



Original: English

No. ICC-01/12-01/18 OA2

Date: 12 May 2021

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Rosario Salvatore Aitala
Judge Gocha Lordkipanidze

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ
AG MOHAMED AG MAHMOUD**

Public document

Decision on Mr Al Hassan's request for a time extension

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

Helen Brady

Counsel for the Defence

Melinda Taylor

Kirsty Sutherland

Legal Representatives of Victims

Seydou Doumbia

Mayombo Kassongo

Fidel Nsita Luvengika

REGISTRY

Registrar

Peter Lewis

The Appeals Chamber of the International Criminal Court,

Having before it the ‘Defence request under Regulation 35(2) to file a public redacted version of ICC-01/12-01/18-1236-Conf’ of 5 March 2021 (ICC-01/12-01/18-1341-Conf; reclassified as ‘public’ pursuant to a 12 May 2021 order of the Appeals Chamber (ICC-01/12-01/18-1341)),

Pursuant to regulations 29(1) and 35(2) of the Regulations of the Court,

Renders the following

DECISION

The request for extension of the time limit is rejected.

REASONS

1. On 22 February 2021, the Appeals Chamber delivered its judgment in *Al Hassan* OA2 on a ‘confidential’ basis.¹ As all the documents in the appeal record were at the time filed as ‘confidential’, the Appeals Chamber ordered the parties and participants to file public redacted versions of their submissions no later than 4 March 2021.²
2. On 1 March 2021, the Prosecutor filed a public redacted version of her response to the appeal brief.³ On 4 March 2021, Mr Al Hassan filed a public redacted version of his appeal brief⁴ and the legal representatives of victims filed a request seeking the reclassification as ‘public’ of their response to the appeal brief.⁵

¹ Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’ of 23 December 2020, ICC-01/12-01/18-1311-Conf (‘*Al Hassan* OA2 Judgment’).

² *Al Hassan* OA2 Judgment, p. 3, paras 12-13.

³ Prosecution’s Response to Defence’s “Appeal of the Trial Chamber’s ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’”, ICC-01/12-01/18-1262-Red.

⁴ Defence Appeal of the Trial Chamber’s “Decision on the urgent Defence request for a custodial visit on compassionate grounds”, ICC-01/12-01/18-1249-Corr-Red2.

⁵ *Demande de reclassification de la « Réponse au mémoire d’appel de la Défense relatif à la ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’ (ICC-01/12-01/18-1227-Conf) »* (ICC-01/12-01/18-1263-Conf), ICC-01/12-01/18-1338.

3. On 5 March 2021, Mr Al Hassan filed a public redacted version of his notice of appeal,⁶ after the deadline set by the Appeals Chamber. Mr Al Hassan filed, simultaneously, a request pursuant to regulation 35(2) of the Regulations of the Court ('Regulation 35(2) Request'), praying that the Appeals Chamber accept the public redacted version of the notice of appeal notwithstanding its late filing.⁷ The Defence apologises for its 'failure to file the public redacted version of the Notice of Appeal', which it explains occurred due to 'inadvertence'.⁸ The Defence submits that there is 'good cause' for granting the request because there will be no prejudice to the parties and participants.⁹

4. Regulation 35(2) of the Regulations of the Court (the 'Regulations'), 'Variation of time limits', states as follows:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

5. Under the circumstances, the Appeals Chamber considers that the procedure set out in regulation 35(2) of the Regulations, second sentence, was not followed in this case. Rather than first seeking an extension of time, the Defence simply filed the public redacted version of its notice of appeal after inadvertently missing the deadline to do so. Furthermore, the Appeals Chamber considers that the explanation provided by the Defence for the late filing cannot be considered a reason outside the Defence's control, as required in regulation 35(2) of the Regulations. Therefore, the Regulation 35(2) Request is rejected.

6. It is worth emphasising that the Defence must comply with the orders of the Appeals Chamber going forward or seek timely and appropriate relief if it cannot do so. Such conduct is not only required by the Court's procedural rules, but it is also an

⁶ Defence Notice of Appeal of 'Decision on the urgent Defence request for a custodial visit on compassionate grounds' with confidential annex (ICC-01/12-01/18-1236-Conf-Anx), ICC-01/12-01/18-1236-Red.

⁷ Defence request under Regulation 35(2) to file a public redacted version of ICC-01/12-01/18-1236-Conf, 5 March 2021, ICC-01/12-01/18-1341-Conf, paras 3, 6.

⁸ Regulation 35(2) Request, para. 5.

⁹ Regulation 35(2) Request, para. 5.

obligation of counsel appearing before the Court.¹⁰ However, notwithstanding the Defence's non-compliance with procedure, the Appeals Chamber notes that the document concerned is one that the Appeals Chamber specifically ordered to be filed for the purpose of enhancing the publicity of the appellate record. Therefore, the Appeals Chamber considers that it would be in the interests of justice, pursuant to regulation 29(1) of the Regulations, that the public redacted version of the notice of appeal remain part of the record in this case.

Done in both English and French, the English version being authoritative.



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 12th day of May 2021

At The Hague, The Netherlands

¹⁰ See article 24(1) and article 31(a) of the Code of Professional Conduct for Counsel.