

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 30 July 2019

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Single Judge

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 the Prosecution's Request for an Extension of the Page limit for its
Response to the Defence Submissions Filed on 22 July 2019**

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge **Péter Kovács**, designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as the Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),¹ rules as follows.

I. Procedural history

1. On 27 March 2018, the Chamber, acting pursuant to article 58 of the Rome Statute (“Statute”), issued a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan” and “Warrant of Arrest”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court and is currently in custody at the Court’s detention centre in The Hague.³
3. On 4 April 2018, the first appearance hearing was held. Mr Al Hassan appeared before the Single Judge in the presence of his counsel and the Prosecutor.⁴
4. On 16 May 2018, the Single Judge issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters” (“Decision on Disclosure Protocol”).⁵
5. On 22 May 2018, the Single Judge issued his decision on the Warrant of Arrest (“Decision on the Warrant of Arrest”).⁶
6. On 20 July 2018, the Single Judge decided to postpone to 6 May 2019 the confirmation hearing initially scheduled for 24 September 2018.⁷

¹ “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG, (Decision of 28 March 2018).

² “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, ICC-01/12-01/18-2-tENG.

³ ICC-01/12-01/18-11-US-Exp.

⁴ Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-FRA ET

⁵ ICC-01/12-01/18-31-tENG-Corr.

⁶ “*Décision relative à la requête du Procureur aux fins de délivrance d’un mandat d’arrêt à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, 22 May 2018, ICC-01/12-01/18-35-Conf-Exp-Red. A public redacted version was issued that same day.

7. On 5 October 2018, the Chamber delivered the “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges”.⁸

8. On 12 February 2019, the Prosecutor submitted information on the disclosure of evidence and anticipated requests for redactions, as well as a request for an extension of time for filing the document containing the charges against Mr Al Hassan.⁹

9. On 25 February 2019, the Single Judge deferred the date of the confirmation hearing, stating that a new date would be set after 15 March 2019.¹⁰

10. On 18 April 2019, the Single Judge rendered a decision instructing the Prosecutor to file the Document Containing the Charges against Mr Al Hassan by Wednesday, 8 May 2019 and rescheduling the confirmation hearing for Monday, 8 July 2019 (“Confirmation Hearing”).¹¹

11. On 8 May 2019, the Prosecutor filed the Document Containing the Charges against Mr Al Hassan.¹²

12. On 11 May 2019, the Prosecutor filed an amended and corrected version of the Document Containing the Charges against Mr Al Hassan of 8 May 2019 (“DCC”).¹³

13. On 7 June 2019, the Prosecutor filed the DCC in Arabic.¹⁴

⁷ “Decision Postponing the Date of the Confirmation Hearing”, 20 July 2018, ICC-01/12-01/18-94-Conf-Exp-tENG. On the same day, a confidential redacted version, accessible to the Defence, was added to the case file, ICC-01/12-01/18-94-Red-tENG.

⁸ ICC-01/12-01/18-143-tENG.

⁹ “Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve”, 12 February 2019, ICC-01/12-01/18-243-Secret-Exp. On 15 February 2019, the Prosecutor filed a public redacted version of this document, ICC-01/12-01/18-243-Red2.

¹⁰ “Ordonnance fixant une date butoir pour le dépôt des requêtes en vue du dépôt du document contenant les charges”, 25 February 2019, ICC-01/12-01/18-255, para. 15.

¹¹ “Décision fixant une nouvelle date pour le dépôt du document contenant les charges et pour le début de l’audience de confirmation des charges”, ICC-01/12-01/18-313, paras. 18-20.

¹² ICC-01/12-01/18-335-Conf.

¹³ ICC-01/12-01/18-335-Conf-Corr.

¹⁴ ICC-01/12-01/18-366.

14. On 11 June 2019, the Prosecutor filed the Arabic version of the DCC containing footnotes.¹⁵

15. On 4 July 2019, the Defence lodged submissions under rule 121(9) of the Rules of Procedure and Evidence (“Rules”).¹⁶

16. Between 8 and 17 July 2019, the Confirmation Hearing was held in the presence of the Prosecutor, the Defence and the Legal Representatives of Victims.¹⁷

17. On 8 July 2019, at the opening of the Confirmation Hearing, the Defence made oral observations under rule 122(3) of the Rules (“Defence Oral Observations of 18 July 2019”).¹⁸

18. On 22 July 2019, the Defence filed submissions in connection with its oral observations of 8 July 2019 (“Defence Submissions of 22 July 2019” or “Defence Submissions”).¹⁹

19. On 26 July 2019, the Prosecutor submitted a request for an extension, to 30 pages, of the page limit for its response to the Defence Submissions of 22 July 2019 due to exceptional circumstances relating to the complexity of the issues raised in the Defence Submissions (“Request”).²⁰

20. On 29 July 2019, the Single Judge informed the Prosecutor by email that her request had been rejected and that a decision containing reasons for the rejection would be delivered shortly.²¹ The Single Judge also decided to extend the time limit for filing the Prosecutor’s response to the Defence Submissions to 30 July 2019.²²

¹⁵ ICC-01/12-01/18-370.

¹⁶ ICC-01/12-01/18-394-Conf, paras. 256-286. On 9 July 2019, the Defence filed a public redacted version of the document, ICC-01/12-01/18-394-Red.

¹⁷ “Ordonnance portant calendrier aux fins de l’audience de confirmation des charges”, ICC-01/12-01/18-385 and “Ordonnance modifiant l’Ordonnance portant calendrier de l’audience de confirmation des charges”, 27 June 2019, ICC-01/12-01/18-390.

¹⁸ Transcript of the Confirmation Hearing, 8 July 2019, ICC-01/12-01/18-T-003-CONF-ENG ET, pp. 6-28.

¹⁹ “Submissions requested by the Pre-Trial Chamber”, ICC-01/12-01/18-426-Secret-Exp.

²⁰ “Prosecution’s request for an extension of the page limit for its response to the Defence submissions filed on 22 July 2019”, ICC-01/12-01/18-433.

²¹ Email from the Chamber to the Prosecutor at 11.36 on 29 July 2019.

²² Email from the Chamber to the Prosecutor at 11.36 on 29 July 2019.

II. Analysis

21. The Single Judge refers to regulation 37(2) of the Regulations of the Court which states that “[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances”.

22. Before proceeding, the Single Judge notes that the Prosecution Request was registered on 26 July 2019, one working day before expiry of the time limit set by the Single Judge at the Confirmation Hearing.²³ He points out that parties wishing to submit a request to the Single Judge must do so in a manner that will enable him to take action within the appropriate time limits. In this instance, the Single Judge finds that filing the request one working day before expiry of the time limit makes it difficult, if not impossible, for the Defence to submit any reply and for the Single Judge to properly examine the submissions. He also notes that this is the second time in under a week that the Prosecutor has chosen to make such a request tardily, after having requested, last Monday, two days before expiry of the time limit, an extension of the page limit for filing her final written submissions.²⁴ That submission left virtually no time for the Defence to respond and for the Single Judge to examine the request on the merits.²⁵

23. As to the merits of the Request, the Single Judge notes that the Defence Submissions of 22 July 2019 and the prospective response to them by the Prosecutor relate to a series of specific points that both parties had the opportunity to address at the Confirmation Hearing. Considering the extensive submissions in the instant case, and taking into account the restricted nature of the issues that the Prosecutor has to address in her prospective response, the Single Judge finds that, in this instance, the reasons advanced do not amount to exceptional circumstances within the meaning of regulation 37(2) of the Rules.

²³ Transcript of the Confirmation Hearing, 8 July 2019, ICC-01/12-01/18-T-003-CONF-FR ET, p. 33, lines 19-20.

²⁴ “Prosecution’s request for an extension of the page limit for its final written submissions”, 22 July 2019, ICC-01/12-01/18-425.

²⁵ See the “Decision on the Prosecutor’s request for an extension of the page limit for its final written submissions”, 23 July 2019, ICC-01/12-01/18-433.

FOR THESE REASONS, the Single Judge

REJECTS the Prosecution's request for an extension of the page limit for its response to the Defence Submissions of 22 July 2019.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 30 July 2019

At The Hague, Netherlands