

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **23 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***

**URGENT
PUBLIC DOCUMENT**

**Decision on the Prosecution's Request for an Extension of the Page Limit
for its Final Written Submissions**

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 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 decides 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 for the arrest of Mr 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; he is currently in custody at its 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 Warrant of Arrest”).⁶
6. On 20 July 2018, the Single Judge decided to postpone until 6 May 2019 the confirmation hearing originally scheduled for 24 September 2018.⁷

¹ “Decision Designating a Single Judge”, 28 March 2018, 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 “Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 22 May 2018, ICC-01/12-01/18-35-Conf-Exp-Red-tENG. A public redacted version was issued the same day.

⁷ “Decision Postponing the Date of the Confirmation Hearing”, 20 July 2018, ICC-01/12-01/18-94-Conf-Exp-tENG. A confidential redacted version available to the Defence was added to the record that day (ICC-01/12-01/18-94-Red-tENG).

7. On 5 October 2018, the Chamber handed down its “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 filed particulars on disclosure of evidence and forthcoming redaction requests, along with a request for an extension of time to file 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 and advised that it would be rescheduled after 15 March 2019.¹⁰

10. On 18 April 2019, the Single Judge directed the Prosecutor to file the DCC by Wednesday, 8 May 2019 and rescheduled the confirmation hearing for Monday, 8 July 2019 (“Hearing”).¹¹

11. On 8 May 2019, the Prosecutor filed her document containing the charges against Mr Al Hassan.¹²

12. On 11 May 2019, the Prosecutor filed an amended and corrected version of her document containing the charges against Mr Al Hassan of 8 May 2019 (“DCC”).¹³

13. On 29 May 2019, the Single Judge issued an order on arrangements for the Hearing, which he decided would be held, in principle, from Monday, 8 to Friday, 12 July 2019.¹⁴ The Single Judge also advised that the Hearing would focus in part on the responses to the questions of the Bench arising out of the parties and participants’

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. The Prosecutor submitted a public redacted version on 15 February 2019 (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 “*Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing*”, 18 April 2019, ICC-01/12-01/18-313-tENG, paras. 18-20.

¹² ICC-01/12-01/18-335-Conf.

¹³ ICC-01/12-01/18-335-Conf-Corr.

¹⁴ ICC-01/12-01/18-357, para. 18.

submissions, and stated accordingly that a list of questions would be provided in good time for the Hearing.¹⁵

14. On 7 June 2019, the Prosecutor filed the DCC in Arabic.¹⁶

15. On 11 June 2019, the Prosecutor filed the DCC in Arabic with the footnotes.¹⁷

16. On 24 June 2019, the Single Judge issued an order¹⁸ directing the parties and participants to file final written submissions, after the Hearing, on the questions discussed during the Hearing, extending to no more than 30 pages and containing no procedural history or annexes (“Scheduling Order of 24 June 2019”).¹⁹

17. On 27 June 2019, the Single Judge made an order varying the Scheduling Order of 24 June 2019,²⁰ in which he directed the Prosecutor and the Legal Representatives of Victims to file their final written submissions by 24 July 2019 and the Defence team for Mr Al Hassan (“Defence”) to file its final written submissions by 31 July 2019.²¹

18. On 4 July 2019, the Defence lodged its submissions under rule 121(9) of the Rules of Procedure and Evidence (“Rules”).²²

19. On 5 July 2019, the Single Judge emailed the parties and participants a list of questions.²³

20. On 8 July 2019, the Single Judge issued an order²⁴ directing the parties and participants to respond, at the confirmation hearing, to the questions appended (“List of 43 Questions”).²⁵

¹⁵ ICC-01/12-01/18-357, para. 20.

¹⁶ ICC-01/12-01/18-366.

¹⁷ ICC-01/12-01/18-370.

¹⁸ “*Ordonnance portant calendrier aux fins de l’audience de confirmation des charges*”, ICC-01/12-01/18-385.

¹⁹ ICC-01/12-01/18-385, para. 33.

²⁰ “*Ordonnance modifiant l’Ordonnance portant calendrier aux fins de l’audience de confirmation des charges*”, ICC-01/12-01/18-390.

²¹ ICC-01/12-01/18-390, para. 4.

²² ICC-01/12-01/18-394-Conf, paras. 256-286. The Defence filed a public redacted version on 9 July 2019 (ICC-01/12-01/18-394-Red).

²³ Email from the Chamber on 5 July 2019 at 19.12.

²⁴ “Order Instructing Parties and Participants to Respond to the Questions in the Annex at the Confirmation Hearing”, ICC-01/12-01/18-399-tENG, with annex ICC-01/12-01/18-399-Anx-Red-tENG.

21. The Hearing was held from 8 to 17 July 2019, in the presence of the Prosecutor, the Defence and the legal representatives of victims.²⁶

22. On 22 July 2019, the Prosecution filed a request for an extension of the page limit for its final written submissions (“Request”).²⁷

23. On 23 July 2019, the Defence, as directed by the Single Judge,²⁸ emailed its response to the Request.²⁹

II. Analysis

A. Submissions of the parties

24. The Prosecutor seeks, under regulation 37(2) of the Regulations of the Court, an extension of the page limit for her final written submissions for the purposes of the Hearing to 58 pages on the ground of exceptional circumstances regarding the number of issues to be covered in response to the Chamber’s questions.³⁰

25. The Prosecutor first adverts to the List of 43 Questions, extending to 11.5 pages, which the Chamber sent to the parties and participants and which she says requires detailed responses, including references to relevant examples and evidence.³¹ The Prosecutor then states that, for ease of reference and because she did not have sufficient time to prepare fully or elaborate upon her responses at the Hearing, her final written submissions will set out her full, consolidated responses to the questions put by the Chamber, including those to which she has already given preliminary responses at the Hearing.³² The Prosecutor goes on to explain that, for the sake of efficiency and concision, some responses will also address inaccuracies or

²⁵ Annex to the “Order Instructing Parties and Participants to Respond to the Questions in the Annex at the Confirmation Hearing”, ICC-01/12-01/18-399-Anx-Red.

²⁶ Scheduling Order of 24 June 2019 and “*Ordonnance modifiant l’Ordonnance portant calendrier de l’audience de confirmation des charges*”, 27 June 2019, ICC-01/12-01/18-390.

²⁷ “Prosecution’s request for an extension of the page limit for its final written submissions”, ICC-01/12-01/18-425.

²⁸ Email from the Chamber on 22 July 2019 at 14.25.

²⁹ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

³⁰ Request, paras. 1, 6-7.

³¹ Request, para. 6.

³² Request, para. 6.

misstatements contained in the Defence's written submissions, where they relate to the questions which the Chamber has raised.³³ Lastly, the Prosecutor advises that, for ease of reference, she has included the Chamber's questions in the footnotes to her final written submissions, which alone accounts for 6.5 pages.³⁴

26. The Defence moves the Single Judge to deny the Prosecutor's Request.³⁵ The Defence contends that the Prosecutor's request to extend her final written submissions to 58 pages is unjustified, excessive and would violate the Defence's right to full disclosure of the Prosecutor's case in advance of the Hearing.³⁶

27. The Defence argues in particular that the Prosecutor had ample time to present her case at the Hearing and should be in a position to respond to the Bench's questions by reference to the arguments advanced in her DCC or in her oral submissions within the current page limit.³⁷ The Defence asserts that the purpose of the final written submissions, as directed by the Single Judge, is to address the issues raised at the Hearing and not to set out new arguments that have so far been withheld for strategic reasons.³⁸

28. Moreover, since it has already presented its case on the basis of the allegations and arguments known to it, the Defence asserts that it would be unfair for it now to be confronted with new arguments or theories, which seems to be the Prosecutor's aim in making her Request.³⁹

29. Lastly, the Defence submits that the Request also runs counter to its right to have adequate time and facilities to prepare its case.⁴⁰ Specifically, the Defence states that it is not possible for it to respond to 30 additional pages by 31 July 2019, the deadline for its final written submissions.⁴¹ The Defence argues in this connection

³³ Request, para. 6.

³⁴ Request, para. 6.

³⁵ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

³⁶ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

³⁷ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

³⁸ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

³⁹ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

⁴⁰ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

⁴¹ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

that it cannot seek an extension of time to file its own submissions without undermining Mr Al Hassan's right to expeditious proceedings, given that the time in which to deliver the confirmation decision will run from the filing of the Defence's final written submissions.⁴²

B. Applicable law

30. The Single Judge refers to articles 61 and 67 of the Statute, rules 121 and 122 of the Rules, and regulations 37 and 38 of the Regulations of the Court.

C. Determination of the Single Judge

31. The Single Judge notes that in the Scheduling Order of 24 June 2019 he gave the parties and participants the following direction:

33. [TRANSLATION] [...] the Single Judge sees fit to direct the parties and participants to file final written submissions, after the Hearing, on the issues discussed during the Hearing, extending to no more than 30 pages. The Single Judge advises that the submissions are not to contain any procedural history or annexes.⁴³

32. The Single Judge also notes that under regulation 37(2) of the Regulations of the Court "[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances."

33. The Single Judge notes the Defence's submission that the Prosecutor had ample time to present her case at the Hearing. The Single Judge nonetheless refers to the sizeable number of questions raised by the Chamber before the Hearing. He observes in this regard that the Chamber directed the parties and participants to respond at the Hearing, *to the extent possible*, to the List of 43 Questions which arose from examination of their submissions.⁴⁴ At the Hearing, however, the Chamber granted the parties and participants permission, if need be, to provide further responses to the questions in their final written submissions, and stated that the

⁴² Email from the Defence to the Chamber on 23 July 2019 at 13.36.

⁴³ ICC-01/12-01/18-385, para. 33.

⁴⁴ "Order Instructing Parties and Participants to Respond to the Questions in the Annex at the Confirmation Hearing", 8 July 2019, ICC-01/12-01/18-399-tENG, p. 4.

parties and participants could request a page extension if they wished.⁴⁵ The Single Judge therefore finds merit in the Prosecutor's argument that the 43 questions may call for substantial elaboration in her final written submissions, thereby requiring more pages than the Chamber had directed.

34. The Single Judge also notes the Defence's submission that the Request runs counter to its right to have adequate time and facilities to prepare its case. The Single Judge notes in this regard that the format suggested by the Prosecutor – in which her final written submissions will include the responses given at the Hearing – has the potential to enable a clearer presentation of the Prosecutor's responses while sparing the parties and participants, and the public, the need to compare the contents of several documents to see what clarifications the Prosecutor has provided. The Single Judge also notes that some of the extra pages requested by the Prosecutor will be devoted to reciting the Chamber's questions. Thus the Single Judge sees that some of the additional pages requested by the Prosecutor are a consequence of the way in which her final written submissions will be set out.

35. For these reasons the Single Judge grants the Prosecutor's request to extend the page limit for her final written submissions for the purposes of the Hearing to 58 pages.

36. The Single Judge nevertheless takes note of the Defence's argument that the Prosecutor, if not intending to present new allegations or theories in her final written submissions, should be in a position to respond to the List of 43 Questions within the page limit imposed and concerning the fact.⁴⁶ In this respect, the Single Judge points out that the Chamber's questions to the parties and participants are aimed at clarifying certain aspects of their submissions now that these have been examined. The Single Judge therefore reminds the Prosecutor that her written submissions must not exceed the scope of the charges laid, or the evidence presented, in her DCC.

⁴⁵ Transcript of the Hearing, 9 July 2019, ICC-01/12-01/18-T-004-CONF-FR ET, p. 55, line 28 and p. 56, lines 1-4.

⁴⁶ Email from the Defence to the Chamber on 23 July 2019 at 13.36.

37. Lastly, the Single Judge sees fit to also allow the Defence, should it so wish, to submit 58 pages of final written submissions.

FOR THESE REASONS, the Single Judge

GRANTS the Prosecutor's request to extend the page limit for her final written submissions for the purposes of the hearing on the confirmation of the charges;

AUTHORIZES the Prosecutor to file a document of 58 pages; and

AUTHORIZES the Defence to file 58 pages of final written submissions for the purposes of the hearing on the confirmation of the charges.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 23 July 2019,
At The Hague, Netherlands