

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No. **ICC-01/11-01/17**

Date: **15 June 2022**

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN LIBYA

IN THE CASE OF

THE PROSECUTOR v. MAHMOUD MUSTAFA BUSAYF

AL-WERFALLI

PUBLIC

Decision terminating proceedings against Mr Mahmoud Mustafa Busayf Al-Werfalli

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Nazhat Shameem Khan
Ms Nicole Samson

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representative

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the ‘Prosecution notification of the Death of Mahmoud Mustafa Busayf Al-Werfalli and Request to Withdraw the Warrants of Arrest’ (the ‘Request’).¹

1. On 26 February 2011, the United Nations Security Council referred the situation in the Libyan Arab Jamahiriya (‘Libya’) since 15 February 2011 to the Prosecutor of the Court.²
2. On 15 August 2017, the Chamber³ issued a first warrant of arrest⁴ for Mr Mahmoud Mustafa Busayf Al-Werfalli (‘Mr Al-Werfalli’) for his alleged criminal responsibility for the war crime of murder pursuant to articles 8(2)(c)(i) and 25(3)(a) and (b) of the Rome Statute (the ‘Statute’), and on 4 July 2018, a second warrant of arrest⁵ having found reasonable grounds to believe that he was criminally responsible for the war crime of murder, pursuant to articles 8(2)(c)(i) and 25(3)(a) of the Statute.
3. On 17 May 2022, the Chamber received the Request. The Prosecution requests the Chamber ‘to withdraw the warrants of arrest issued for [Mr Al-Werfalli] and to render them without effect because of the changed circumstances caused by [his] death’.⁶
4. The Chamber notes that, pursuant to article 25(1) of the Statute, the Court has jurisdiction only over ‘natural’ persons. As the purpose of the Court’s criminal proceedings is to determine individual criminal responsibility, that jurisdiction cannot be exercised over a deceased person. Therefore, proceedings against a person who has deceased must be terminated and all relevant documents are rendered without effect.⁷ The Chamber further notes that the production of a

¹ ICC-01/11-01/17-23-Conf-Exp, with confidential *ex parte* annexes.

² See Resolution S/RES/1970 (2011).

³ The two warrants of arrest were issued by the Chamber in a previous composition. On 23 March 2021, the Presidency recomposed the chambers of this Court and assigned the situation in Libya to the Chamber in its present composition (*see* The Presidency, Decision assigning judges to divisions and recomposing Chambers, ICC-01/11-01/17-21, p. 9). On the same day, the Chamber elected Judge Péter Kovács as Presiding Judge of the Chamber (*see* Decision on the Election of the Presiding Judge, ICC-01/11-01/17-22, p. 4).

⁴ Warrant of Arrest, 15 August 2017, ICC-01/11-01/17-2.

⁵ Second Warrant of Arrest, 4 July 2018, ICC-01/11-01/17-13.

⁶ Request, paras 1, 19.

⁷ Article 58(4) of the Statute. Pre-Trial Chamber I (previous composition), *The Prosecutor v. Saif Al-Islam Gaddafi*, Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi, 22 November 2011, ICC-01/11-01/11-28, p. 4 and references cited therein. Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Public redacted Decision terminating the proceedings against Mr Jerbo, 4 October 2013 (public and confidential versions notified on the same day), ICC-02/05-03/09-512-Red, para. 17 and references cited therein.

death certificate is not a pre-requisite for terminating criminal proceedings, but it may be serve to prove that the suspect is in fact deceased.⁸

5. Having considered the information and material provided by the Prosecution, in particular witness statements, photographs, and social media material, the Chamber considers the death of Mr Al-Werfalli to be established. The present proceedings must accordingly be terminated, and the warrants of arrest are no longer in effect, and the outstanding requests for arrest and surrender must be withdrawn. The Registrar is as a result instructed to inform all States which were notified of the said warrants of arrest that they are no longer in effect and to withdraw any requests for arrest and surrender.

6. In addition, the Prosecution is instructed to file a public redacted version of the Request, by no later than 7 days following the notification of this decision.

⁸ ICC-02/05-03/09-512-Red, para. 18.

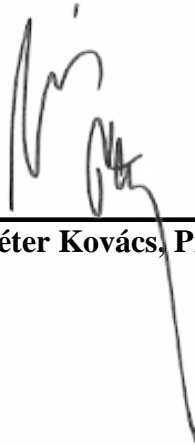
FOR THESE REASONS, THE CHAMBER HEREBY

TERMINATES the proceedings against Mr Al-Werfalli;

ORDERS the Registrar to inform all States which were notified of the warrants of arrest that they are no longer in effect and to withdraw the requests for arrest and surrender; and

ORDERS the Prosecution to file a public redacted version of the Request by no later than 7 days following the notification of this decision.

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



Judge Péter Kovács, Presiding Judge



**Judge Reine Adélaïde Sophie
Alapini-Gansou**



**Judge María del Socorro
Flores Liera**

Dated this Wednesday, 15 June 2022

At The Hague, The Netherlands