

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/11-01/13**

Date: **2 August 2022**

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

IN THE CASE OF *THE PROSECUTOR v. AL-TUHAMY MOHAMED KHALED*

**Public Redacted Version of "Prosecution notification of the Death of Al-Tuhamy Mohamed Khaled and Request to Withdraw the Warrant of Arrest", 2 August 2022,
ICC-01/11-01/13-37-Conf-Exp
With Confidential, Ex Parte, Prosecution and Registry only Annex 1**

Source: Office of the Prosecutor

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

The Office of the Prosecutor
Ms Nazhat Shameem Khan
Ms Nicole Samson

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests the Pre-Trial Chamber (“Chamber”) to withdraw the warrant of arrest issued for Al-Tuhamy Mohamed Khaled (“AL-TUHAMY”) and to render it without effect because of the changed circumstances caused by AL-TUHAMY’s death.¹

Confidentiality

2. Pursuant to regulation 23bis (2) of the Regulations of the Court, this filing and its annexes are classified as confidential, *ex parte*, available only to the Prosecution and the Registry, because they refer to filings and materials with the same level of classification.

Procedural Background

3. On 27 March 2013, the Prosecution submitted, under seal, its application for a warrant of arrest for AL-TUHAMY.²

4. On 18 April 2013, the Chamber issued the “Warrant of Arrest for Al-Tuhamy Mohamed Khaled” (“Warrant of Arrest”), which was classified as under seal *ex parte*.³

5. On 21 April 2017, the Prosecution requested that the Chamber reclassify the Warrant of Arrest as public.⁴

6. On 24 April 2017, the Chamber reclassified the Warrant of Arrest as public.⁵

7. In February 2021, there were reports in the media that AL-TUHAMY had died.

¹ The Prosecutor has recused himself from this case. Accordingly, this application is filed under the signature of Deputy Prosecutor Nazhat Shameem Khan.

² ICC-01/11-01/13-5-US-Exp

³ ICC-01/11-01/13-1.

⁴ ICC-01/11-01/13-17-Conf-Exp

⁵ ICC-01/11-01/13-18

8. [REDACTED].⁶

9. [REDACTED].⁷

10. On [REDACTED], the Prosecution received a copy of the death certificate from Libyan authorities, [REDACTED]. The death certificate is annexed as Annex 1 of this filing, along with an official translation of the certificate.

**Request for the Warrant of Arrest for AL-TUHAMY to be Withdrawn and to
be Rendered without Effect because of his Death**

11. Article 58(4) states that “warrant of arrest shall remain in effect unless otherwise ordered by the Court”. Accordingly, the Prosecution requests the Pre-Trial Chamber to withdraw the Warrant of Arrest and to render it without effect on the ground of AL-TUHAMY’s death.

12. It is self-evident that the death of a person named in a warrant or an indictment terminates the criminal proceedings relating to that individual.⁸ There is no doubt that AL-TUHAMY, the person named in the Warrant of Arrest issued by this Court, is now dead. In light of the death certificate received by the Prosecution, there is no reason for the Warrant of Arrest to remain outstanding.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ ICC-01/11-01/17-24; ICC-02/04-01/05; ICC-02/05-03/09; ICC-01/11-01/11-28; and ICC-02/04-01/05-248.

Conclusion

13. For the foregoing reasons, the Prosecution requests that the Pre-Trial Chamber withdraw the Warrant of Arrest issued for AL-TUHAMY because of the changed circumstance caused by his death.



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 2nd day of August 2022

At The Hague, The Netherlands