

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/05-01/20

Date: 29 June 2020

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR V. ALI MUHAMMAD AL ABD-AL-RAHMAN ('ALI
KUSHAYB')**

**URGENT
Public**

**Registry's observations on the "Requête en vertu de l'Article 67-1-f",
(ICC-02/05-01/20-7)**

Source: The Registry

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

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Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of Victims

**Unrepresented Applicants
(Participation/Reparation)**

Unrepresented victims

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REGISTRY

Registrar

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**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Following Pre-Trial Chamber II's ("Chamber") email instruction on 25 June 2020,¹ the Registrar hereby submits his observations on the "Requête en vertu de l'Article 67-1-f" ("Request") filed by Mr Cyril Laucci, counsel for Mr Ali Muhammad Al Abd-Al-Rahman ("Defence", "Counsel" and "Mr Al Abd-Al-Rahman", respectively).²

II. Procedural history

2. On 11 June 2020, Mr Cyril Laucci was appointed as duty counsel for Mr Abd-Al-Rahman to represent him during the initial appearance hearing.³

3. On 15 June 2020, during the initial appearance hearing, Mr Abd-Al-Rahman indicated that Arabic is the language he fully understands and speaks.⁴

4. On 16 June 2020, following the hearing, the representatives of the Registry met with Mr Abd-Al-Rahman with the purpose of formalising his legal representation before the Court. During this meeting, the Registry representatives indicated to Mr Abd-Al-Rahman the possibility of appointing an Arabic speaking counsel as the Registry could not maintain the level of linguistic assistance that had been provided to him so far. They also enquired about his preferred additional criteria (e.g. gender, experience, location) in order for the Counsel Support Section ("CSS") to further assist him with a pre-selection of counsel on the basis of those criteria.⁵ Mr Abd-Al-Rahman confirmed that he would like an Arabic speaking counsel. Subsequently, the

¹ Email from Pre-Trial Chamber II to Registry on 25 June 2020 at 17.11.

² Defence, "Requête en vertu de l'Article 67-1-f", dated 25 June 2020 and registered on 26 June 2020, ICC-02/05-01/20-7 ("Request").

³ Registry, "Notification of the Appointment of Mr Cyril Laucci as Duty Counsel for Mr Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb")", 12 June 2020, ICC-02/05-01/07-84.

⁴ Transcript of 15 June 2020, ICC-02/05-01/20-T-001-ENG, p. 20, lines 16-18.

⁵ Currently the List of counsel (regulation 122 of the Regulations of the Registry), comprises 846 counsel eligible to practice before the Court. See also rule 21(2) of the Rules of Procedure and Evidence, and regulation 75 of the Regulations of the Court.

CSS provided Mr Abd-Al-Rahman with the profiles of 39 Arabic-speaking persons on the list of counsel ("List").

5. On 17 June 2020, Mr Abd-Al-Rahman requested the appointment of Mr Laucci as his counsel in the proceedings before the Court.⁶

6. On 24 June 2020, during the induction meeting between the Registry and the Defence, the Registry indicated that costs for interpretation between counsel and a client are not foreseen in the Registry's single policy Document on the Court's legal aid system ("LAP"). The Registry thus invited Counsel to consider for the performance of his representation agreement in good faith in accordance with article 14 of the Code of Professional Conduct for counsel ("Code"), recruiting at least an Arabic speaker in the team, given that the Counsel does not master the Arabic language and that this is the chosen language of his client.

7. On the same day, the Counsel submitted a request to use the language services of the Court, because "[he] will not be able to communicate with [the client] any longer without the assistance of an interpreter [...]."⁷

8. On 25 June 2020, the Defence requested the Registry to: (i) "arrange on a provisional and urgent basis the ongoing services of L[anguage] S[ervices] S[ection] for interpretation with Mr Abd-Al-Rahman during his daily meetings with the members of his Defence team as of tomorrow Friday 26 June 2020, 9.30 a.m."; and (ii) "consider the present request for addition of a full time interpreter/translator to the Defence team of Mr Abd-Al-Rahman pursuant to Article 67(1)(f) of the Rome Statute, Regulation 83(1) of the Regulations of the Court and section 15(1) of the Legal Aid Scheme".⁸ On the same day, the Registry informed the Defence by email that "interpretation services are not included in the Court's legal aid system ("LAP")" and that "neither the Rome Statute nor the LAP envisage the use of interpretation

⁶ Registry, "Notification of the Appointment of Mr Cyril Laucci as Counsel for Mr Ali Muhammad Al Abd-Al-Rahman", 19 June 2020, ICC-02/05-01/20-3, para. 4.

⁷ Email from Mr Laucci to CSS on 24 June 2020 at 15.44.

⁸ Email from Mr Laucci to CSS on 25 June 2020 at 10.40.

services for the communication between counsel and the client as interpretation for this purpose is not a right of the defendant according to the Rome Statute.”⁹

9. The Defence was also informed that “[t]he use of the Registry’s interpretation services for purposes of communicating with [the] client has been a temporary solution linked to the urgency of the initial appearance and cannot be considered of a structural nor long term nature”, and that the Counsel can organise the team “in a way that ensures the proper communication with the client within the allocated budget, e.g. through the hiring of one Arabic speaker or more.”¹⁰

10. On the same day, the Defence requested the Chamber “(i) pour ordonner au Greffier de la Cour de mettre à la disposition de l’équipe de Défense de Mr Abd-Al-Rahman les services d’interprétation et de traduction entre l’Arabe et l’une des langues de travail de la Cour nécessaires à la préparation de sa défense et à sa communication avec son équipe de défense à compter du vendredi 26 juin 2020 et jusqu’à nouvel ordre conformément à l’Article 67-1-f du Statut de Rome”; and (ii) “d’ordonner au Greffier de mettre provisoirement à la disposition de l’équipe de défense de Mr Abd-Al-Rahman les services d’interprétation et de traduction nécessaires de la Section des Services Linguistiques du Greffe en vertu de la norme 57-1 du Règlement du Greffe et sans que le délai de préavis de la norme 58-3 du Règlement du Greffe s’applique” (“Request”).¹¹

III. Applicable Law

11. The following provisions are of particular relevance to the present submissions: articles 41, 43(1) and 67(1)(f) of the Rome Statute (“Statute”), rules 14(2), 20 and 21(2) of the Rules of Procedure and Evidence (“Rule”), articles 9 and 14 of the Code, regulations 40, 83 and 93 of the Regulations of the Court (“RoC”) and the LAP.

⁹ Email from CSS to Mr Laucci on 25 June 2020 at 12.03.

¹⁰ *Ibid.*

¹¹ Request, pp. 5-6.

IV. Observations

12. The Request has no legal basis.¹² Neither the Statute nor the LAP envisages the use of the Court's interpretation services for the requested purpose currently before the Chamber. Article 67(1)(f) of the Statute stipulates that the accused has the right "[t]o have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings [...] are not in a language which the accused fully understands and speaks".

13. Similarly, the Court has ruled that "by using the words "as are necessary to meet the requirements of fairness", article 67(1)(f) of the Statute does not grant [the accused] the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that [he] fully understands and speaks".¹³

14. The French text of the Rome Statute of the International Criminal Court is even more rigorous and clear as it circumscribes the right for interpretation of the persons concerned under 67(1)(f) to "toute procédure suivie devant la Cour ou dans tout document présenté à la Cour".

15. In light of the above, the right to translation or interpretation is not an absolute right under the Court's legal framework and the communication between counsel and client is not in itself part of the proceedings, so it cannot be said that it falls *stricto sensu* into the invoked sub-paragraph of article 67 of the Statute. Indeed, no legal text stipulates such right as to receive support from the Court for the purpose of privileged communication(s) between client and counsel.

¹² See footnote 9.

¹³ Pre-Trial Chamber I, "Decision on the Requests of the Defence of 3 and 4 July 2006", 4 August 2006, ICC-01/04-01/06-268, p. 6. Pre-Trial Chamber I, "Decision on the Defence Request Concerning Languages", 21 December 2007, ICC-01/04-01/07-127, para 41.

16. It follows that the consequence of sustaining such communications is a practical constraint to the freedom of choice of counsel, if not a legal one. While the RPE give the a suspect or an accused, as the case may be, a wide freedom to choose counsel¹⁴, that freedom of choice cannot lead to what may be seen as excessive financial impact on the Court.

17. Should the Chamber find that the Request is legally founded, the Registry notes that the Request would not, in any event, be reasonable and is not adequately justified for the following additional reasons.

18. The Registry is to provide assistance to counsel pursuant to rule 20(1)(b) of the Rules in the limit of rule 14(2) of the Rules, which provides that administrative assistance is to be appropriate and reasonable.

19. This is particularly so, given as above, that Mr Abd-Al-Rahman had at his disposal a list of thirty-nine persons from which he could choose with whom he could communicate in Arabic; Mr Abd-Al-Rahman opted otherwise.

20. Regulation 83(1) of the Regulations of the Court requires all legal aid expenditures to reasonably necessary for an efficient and effective defence; this requirement is also present in principle 5 of the five guiding principles of the LAP, which refers to “economy”.¹⁵ In the circumstances, the Request is not reasonably necessary for an efficient and effective defence as required by regulation 83(1) or the LAP.

21. In order to discharge his obligations under the Code¹⁶, it is Counsel’s responsibility to organise the team in order to meet the specific language needs and ensure communication with his client. Counsel appears to have since done so, as he can secure sufficient communication with the client within the resources provided by the Court’s legal aid system. In this regard, the Registry notes that one of the team

¹⁴ The second sentence of rule 21(2) of the RPE is clear in this respect.

¹⁵ [LAP](#), p. 4.

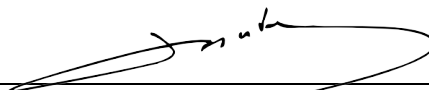
¹⁶ [Resolution ICC-ASP/4/Res.1](#).

members appointed by Counsel is fully proficient in Arabic. The Defence team for Mr Abd-Al-Rahman is currently provided with the standard team composition as per the LAP (counsel, legal assistant and case manager).

22. Notwithstanding the above, the Registry specifies that it will keep on facilitating the language services as necessary to help meet the requirements of fairness in accordance with article 67(1)(f) of the Statute, as well as his proper understanding of the decisions and orders of the Chamber pending their official written translations under regulation 40(3) of the RoC, as appropriate.

V. Conclusion

23. On the basis of the foregoing, the Registry's administrative assistance provided so far to Counsel is appropriate and reasonable, as required by rule 14(2) of the RPE. The Request by Counsel for Court's interpretation services in order to adequately perform his representation agreement and enhance the counsel-client relationship, even on a temporary basis, is not reasonable and not adequately justified. It should be dismissed accordingly for the reasons set forth above.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Peter Lewis, Registrar

Dated this 29 June 2020

At The Hague, The Netherlands