

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/18**
Date: **13 June 2025**

PRE-TRIAL CHAMBER I

Before: Judge Nicolas Guillou, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Beti Hohler

SITUATION IN THE STATE OF PALESTINE

Public

Public redacted version of ‘Prosecution’s Observations on Hungary’s Submissions for the purposes of proceedings under article 87(7) of the Rome Statute (ICC-01/18-433-AnxII)’’, 13 June 2025, ICC-01/18-442-US-Exp

Source: Office of the Prosecutor

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I. INTRODUCTION

1. On 16 April 2025 Pre-Trial Chamber I¹ found that Hungary's failure to execute the Chamber's request for provisional arrest under article 92 of the Statute ("Request for Provisional Arrest") of Mr Benjamin Netanyahu ("NETANYAHU") warranted the opening of proceedings pursuant to article 87(7) of the Statute.²

2. Hungary failed to cooperate with the Court by not executing the Request for Provisional Arrest³ during NETANYAHU's visit to Hungary from 3 to 6 April 2025. Hungary's violation of its obligations under the Statute was deliberate and largely anticipated by Hungary's Prime Minister, Mr Viktor Orbán, who condemned the Arrest Warrant, invited NETANYAHU to visit Hungary, and provided him with assurances that he would not be arrested. Hungary's failure to cooperate prevented the Court from exercising its functions and powers under the Statute.

3. In light of the gravity of Hungary's failure to cooperate with the Court, the Prosecution respectfully requests the Chamber to make a formal finding of non-compliance against Hungary and to refer the matter to the Assembly of States Parties ("ASP") pursuant to article 87(7) of the Rome Statute.

II. CLASSIFICATION

4. This filing is made under seal, *ex parte*, only available to the Registry and the Prosecution pursuant to regulation 23bis(1) of the Regulations of the Court since it refers to communications, filings and information marked with the same classification. The Prosecution will simultaneously file a public redacted version of this filing.

III. BACKGROUND

5. On 20 May 2024, the Prosecution submitted an application under seal in the *Situation in the State of Palestine* pursuant to article 58 of the Statute, requesting the Chamber to issue the Warrant of Arrest for NETANYAHU.⁴

6. On 21 November 2024, the Chamber issued a Warrant of Arrest for NETANYAHU for his alleged criminal responsibility pursuant to articles 25(3)(a) and 28(b) of the Statute for war crimes and crimes against humanity within the Court's jurisdiction,⁵ and instructed the Registry

¹ Pre-Trial Chamber I will be referred to as the "Chamber" or "PTCI".

² [ICC-01/18-421](#), para. 6.

³ [REDACTED]. See also [ICC-01/18-421](#), para. 3.

⁴ [REDACTED]. See also [Statement of ICC Prosecutor](#), 20 May 2024.

⁵ [REDACTED]. See also [Situation in the State of Palestine: ICC Pre-Trial Chamber I issues warrants of arrest for Benjamin Netanyahu](#), 21 November 2024.

to transmit requests for provisional arrest under article 92 of the Statute to State Parties.⁶

7. On 22 November 2024, Hungary's Prime Minister, Mr Viktor Orbán condemned the Chamber's decision and invited NETANYAHU to Hungary.⁷ Mr Orbán assured NETANYAHU's safety and freedom during his visit.⁸ On 23 January 2025, the Hungarian Minister of Trade and Foreign Affairs confirmed the invitation.⁹

8. Throughout March 2025, multiple media outlets reported that NETANYAHU might travel to Hungary in April 2025, before Easter. In a press conference on 13 March 2025, and without providing an exact date for the visit, the Hungarian Prime Minister's Office confirmed NETANYAHU's visit and stated that Hungary would not implement the Warrant of Arrest.¹⁰

9. [REDACTED].¹¹

10. [REDACTED].¹²

11. [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].¹⁵

12. On 30 March 2025, media articles reported that NETANYAHU would travel to Hungary on 2 April 2025.¹⁶ On 31 March 2025, Hungary issued an official statement confirming that, at the invitation of Mr. Orbán, NETANYAHU would pay an official visit to Hungary between 2 April 2025 and 6 April 2025.¹⁷

13. On 31 March 2025, in a letter addressed to the Hungarian Minister of Trade and Foreign Affairs, Mr. Péter Szijjártó, the President of the ASP reminded Hungary of its obligations as a State Party to the Rome Statute, recalling the outstanding Warrant of Arrest against NETANYAHU.¹⁸

14. Social media reports indicated that NETANYAHU might arrive to Hungary, and meet with Mr. Orbán on 3 April 2025, after NETANYAHU's scheduled testimony in a domestic trial from 1 April to 2 April 2025.¹⁹

15. [REDACTED] NETANYAHU landed in Budapest [REDACTED] on 3 April 2025,²⁰

⁶ [REDACTED]. See also [ICC-01/18-421](#), para. 2.

⁷ Hungarian Prime Minister, [PSE-OTP-00209950](#) at 0002, GoI website, [PSE-OTP-00209952](#).

⁸ Letter from Prime Minister Orbán to Prime Minister Netanyahu, 22 November 2024, [PSE-OTP-00209954](#).

⁹ Government of Hungary, [PSE-OTP-00209956](#) (HUN) [PSE-OTP-00213662](#) (ET).

¹⁰ Government of Hungary, [PSE-OTP-00210084](#) (video) at [00:34:48-00:35:40], [00:49:00-00:51:23], [PSE-OTP-00214688](#) (HUN transcript), [PSE-OTP-00214684](#) (ET of transcript) at 0001-0002.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ Government of Hungary, [PSE-OTP-00210089](#) (HUN) [PSE-OTP-00213660](#) (ET).

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

where he was welcomed by the Hungarian Minister of Defence, Mr Kristóf Szalay-Bobrovniczky.²¹

16. On the morning of 3 April 2025, following the approval by the Chamber, the Registry transmitted the Request for Provisional Arrest to Hungary ²² [REDACTED], ²³ [REDACTED], ²⁴ [REDACTED]. ²⁵ [REDACTED]. ²⁶ [REDACTED]. ²⁷ [REDACTED]. ²⁸ [REDACTED].²⁹

17. On 3 April 2025, during a joint press conference with NETANYAHU, Mr Orbán announced that Hungary would withdraw from the Court.³⁰ On the same day, the Hungarian Government submitted a draft bill to the Parliament to be authorised to withdraw from the Rome Statute,³¹ which the Parliament adopted on 20 May 2025.³²

18. On 11 April 2025, the Registry filed with the Chamber a report about the transmission of the request to Hungary, providing it, *inter alia*, with information that NETANYAHU was present in Hungary from 3 until 6 April 2025.³³

19. On 16 April 2025, the Chamber invited Hungary to submit observations regarding its failure to provisionally arrest NETANYAHU pursuant to the Warrant of Arrest.³⁴

20. On 22 May 2025, Hungary filed its Submissions.³⁵ Hungary argued that it could not arrest NETANYAHU because: (i) it had not promulgated the Rome Statute into national law; (ii) article 98(1) provides that a State Party cannot act inconsistently with its obligations under international law; and (iii) the Court had no jurisdiction in the Situation in the State of Palestine.

21. On 28 May 2025, the Prosecution requested leave to provide observations on Hungary's Submissions.³⁶

22. On 30 May 2025, the Chamber granted the Prosecution's request.³⁷

23. On 2 June 2025, Hungary deposited the withdrawal from the Rome Statute with the

²¹ [REDACTED].

²² [REDACTED]. See also [ICC-01/18-421](#), para. 3.

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ Government of Hungary, [PSE-OTP-00209960](#). (HUN) [PSE-OTP-00213663](#) (ET).

³¹ [REDACTED]; Bill T/11449, [PSE-OTP-00209947](#) (HUN) [PSE-OTP-00213661](#) (ET).

³² Parliament of Hungary, 26 May 2025, [PSE-OTP-00214470](#) (HUN), [PSE-OTP-00214469](#) (MT).

³³ [ICC-01/18-421](#), para. 4.

³⁴ [ICC-01/18-421](#), paras. 5-6.

³⁵ [ICC-01/18-433](#), paras. 1, 4.

³⁶ [ICC-01/18-436](#).

³⁷ [ICC-01/18-437](#).

United Nations Secretary-General.³⁸

IV. SUBMISSIONS

24. In the exercise of its discretion under article 87(7) of the Statute, the Chamber should determine: (a) “whether to make a finding of a failure to comply with a request for cooperation by a State, which prevents the Court from exercising its functions and powers under the Statute; and (b) “[...] whether it is appropriate to refer the matter to the ASP [Assembly of State Parties] [...] in order to seek external assistance to obtain cooperation with the request at issue or to otherwise address the lack of cooperation by the requested State.”³⁹

25. As developed below, the above conditions are met. Hungary has failed to comply with the Request for Provisional Arrest of NETANYAHU. Such failure has prevented the Court from exercising its functions and powers under the Statute. Hungary’s long announced and deliberate non-compliance is of such gravity that it should be referred to the ASP in order to address Hungary’s non-compliance and also, importantly, to safeguard the functions of the Court, to protect the efficiency and integrity of the proceedings in this situation, and to enhance the effectiveness of future cooperation.

a. Hungary failed to comply with a request for cooperation preventing the Court from exercising its functions and powers

26. The factual prerequisite under the first clause of article 87(7) consists of two cumulative conditions: (i) that the State concerned failed to comply with a request to cooperate; and (ii) that this non-compliance is grave enough to prevent the Court from exercising its functions and powers under the Statute.⁴⁰ As developed below, both conditions are met in this case.

(i) Hungary failed to comply with the Court’s Request for Provisional Arrest

27. According to article 59 of the Statute, a “State Party which has received a request for provisional arrest [...] shall immediately take steps to arrest the person”. Pre-Trial Chamber II has confirmed that “[t]his provision describes a fundamental obligation of the requested State, not a discretion.”⁴¹

28. Hungary was reminded of this obligation on 31 March 2025 by the President of the ASP⁴² and, again, on 3 April 2025 by the Registrar when transmitting the Request for Provisional

³⁸ [UNSC, Hungary’s withdrawal from the Rome Statute](#), 3 June 2025; [UNSC, Hungary’s denunciation of the agreement on the immunities of the ICC](#), 3 June 2025.

³⁹ [ICC-01/09-02/11-1032 OA 5](#), para. 55.

⁴⁰ [ICC-02/05-01/09-397-Corr](#), para. 184.

⁴¹ [ICC-01/22-90](#), para. 14.

⁴² [REDACTED]. See also [ASP Presidency letter to Hungary](#), 31 March 2025.

Arrest.⁴³ Yet, NETANYAHU was promised to be shielded from ICC prosecution while in Hungary, where he travelled and remained from 3 April until 6 April 2025 without being provisionally arrested. Further, during all this time, Hungary did not engage with the Court nor did it raise any impediment that could prevent it from executing the Court's Request for Provisional Arrest. Instead, on 3 April 2025, Hungarian Prime Minister Mr Orbán announced that Hungary would withdraw from the Court.⁴⁴ Mr Orbán expressed on behalf of Hungary that "we cannot and indeed do not want to have anything to do with [the Court] during the period ahead".⁴⁵ On 4 April 2025, Mr Orbán likewise stated in a national radio interview that "Hungary has always taken a half-hearted approach to the whole thing [i.e. the Court]".⁴⁶

29. By not arresting NETANYAHU between 3 and 6 April 2025, Hungary breached its obligations under article 59 and 92 of the Statute. Accordingly, Hungary's decision to not execute the Request for Provisional Arrest amounts to a failure to comply with "a request to cooperate by the Court" under article 87(7).

(ii) Hungary's non-compliance was grave enough to prevent the Court from exercising its functions and powers

30. The Appeals Chamber has emphasized that "[a] warrant of arrest, alongside its alternative of summons to appear, serves the function of securing the presence of the suspect before the Court. It thus engages an important power that serves a fundamental function of the Court. This is particularly so when the Pre-Trial Chamber has decided that an arrest warrant is the more appropriate means of securing presence before the Court. Those who bear the obligation to execute an arrest warrant are not then free to render it nugatory merely by refusing to execute it".⁴⁷

31. Hungary has disregarded the import of the Appeals Chamber's finding. It invited NETANYAHU, promised to shield him from ICC prosecution and hosted him for three days, during which it deliberately ignored the Chamber's Request for Provisional Arrest, thereby preventing the Court from exercising its functions and powers.⁴⁸ Significantly, by failing to provisionally arrest NETANYAHU, Hungary has enabled his continuing commission of

⁴³ [REDACTED]. See also [ICC-01/18-421](#), para. 3.

⁴⁴ Government of Hungary, [PSE-OTP-00209960](#) (HUN) [PSE-OTP-00213663](#) (ET).

⁴⁵ Hungarian Prime Minister, [PSE-OTP-00209958](#) at 0001. According to media reports, the Hungarian Prime Minister already instructed its ministers to assess the implications of a withdrawal shortly after the Prosecutor submitted his request for issuing a warrant of arrest against NETANYAHU. In its answer to the reporting media platform, the Press Department of the Office of the Prime Minister expressed that the Court delivered a political decision. See Orbán utasította három miniszterét: vizsgálják meg a Nemzetközi Büntetőbíróságból való kilépés lehetőségét, [PSE-OTP-00209964](#) (HUN) [PSE-OTP-00213664](#) (ET) at 0001.

⁴⁶ Hungarian Prime Minister, [PSE-OTP-00209962](#) at 0001.

⁴⁷ [ICC-02/05-01/09-397-Corr](#), para. 190.

⁴⁸ [ICC-01/22-90](#), para. 38.

crimes arising out of the same circumstances as those described in the Warrants,⁴⁹ and has obstructed the timely triggering of criminal proceedings before the ICC to provide accountability and eventual reparations.⁵⁰

32. The reasons provided by Hungary in its Submissions do not explain, and only confirm, Hungary's deliberate non-compliance.⁵¹ In its Submissions, Hungary argues that:

(a) Hungary can be relieved from its obligations under the Statute to provisionally arrest NETANYAHU because it has failed to promulgate the Rome Statute into domestic law;⁵²

(b) Article 98(1) of the Statute justifies its failure to arrest NETANYAHU;⁵³ and

(c) The Court lacks jurisdiction and the Warrant of Arrest of NETANYAHU is a "politically motivated instrument".⁵⁴

33. None of these arguments justify Hungary's grave non-compliance.

(a) *Hungary's failure to promulgate the Rome Statute into domestic law does not justify its non-compliance*

34. This argument suggests that even though Hungary ratified the Rome Statute (upon the approval by the Parliament) on 30 November 2001,⁵⁵ it cannot execute the Court's cooperation

⁴⁹ See Statute, art. 58(b)(iii). See e.g. [Israeli Prime Minister says operation will lead to significant displacement of the population](#), 5 May 2025 (Netanyahu "said a new "intensified" offensive in Gaza will involve Israeli troops holding on to seized territory and significant displacement of the population"); [Israel blocks entry of all humanitarian aid into Gaza](#), 2 March 2025 (A statement from Netanyahu's office said: "[...] Prime Minister Netanyahu has decided that, as of this morning, all entry of goods and supplies into the Gaza Strip will cease"). [Netanyahu says Israel will control Gaza](#), 19 May 2025 (the Israeli military, which announced the start of a new operation on Friday, warned residents of the southern city of Khan Younis on Monday to evacuate to the coast immediately as it prepared "an unprecedented attack"). See also [WHO, People in Gaza starving](#), 12 May 2025; [OHCHR, "Stop the clock on madness"](#), 30 May 2025; [OHCHR, Türk warns UN Security Council of increasing risk of atrocity crimes](#), 3 April 2025; [OHCHR, End unfolding genocide or watch it end life in Gaza](#), 7 May 2025; [UNICEF, Humanitarian Situation Report No. 37](#), 29 April 2025; [OCHA, Statement attributable to the Spokesperson for the Secretary-General – on Gaza](#), 14 April 2025; [OCHA, Statement on Gaza by Tom Fletcher, Under-Secretary-General for Humanitarian Affairs](#), 1 May 2025; [OCHA, Humanitarian Situation Update #288](#), 14 May 2025; [OCHA, Statement by the Humanitarian Country Team](#), 28 May 2025; [OCHA, Statement on aid distribution in Gaza by Tom Fletcher, Under-Secretary-General for Humanitarian Affairs](#), 4 June 2025; [OCHA, Humanitarian Situation Update #294](#), 5 June 2025.

⁵⁰ [ICC-RoC46\(3\)-01/18-37](#), para. 86.

⁵¹ But see Hungary's contradictory statements (albeit collectively with the Member States of the European Union) in the 23rd session of the ASP where it called upon all States to follow up on their obligations to cooperate with the Court, and to avoid non-essential contacts with suspects under ICC arrest warrants. [Draft Intervention on behalf of the European Union and its Member States](#), paras. 6-7; see also [ASP Presidency response to Hungary's withdrawal](#), 3 April 2025 (recalling that "Hungary has participated actively in the Assembly of States Parties to the Rome Statute since becoming a State Party in 2001, and as recently as December 2024, in resolution ICC-ASP/23/Res.1, reconfirmed together with other States Parties its unwavering support for the Court as an independent and impartial judicial institution").

⁵² [ICC-01/18-433-AnxII](#), paras. 2-3. This would include the lack of promulgation of article 27 of the Rome Statute.

⁵³ [ICC-01/18-433-AnxII](#), para. 4.

⁵⁴ [ICC-01/18-433-AnxII](#), para. 5.

⁵⁵ Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN) Explanatory note, para. 4 at 0044, [PSE-OTP-00213666](#) (ET) at 0001-0002.

requests because it has not made the Statute part of its domestic legal framework since this requires a *further* legislative act by the Parliament.⁵⁶

35. The Hungarian authorities have indeed failed to take this step on several occasions:

- In 2003, the then Government proposed a promulgation bill,⁵⁷ but this did not succeed.⁵⁸ It was then raised that an amendment of the Hungarian constitution was necessary.⁵⁹ Yet, even though Hungary passed a new constitution on 25 April 2011, it did not make then the purportedly necessary adjustments to address the concerns previously raised.
- In 2016, with a new bill, the Hungarian Government proposed anew the implementation of the Rome Statute into the Hungarian domestic system. The explanatory note of the bill identified the legislative steps to be taken to comply with the Rome Statute.⁶⁰ Yet, in March 2023, the Government, headed by Mr Orbán, indicated that it would not adopt a

⁵⁶ Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) Explanatory note, para. 4. at 0044, [PSE-OTP-00213666](#) (ET) at 0001-0002: under the old constitution [1949. évi XX. Törvény, A Magyar Köztársaság Alkotmánya para. 7(1)]: A jogalkotásról szóló 1987. évi XI. Törvény 3. §, A nemzetközi szerződésekkel kapcsolatos eljárásról szóló 1982. évi 27. törvényerejű rendelet 13. § (1); Bill T/10722 (T/383) on the Promulgation of the Rome Statute (2016), [PSE-OTP-00210074](#) (HUN) General Explanatory note, para. 4 at 0204, [PSE-OTP-00213668](#) (ET) at 0002: under the new constitution [Magyarország Alaptörvénye (2011. április 25.) Article Q (3)]: A nemzetközi szerződésekkel kapcsolatos eljárásról szóló 2005. évi L. törvény 7. § (3)(b), 9. § (1).

⁵⁷ Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN), [PSE-OTP-00213666](#) (ET).

⁵⁸ The bill was approved by the Foreign Affairs Committee of the Parliament, but it was removed from the agenda in 2006. See: Tamás V. Ádány: A Nemzetközi Büntetőbíróság joghatósága és a magyar jog, [PSE-OTP-00210072](#) (HUN) at 0003-0004, [PSE-OTP-00213667](#) (ET) at 0001-0002.

⁵⁹ In the 2003 promulgation bill, the explanatory note indicated that it was required to amend several parts of the (old) Hungarian constitution. In particular, that the domestic laws were to be amended to comply with article 27 of the Statute. Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN) General Explanatory note, para. 5 at 0044, [PSE-OTP-00213666](#) (ET) at 0002. However, according to the explanatory note to the 2003 promulgation bill, the Hungarian domestic legal system ensures that Hungary was able to comply with the requests of the Court under articles 86 and 88 of the Statute and the proposed amendment of the promulgation bill would have only provided further clarity: Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN) Explanatory note to 3. §, para.1. at 0044, [PSE-OTP-00213666](#) (ET) at 0002-0003.

⁶⁰ Bill T/10722 (T/383) on the Promulgation of the Rome Statute (2016), [PSE-OTP-00210074](#) (HUN) General Explanatory note, para. 6 at 0204, [PSE-OTP-00213668](#) (ET) at 0002. In particular, it indicated that the domestic laws are to be amended to comply with article 27 of the Statute. It however only referred the immunity of Hungarian MPs, Constitutional Court judges and the president of the Fiscal Council, and did not raise any issues with foreign Heads of State Immunity: Bill T/10722 (T/383) on the Promulgation of the Rome Statute (2016), [PSE-OTP-00210074](#) (HUN) General Explanatory note, paras. 5-6 at 0204 and Explanatory note to 10-12. §. at 0209, [PSE-OTP-00213668](#) (ET) at 0002-0003. The Hungarian State Secretary of the Ministry of Justice confirmed at the parliamentary debate on 25 May 2016 that: “[t]he statute has not yet been promulgated, and this proposal is now intended to make up for this.” Parliament of Hungary records, Issue 157, [PSE-OTP-00210077](#) (HUN) at 0004, [PSE-OTP-00213669](#) (ET) at 0002. He added that “[w]ith the promulgation and the related legislative amendments, the legislator fulfils both requirements, including the content and the form, by adopting the present legislative proposal. The second reason for promulgating the Statute is that it cannot be ruled out on a theoretical level that Hungary may be involved in the proceedings of the Court in some way under the Statute due to an extradition or other ancillary case. The conditions for participation in the proceedings of the International Criminal Court can only be fully created by promulgating the Statute and amending the related domestic legislation, because in the absence of this, the measures of the Hungarian authorities could only operate within the framework of the rules of international legal assistance and European Union legal assistance.” (*Ibid*, HUN: at 0004, ET: at 0003).

bill implementing the Rome Statute as it considered it to be contrary to the Hungarian constitution.⁶¹ In 2025, a Government representative implied that the lack of promulgation was a deliberate choice by the Government.⁶²

36. It should be noted that, based on the explanatory notes of the 2003 and 2016 promulgation bills, the alleged bar for promulgating the Rome Statute was its article 27, which was deemed to be unconstitutional.⁶³ However, both bills provided for solutions to resolve this purported obstacle.⁶⁴ Moreover, contrary to Hungary's Submissions,⁶⁵ previous promulgation attempts did not suggest that an additional domestic waiver of immunity for foreign officials was required under national law. The alleged issue with article 27 of the Statute related to the immunity of Hungarian state officials provided for in domestic law, not to the immunity of foreign Heads of States.⁶⁶ Significantly, the Government's current interpretation of Hungarian domestic law does not appear to be supported by most Hungarian academia,⁶⁷ including Judge Péter Kovács,⁶⁸ who served as a Hungarian Constitutional Court judge before his mandate at

⁶¹ Government of Hungary, [PSE-OTP-00210087](#) (video) at [01:29:53-01:31:56], [PSE-OTP-00214689](#) (HUN transcript), [PSE-OTP-00214685](#) (ET of transcript) at 0002-0003. Following the announcement of the Hungarian Government that it would not arrest Putin despite the ICC arrest warrant should he visit Hungary, a media article reported in April 2023 that the opposition proposed the promulgation of the Rome Statute in the Foreign Affairs Committee of the Hungarian Parliament. The proposal was voted down by the governing party. See HVG, [PSE-OTP-00210079](#) (HUN) [PSE-OTP-00213670](#) (ET).

⁶² Government of Hungary, [PSE-OTP-00210084](#) (video) at [00:49:00-00:51:23] [PSE-OTP-00214688](#) (HUN transcript), [PSE-OTP-00214684](#) (ET of transcript) at 0003. "[w]e had the sense to never make this part of our domestic law."

⁶³ Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN) General Explanatory note, para. 5 and Explanatory notes to 3. § at 0044, [PSE-OTP-00213666](#) (ET) at 0002-0003; Bill T/10722 (T/383) on the Promulgation of the Rome Statute (2016), [PSE-OTP-00210074](#) (HUN) General Explanatory note, para. 6 at 0204 0204 and Explanatory note to 10-12. §. at 0209, [PSE-OTP-00213668](#) (ET) at 0002-0003.

⁶⁴ *Ibid.* See also The Hungarian State Secretary of the Ministry of Justice confirmed in the Parliament in 2016 that: "[w]ith the promulgation and the related legislative amendments, the legislator fulfils both requirements, including the content and the form, by adopting the present bill." Parliament of Hungary records, Issue 157, [PSE-OTP-00210077](#) (HUN) at 0004, [PSE-OTP-00213669](#) (ET) at 0003.

⁶⁵ [ICC-01/18-433-AnxII](#), paras. 2-3.

⁶⁶ Bill T/4490 on the Promulgation of the Rome Statute (2003), [PSE-OTP-00210070](#) (HUN) General Explanatory note, para. 5 at 0044, [PSE-OTP-00213666](#) (ET) at 0002-0003; Bill T/10722 (T/383) on the Promulgation of the Rome Statute (2016), [PSE-OTP-00210074](#) (HUN) General Explanatory note, para. 6 at 0204 and Explanatory note to 10-12. §. at 0209, [PSE-OTP-00213668](#) (ET) at 0002-0003.

⁶⁷ See *E.g.* Tamás V. Ádány: A Nemzetközi Büntetőbíróság joghatósága és a magyar jog [PSE-OTP-00210072](#) at 0022, [PSE-OTP-00213667](#) (ET) at 0003. "[T]he draft of the promulgatory legislation has already been completed [...] the promulgation would not cause a conflict of norms [...]. Everything is available for the promulgation of the text of the Statute: "only" the political will may be missing."

⁶⁸ Péter Kovács: Miért nincs még kihirdetve a Római Statútum?, [PSE-OTP-00210066](#) (HUN) p. 69 at 0001, [PSE-OTP-00213665](#) (ET) at 0001. He opined that there is no constitutional obstacle in ensuring the compliance between the Hungarian constitution and the Rome Statute (HUN: para 1, p. 86 at 0018 – ET: at 0004); such claims are "unfounded, they cannot be defended on the basis of either international law or constitutional law" (HUN: para. 10, p. 89. at 0021- ET: at 0007-0008); the Hungarian government identified the alleged constitutional discrepancies, yet did not resolve them despite having several opportunities and the power to do so (HUN: para. 4, p. 87. at 0019 – ET: at 0005); significant parts of the Rome Statute could be enforced on its own, without promulgation (HUN: para. 5, p. 87. at 0019 – ET: at 0005); and a warrant of arrest may be executed despite the lack of promulgation under Interpol cooperation should the ICC requested such *in concreto* (HUN: p. 84. Fn. 57. at 0016 – ET: at 0004).

the ICC. Further, in 2016, the State Secretary of the Hungarian Ministry of Justice acknowledged before the Parliament that, despite the lack of promulgation, the Rome Statute does bind Hungary internationally.⁶⁹

37. This is correct. Hungary's purported impediments under domestic law are inapposite and do not justify its non-compliance with cooperation requests from the Court. This is because pursuant to article 88 of the Statute, State Parties have an obligation to "ensure that there are procedures available under national law for all the forms of cooperation" which are specified in Part 9 of the Statute.⁷⁰

38. Accordingly, in light of this obligation, Chambers have confirmed that the unavailability of domestic procedures for cooperation with the Court is insufficient to justify non-compliance. For example, in the *Kenyatta* case, Trial Chamber V(B) found "it unnecessary to consider whether or not [] Kenyan domestic legislation provides a sufficient basis for executing cooperation requests under Part 9 of the Statute. Any purported deficiency in domestic legal procedures (or interpretation thereof), cannot be raised as a shield to protect a State Party from its obligation to cooperate with the Court, or to undermine any application for non-compliance under Article 87(7) of the Statute that may result."⁷¹ Similarly, Pre-Trial Chamber I in *Al Bashir* dismissed Malawi's reliance on its internal law to justify its failure to comply with the Court's cooperation requests.⁷²

39. This is consistent with article 27 of the Vienna Convention on the Law of Treaties providing that: "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".⁷³

40. For the reasons above, the purported lack of promulgation of the Rome Statute into domestic law does not relieve Hungary from its obligations under the Statute.

⁶⁹ Parliament of Hungary records, Issue 157, [PSE-OTP-00210077](#) (HUN) at 0004, [PSE-OTP-00213669](#) (ET) at 0002: "The statute has not yet been promulgated, and this proposal is now intended to make up for this. In this regard, it is important to note that from the point of view of international law, the provisions of the Statute are still binding on Hungary, so they must and can be applied against Hungary in an international context even in the absence of a domestic legal promulgation."

⁷⁰ Report of the Court on cooperation, [ICC-ASP/15/9](#), para. 19 (stressing that article 88 "requires States Parties to review their national law and procedures and where necessary introduce through legislation, treaty implementation, or administrative practice, procedures in their domestic regimes to meet the cooperation obligations. Unavailability of domestic procedures for cooperation with the Court is thus not sufficient to justify a State's refusal to execute a cooperation request from the Court."); Ambos Forth Edition (2022) p. 2493 mn. 3. ("[Article 88 of the Statute] emphasizes that procedures are to be used to meet, not to defeat the obligation to comply with requests").

⁷¹ [ICC-01/09-02/11-908](#), para. 47.

⁷² [ICC-02/05-01/09-139-Corr](#), paras. 19-21.

⁷³ [ICC-02/05-01/09-139-Corr](#), para. 20.

(b) *Hungary cannot invoke article 98(1) of the Statute at this stage*

41. Hungary cannot now invoke the purported existence of Heads of State immunity under international law pursuant to article 98(1) of the Statute to *a posteriori* justify its prior non-compliance of the Request to Provisionally Arrest NETANYAHU.

42. ICC Chambers,⁷⁴ including the Appeals Chamber⁷⁵ have consistently held that article 98 of the Statute does not allow State Parties to *unilaterally* refuse compliance with the Court's requests for cooperation. Instead, it is for the Court to address any question that may arise. Unlike other provisions, article 98(1) does not provide for the suspension the Court's cooperation requests.⁷⁶

43. Article 97 of the Statute provided the procedure for Hungary to raise any such concerns in good faith.⁷⁷ It requires that State Parties “*shall consult with the Court without delay*” if they identify any purported “*problems which may impede or prevent the execution of the request*”.⁷⁸ Yet, Hungary failed to avail itself of this provision and did not engage with the Court in order to raise any purported impediment under domestic or international law (such as the alleged Head of State immunity) that could supposedly bar the execution of the Request for Provisional Arrest.⁷⁹ Hungary had multiple opportunities to do so. Hungary could have raised any such issue prior to inviting NETANYAHU in November 2024, [REDACTED], or when the President of the ASP reminded Hungary of its obligations on 31 March 2025, or when the Registry transmitted the Request for Provisional Arrest on 3 April 2025. Despite this, Hungary absolutely failed to consult with the Court, and much less to consult “without delay”, as required by article 97.⁸⁰

44. Hungary's failure to consult with the Court is consistent with its publicly announced and deliberate decision not to cooperate with respect to the Warrant of Arrest of NETANYAHU. This is confirmed by the following statements made by public officials:

- On 22 November 2024, Mr Orbán invited NETANYAHU to Hungary and described the Warrant of Arrest as “a shockingly impertinent and cynical decision.” He added that the decision was wrong, and constituted a political interference to a conflict in a legal disguise. He stated that “[w]e have no choice, we must resist this decision” and that “he will

⁷⁴ [ICC-02/05-01/09-302](#), paras. 99-101, 111; [ICC-02/05-01/09-140-tENG](#), paras. 9-11.

⁷⁵ [ICC-02/05-01/09-397-Corr](#), para. 152.

⁷⁶ [ICC-02/05-01/09-302](#), paras. 102-104.

⁷⁷ [ICC-01/22-90](#), para. 14; Ambos Forth Edition (2022) p. 2455 mn. 9.

⁷⁸ Statute, art. 97. See e.g. [ICC-02/05-01/09-397-Corr](#), para. 202 (“the intention to consult must be communicated to the Court timeously, so as not to frustrate the object of the request for cooperation or defeat the purpose of the consultation process”).

⁷⁹ [ICC-01/22-90](#), para. 17.

⁸⁰ See e.g. [ICC-02/05-01/09-397-Corr](#), para. 202.

guarantee that [...] the warrant of the International Criminal Court will have absolutely no effect in Hungary [...].”⁸¹

- In his letter of invitation addressed to NETANYAHU on 22 November 2024, the Hungarian Prime Minister promised to ensure NETANYAHU’s “safety and freedom” should he accept the invitation and condemned the “shameful” and “disgraceful” decision of the Court.⁸²
- On 23 January 2025, when the Hungarian Minister for Trade and Foreign Affairs confirmed NETANYAHU’s invitation, he added that “this decision discredited the ICC, made it clear that it is a politically motivated institution, and such decisions obviously have an impact on Hungary’s ideas and plans for the future of cooperation with the court.”⁸³

45. For the reasons above, Hungary’s attempt to raise the purported existence of Heads of State immunity of foreign officials as an impediment under international law pursuant to article 98(1) of the Rome Statute to retroactively justify its non-compliance must fail. Not only Hungary failed to follow the mandatory procedure set out in article 97, but also any discussion on this matter, at this stage, would be in the abstract and would not serve to ensure the provisional arrest of NETANYAHU by Hungary, as he has long since left the country. In any event, Pre-Trial Chamber II in *Ukraine* has recently addressed this question, finding that since immunities of Heads of States operate in relations between States, these do not protect individuals from prosecution by international criminal courts in circumstances where a State has accepted the jurisdiction of such courts, and that no additional waiver is therefore required.⁸⁴ Should the Chamber wish to receive further submissions on the matter, the Prosecution stands ready to provide them.

(c) Hungary’s view of the Court’s jurisdiction and the Chamber’s decision is irrelevant

46. As a State Party to the Rome Statute, Hungary is bound by the Court’s decisions.⁸⁵ Hungary cannot unilaterally decide whether or not to comply with requests such as requests to cooperate by the Court on the basis of its views and opinion of a particular situation and suspect.

47. The Warrant of Arrest against NETANYAHU is valid and in force unless the ICC issues

⁸¹ Hungarian Prime Minister, [PSE-OTP-00209950](#) at 0002.

⁸² Letter from Prime Minister Orbán to Prime Minister Netanyahu, 22 November 2024, [PSE-OTP-00209954](#).

⁸³ Government of Hungary, [PSE-OTP-00209956](#) (HUN), [PSE-OTP-00213662](#) (ET).

⁸⁴ [ICC-01/22-90](#), para. 36. Consistently with *Al-Bashir* Jordan Appeals judgement: “States Parties have consented to the inapplicability of Head of State immunity for the purpose of proceedings before the Court,” hence, “no waiver is required as there is no immunity to be waived.” See [ICC-02/05-01/09-397-Corr](#), paras. 128-132. See also [ICC-02/05-01/09-302](#), para. 71 *junto* para. 81.

⁸⁵ Rome Statute, article 86.

a final decision that it is not.⁸⁶ The Appeals Chamber has recently confirmed its validity⁸⁷ and the Pre-Trial Chamber is yet to rule on Israel's request to vacate or withdraw the Warrant of Arrest and suspend the Court's investigation in this situation.⁸⁸

48. In light of the foregoing, the Prosecution respectfully requests the Chamber to make a finding of non-compliance pursuant to article 87(7) of Hungary because it has failed to execute the Chamber's Request for Provisional Arrest of NETANYAHU, thereby preventing the Court from exercising its functions and powers under the Statute.⁸⁹

b. Hungary's failure to comply should be referred to the ASP

49. The Prosecution respectfully submits that, on the basis of the circumstances of this case, the most effective course of action to address Hungary's non-compliance and to foster future cooperation is to refer the matter to the ASP, the Court's management oversight and legislative body composed of representatives of the States that have ratified or acceded to the Rome Statute.⁹⁰

50. *First*, it was abundantly clear for Hungary that it was under the obligation to execute the Request for Provisional Arrest. Further, Hungary did not attempt to consult with the Court with respect to any purported impediments to execute the Request for Provisional Arrest as required by article 97,⁹¹ even though it had opportunities to do so. To the contrary, Hungary had already foreshadowed that it would not arrest NETANYAHU when it invited him in November 2024; [REDACTED]; it disregarded the letter of the President of the ASP and did not engage with the Court during NETANYAHU's three-day visit. As outlined above, none of the purported impediments now suggested by Hungary are valid justifications for the grave breach of its

⁸⁶ Rome Statute, article 58(4).

⁸⁷ [ICC-01/18-422](#), para. 66; [ICC-01/18-423](#), para. 41.

⁸⁸ [ICC-01/18-422](#), para. 64; [ICC-01/18-428](#).

⁸⁹ [ICC-01/22-90](#), para. 38.

⁹⁰ [ICC-01/09-02/11-1032 OAS](#), paras. 51, 53. In *Kenyatta*, the Appeals Chamber held that when deciding whether a referral is warranted, a Chamber should consider "whether a referral of a State's failure to comply with a request for cooperation is an appropriate measure to either seek assistance from external actors [the ASP] to obtain the requested cooperation or otherwise address the lack of cooperation from the requested State", taking into account factors relevant to the circumstances of the case, such as "whether external actors [the ASP] could indeed provide concrete assistance to obtain the cooperation requested taking into account the form and content of the cooperation; whether the referral would provide an incentive for cooperation by the requested State; whether it would instead be beneficial to engage in further consultations with the requested State; and whether more effective external actions may be taken by actors other than the ASP [or the UNSC where applicable], such as third States or international or regional organisations." See also [ICC-01/09-02/11-1037](#), para. 38 (considering the deadlock reached in cooperation, the statutory framework in which the ASP is mandated to consider questions relating to non-cooperation, and in light of the guidance in the Appeals Judgment above, TCX(B) considered that the ASP would be best placed to address the lack of cooperation).

⁹¹ [ICC-02/05-01/09-397-Corr](#), paras. 212-216 (reversing the PTC's decision to refer to the ASP Jordan's failure to cooperate with the Court's request to arrest and surrender Al Bashir, in light of Jordan's efforts to consult with the Court pursuant to article 97 and its commitment to cooperate with the Court).

obligations under the Statute. Similar factors have been considered as indicating a failure to cooperate serious enough to refer the matter of non-compliance to the ASP.⁹²

51. *Second*, Hungary's non-compliance is particularly grave in this situation because Hungary openly announced its intention not to cooperate with the Court shortly after the Warrant of Arrest was issued and thereafter. Indeed, on 22 November 2024, Mr Orbán invited NETANYAHU to travel to Hungary and provided him with assurances that he would not be arrested on Hungarian soil. Other Hungarian officials confirmed this position. By joining the Court, Hungary, like any other State Party, agreed to the terms of the Rome Statute, including compliance with the Court's orders, regardless of the situation being investigated and the suspects sought.⁹³ Hungary was not entitled to selectively and unilaterally decide to not comply with a specific request for cooperation regarding a specific suspect.

52. In light of the above, referring the matter to the ASP is the most effective course of action to address Hungary's non-compliance and to foster cooperation more broadly. A referral to the ASP would serve to safeguard the functions of the Court and protect the efficiency and integrity of the proceedings in this situation. Significantly, such referral would send a positive signal to victims and witnesses who have provided important information and evidence in the face of serious risks to their security and that of their families, and further demonstrate that the Court is not deterred from exercising its functions with independence and objectivity even in the most challenging of times.

V. RELIEF SOUGHT

53. For the above reasons, the Prosecution requests the Chamber to make a finding of non-compliance by Hungary pursuant to article 87(7) and refer the matter to the ASP.



Mame Mandiaye Niang, Deputy Prosecutor, Officer-in-Charge

Dated this 13th day of June 2025
At The Hague, The Netherlands

⁹² [ICC-01/22-90](#), para. 40 (considering it appropriate to refer the matter of Mongolia's non-compliance with the Court's request for cooperation in the arrest and surrender of Vladimir Vladimirovich Putin, in light of the lack of any valid justifications advanced by Mongolia for this breach of its statutory obligations and the lack of indication that it will in the future cooperate with the Court should the same situation arise).

⁹³ See [ASP Presidency response to Hungary's withdrawal](#), 3 April 2025 ("The Presidency reminds that a State Party shall not be discharged, by reason of its withdrawal, from the obligations arising from the Rome Statute while it was a Party to the Statute").