



Original: French

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

Date: 1 June 2018

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***

Public

**Decision on the Defence Request for an Arabic Translation of the Prosecution
Application for the Issuance of a Warrant of Arrest**

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

Mr Yasser Hassan

Legal Representatives of Victims

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 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* since 28 March 2018,¹ decides the following:

I. Procedural history

1. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”), the Chamber issued a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court; he is currently in custody at the Court’s detention centre in The Hague.³
3. On 4 April 2018, Mr Al Hassan made his first appearance before the Single Judge in the presence of his counsel and the Prosecution.⁴
4. On 16 May 2018, the Single Judge issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters” (“Decision on the Evidence Disclosure Protocol”).⁵
5. On 31 May 2018, the Defence filed a request⁶ (“Defence Request”) in which it requested the Single Judge to order the translation into Arabic of the confidential *ex parte* version of the “*Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud*” (“Prosecution Application for the Issuance of a Warrant of Arrest”).⁷

¹ “Decision Designating a Single Judge”, 28 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

² “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

³ ICC-01/12-01/18-11-US-Exp.

⁴ Transcript of the initial appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-FRA ET.

⁵ ICC-01/12-01/18-31.

⁶ “Request for Translation”, 31 May 2018, ICC-01/12-01/18-39-Conf-Exp and its two confidential annexes, ICC-01/12-01/18-39-Conf-AnxA and ICC-01/12-01/18-39-Conf-AnxB, para. 21.

⁷ “Version confidentielle expurgée de la ‘Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag ABDOUL AZIZ

II. Applicable Law

6. The Single Judge refers to articles 50, 57(3)(b) and 67(1)(a), (b) and (f) of the Statute, rule 121 of the Rules of Procedure and Evidence (“Rules”) and regulations 39 and 40 of the Regulations of the Court.

III. Analysis

7. In its Request, the Defence requests the Single Judge to order the Arabic translation of the confidential *ex parte* version of the Prosecution Application for the Issuance of a Warrant of Arrest.⁸

8. The Defence notes that, in his Decision on the Evidence Disclosure Protocol, the Single Judge directed the Defence to submit a request if it deemed it necessary for the Arabic translation of documents other than the document containing the charges and the list of evidence submitted pursuant to article 61(3) of the Statute and rule 121(3) of the Rules.⁹

9. The Defence recalls that article 67(1) of the Statute guarantees Mr Al Hassan the right to a fair trial, which includes the right to be informed promptly and in detail of the nature, cause and content of the charges brought against him, in a language which he fully understands and speaks.¹⁰ The Defence reiterates Mr Al Hassan’s preference for Arabic, as stated during the first appearance hearing,¹¹ and submits that his rudimentary command of French means that he cannot be apprised of the content of the Prosecution Application for the Issuance of a Warrant of Arrest, which has been delivered to him in French only.¹²

10. According to the Defence, it can be understood from the Single Judge’s Decision on the Evidence Disclosure Protocol that “any document containing details

Ag Mohamed Ag Mahmoud’, 20 mars 2018, ICC-01/12-54-Secret-Exp”, 31 March 2018, ICC-01/12-01/18-1-Conf-Exp-Red2.

⁸ Defence Request, para. 21.

⁹ Defence Request, paras. 1-2.

¹⁰ Defence Request, para. 9.

¹¹ Defence Request, para. 10; Transcript of the initial appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-Red-FRA WT, p. 7.

¹² Defence Request, para. 12.

on the material facts of the case, or that require Mr Al Hassan's comprehension, advice or approval, must be provided in Arabic."¹³ The Defence adds that the Prosecution Application for the Issuance of a Warrant of Arrest is a concrete example of such a document and that it contains "specific details on the basis of the allegations made against [Mr Al Hassan]".¹⁴ The Defence concludes that, without access to an Arabic version of the document, Mr Al Hassan is able neither to understand the basis of his detention nor to prepare his defence.¹⁵

11. The Single Judge recalls that, in his Decision on the Evidence Disclosure Protocol, he had ruled that¹⁶

Lastly, with regard to translation into Arabic of documents entered by the Prosecution in the record of the case pursuant to articles 58 or 61 of the Statute, other than those filed as evidence or decisions handed down by the Chamber, the Single Judge recalls previous decisions of the Pre-Trial Chamber according to which, pursuant to article 67(1)(a) of the Statute, the suspect must be informed "in detail of the nature, cause and content of the charges" brought against him or her, in a language which he or she fully understands and speaks.¹⁷ The Single Judge considers, therefore, that, at a minimum, the Prosecution must, with the assistance of the Registry if necessary, enter in the record of the case an Arabic version of the document containing the charges and the list of evidence submitted pursuant to article 61(3) of the Statute and rule 121(3) of the Rules. If the Defence considers that other documents must also be translated into Arabic, it must submit a request to that end to the Single Judge at the earliest opportunity.

12. The Single Judge also recalls previous decisions of Pre-Trial Chamber II, according to which, while an accused does not have an absolute right to obtain translations of all the documents filed in the record of the case,¹⁸ a Prosecution request for the issuance of a warrant of arrest is one of the documents informing an accused of the nature, cause and content of the charges brought against him or her and which, as such, must be communicated to him or her in a language which he or she fully understands and speaks.¹⁹

¹³ Defence Request, para. 10.

¹⁴ Defence Request, paras. 10 and 14.

¹⁵ Defence Request, paras. 19 and 15-18.

¹⁶ Decision on the Evidence Disclosure Protocol, para. 26.

¹⁷ [Decision of 27 February 2015](#), para. 32.

¹⁸ Decision of 27 February 2015, paras. 31-33 and cited references.

¹⁹ Decision of 27 February 2015, para. 31 and cited references.

13. Accordingly, the Single Judge grants the Defence Request and recalls that, in his earlier decision,²⁰ mentioned above, he ordered the Prosecution to provide Arabic translations, with the help of the Registry if necessary, of the documents filed in the record of the case under articles 58 or 61 of the Statute informing the accused of the nature, cause and content of the charges brought against him.

FOR THESE REASONS, the Single Judge

GRANTS the Defence request.

ORDERS the Prosecution, with the help of the Registry if necessary, to enter in the record of the case as soon as possible an Arabic version of the confidential redacted *ex parte* version (reserved for the Office of the Prosecutor and the Defence of Mr Al Hassan) of its “*Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud*”, dated 31 March 2018.

ORDERS the Defence to enter in the record of the case a public version, redacted if necessary, of the Defence Request, excluding its two confidential annexes.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 1 June 2018

At The Hague, Netherlands

²⁰ Decision on the Evidence Disclosure Protocol, para. 26.