



Original: **English**

No.: **ICC-RoR220-03/21**

Date: **27 July 2021**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

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 Application for Judicial Review of Registrar’s Decision of 13
July 2021’, dated 21 July 2021 (ICC-RoR220-03/21-1-Conf)**

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
Mr James Stewart

**Counsel for Mr Al Hassan Ag Abdoul Aziz
Ag Mohamed Ag Mahmoud**

Ms Melinda Taylor
Ms Kirsty Sutherland

Legal Representatives of the Victims

Mr Seydou Doumbia
Mr Mayombo Kassongo
Mr Fidel Luvengika Nsita

Legal Representatives of Applicants

**Unrepresented Applicants
(Participation/Reparation)**

Unrepresented Victims

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

The Office of Public Counsel for Victims

Amicus Curiae

States' Representatives

REGISTRY

Registrar

Mr Peter Lewis

Detention Section

Mr Harry Tjonk, Acting Chief Custody
Officer

Division of Court Services

The Presidency of the International Criminal Court (the ‘Court’) has before it the application filed by Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (‘Mr Al Hassan’) dated 21 July 2021, seeking judicial review pursuant to regulation 220 of the Regulations of the Registry (the ‘Regulations’) of a decision of the Registrar issued on 15 July 2021, requesting the Presidency to quash the decision and to confirm that Mr Al Hassan is urgently entitled to a funded family visit that satisfies his right to effective and meaningful contacts with his wife and children (the ‘Application’).¹

I. PROCEDURAL HISTORY

1. On 10 September 2019, the Chief Custody Officer (the ‘CCO’) rejected Mr Al Hassan’s request for a funded family visit from his wife, three children and his mother, who was supposed to accompany the family as guardian (the ‘CCO’s Decision of 10 September 2019’).² On 15 October 2019, the CCO rejected a complaint (the ‘CCO’s Decision’ of 15 October 2019),³ which Mr Al Hassan had submitted in response to the CCO’s Decision of 10 September 2019.⁴
2. On 6 November 2019, in response to Mr Al Hassan’s complaint of 22 October 2019⁵ pursuant to regulation 219 of the Regulations, the Registrar, *inter alia*, reversed the CCO’s Decision of 15 October 2019, stated his intention to explore alternative means to support family visits and granted funds for Mr Al Hassan’s family to obtain required travel documents (the ‘Registrar’s Decision of 6 November 2019’).⁶
3. On 30 March 2020, the Registrar informed Trial Chamber X, that ‘[a]s soon as the suspension of inbound and outbound flights in Mali is lifted, the Registry will assist Mr Al Hassan’s family members in obtaining passports and Dutch visas’ and further that the

¹ Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Defence Application for Judicial Review of the Registrar’s Decision of 13 July 2021, 21 July 2021, ICC-RoR220-03/21-1-Conf, para. 77. The Application was originally filed on 21 July 2021 on the record of the main case, while the corrected version was filed on the case record of this case on 22 July 2021. A public redacted version is available at ICC-RoR220-03/21-1-Red.

² CCO’s Decision of 10 September 2019, ICC-RoR220-03/21-1-Conf-Exp-AnxB, p. 10, *annexed to the Application*.

³ CCO’s Decision of 15 October 2019, ICC-RoR220-03/21-1-Conf-Exp-AnxB, pp. 4-8, *annexed to the Application*.

⁴ Mr Al Hassan’s Complaint of 1 October 2019, ICC-RoR220-03/21-1-Conf-Exp-AnxB, pp. 2-3, *annexed to the Application*.

⁵ Mr Al Hassan’s complaint of 22 October 2019, ICC-RoR220-03/21-1-Conf-Exp-AnxC, *annexed to the Application*.

⁶ Registrar’s Decision of 6 November 2019, ICC-RoR220-03/21-1-Conf-Exp-AnxA, p. 7, *annexed to the Application*.

‘funds of the TFFV [Trust Fund for Family Visits] are available and already earmarked for Mr Al Hassan’s next family visit’.⁷

4. On 8 June 2021, after visits to the Detention Centre were suspended due to the COVID-19 pandemic, the Registry informed the detained persons that family visits would resume as of 15 July 2021.⁸
5. In a memorandum dated 9 July 2021,⁹ the Registry informed all detained persons of his decision allocating funding for family visits to each detained person, thereby emphasising that each of them shall have equal access to funded visits and that each visit is therefore limited to a maximum of two visitors per detained person.¹⁰
6. On 12 July 2021, Mr Al Hassan sought the Registry’s confirmation that the family visit he considered to have been previously approved pursuant to the Registrar’s Decision of 6 November 2019 would not be replaced by a visit limited to two persons,¹¹ to which the Registry responded on 13 July 2021 via email that the decision to fund a visit with two persons only, is equally applicable to Mr Al Hassan.¹²
7. On 15 July 2021, by way of letter, the Registrar confirmed again that the funded family visit of Mr Al Hassan would be limited to a maximum of two persons (the ‘Letter of 15 July 2021’).¹³ The Application characterises this Letter of 15 July 2021 as an Impugned Decision. The Letter of 15 July 2021 further emphasised that, while being committed to organising a funded family visit for Mr Al Hassan,¹⁴ the Registrar also needs to take into account the requests for funded family visits of other detained persons and the current level of funding available at the Trust Fund for Family Visits.¹⁵ The Letter of 15 July 2021 further explained that in light of the COVID-19 pandemic none of the detained

⁷ Registrar, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Confidential Redacted Version of the Registry’s Observations on the “Urgent Defence Request for Interim Release” (ICC-01/12-01/18-680-Conf-Exp), 30 March 2020, ICC-01/12-01/18-698-Conf-Exp-Red, para. 13.

⁸ Letter from Registrar to counsel of all detained persons, dated 8 June 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxH, p. 1, *annexed to the Application*.

⁹ Annex M of the Application indicates that this letter was not received by the Defence until the next working day, 12 July 2021.

¹⁰ Internal Memorandum of the Registry, dated 9 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxL, p. 1, *annexed to the Application*.

¹¹ Letter of Mr Al Hassan’s Defence to the Director of DJS, dated 12 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxM, *annexed to the Application*.

¹² Email from Registry, dated 13 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxN, *annexed to the Application*.

¹³ Letter of 15 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxO, p. 2, *annexed to the Application*.

¹⁴ Letter of 15 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxO, p. 1, *annexed to the Application*.

¹⁵ Letter of 15 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxO, p. 1, *annexed to the Application*.

persons at the Detention Centre had received a family visit for over 18 months and that also other detained persons had faced judicial or personal developments, which would result in concurrent priorities and obligations towards several detained persons.¹⁶

8. On 21 July 2021, Mr Al Hassan filed the present Application for judicial review, requesting the Presidency to quash the alleged Impugned Decision pursuant to regulation 220 of the Regulations and confirm that Mr Al Hassan is entitled to a funded family visit that satisfies the right to effective and meaningful contacts with his wife and children.¹⁷ As to the aspect of standing, Mr Al Hassan submitted that he considers his complaint of 22 October 2019 as a complaint pursuant to regulation 218 and 219 of the Regulations and that the Letter of 15 July 2021 constitutes a new decision overriding the Registrar's Decision of 6 November 2019.¹⁸ Mr Al Hassan concludes that the Letter of 15 July 2021 hence triggers the present Application for judicial review pursuant to regulation 220(1) of the Regulations.¹⁹ As to the merits, Mr Al Hassan submitted that the Registrar has failed to act with procedural fairness,²⁰ arguing that the supposedly 'equal' distribution of funding between all detained persons leads *de facto* to an unequal and procedurally unfair outcome.²¹ Further, Mr Al Hassan submitted that the Letter of 15 July 2021 failed to take into account relevant factors, namely (i) the cultural and religious background of Mr Al Hassan's wife, which leads to the fact that she is unable to travel without a guardian;²² (ii) the death of Mr Al Hassan's daughter in 2020;²³ (iii) that Mr Al Hassan has never met his son;²⁴ and (iv) the length of time which had elapsed since Mr Al Hassan has seen members of his family.²⁵

¹⁶ Letter of 15 July 2021, ICC-RoR220-03/21-1-Conf-Exp-AnxO, pp. 1-2, *annexed to the Application*.

¹⁷ Application, ICC-RoR220-03/21-1-Red, para. 77.

¹⁸ Application, ICC-RoR220-03/21-1-Red, para. 31.

¹⁹ Application, ICC-RoR220-03/21-1-Red, para. 31.

²⁰ Application, ICC-RoR220-03/21-1-Red, paras 35-46.

²¹ Application, ICC-RoR220-03/21-1-Red, para. 35.

²² Application, ICC-RoR220-03/21-1-Red, paras 47, 52-59.

²³ Application, ICC-RoR220-03/21-1-Red, paras 47, 60-63.

²⁴ Application, ICC-RoR220-03/21-1-Red, paras 47, 64-72.

²⁵ Application, ICC-RoR220-03/21-1-Red, paras 47, 73-76.

II. DETERMINATION OF THE PRESIDENCY

9. The Presidency fully understands Mr Al Hassan's strong desire to hold an in-person visit with as many of his family members as possible as soon as possible and acknowledges that the COVID-19 situation has generated significant challenges for detained persons.
10. Nonetheless, the Presidency does not accept the Application's contention that the present matter may be brought directly before the Presidency for judicial review pursuant to regulation 220 of the Regulations. The Presidency considers that the Letter of 15 July 2021 has clearly been taken in an entirely different context to the Registrar's Decision of 6 November 2019 and appears to have been informed by different reasons. It is evidently a new decision. In order to enable a meaningful judicial review process, the alleged Impugned Decision must be reviewed in accordance with the procedure established by law. In this particular case, a decision taken directly by the Registrar must be first subject to detailed review by the Registrar himself, in accordance with regulation 218(1) of the Regulations. An initial review decision of the Registrar pursuant to regulation 218(5) of the Regulations may then be subject to judicial review by the Presidency, pursuant to regulation 220 of the Regulations.
11. The Presidency considers that ensuring that all decisions have been fully subjected to a review process before judicial review is sought is essential. The Presidency has earlier elucidated the importance of such process in the following terms:

Nonetheless, even where a complaint is based on an initial decision or order of the Registrar, it is still necessary to first address a reasoned complaint to the Registrar, prior to addressing the Presidency. This provides the Registrar with an opportunity to consider the matter with the benefit of the arguments of the detained person for the first time. It enables a fully-fledged administrative decision-making process to first take place within the Registry and ensures that there is a fully reasoned formal written decision of the Registrar which may be the subject of judicial review by the Presidency.²⁶

12. The fact that some of the arguments likely to be made by the defence in the course of seeking review before the Registrar may be similar to those made in earlier applications

²⁶ Presidency, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on 'Yekatom Defence Request for Review of Registrar's Family Visits Decision' dated 18 November 2019 (ICC-RoR220-04/19-1), 10 December 2019, ICC-RoR220-04/19-3, para. 13.

on the same subject matter does not reduce the importance of the Registrar being given the opportunity to fully consider such arguments in the present context.

13. The Presidency acknowledges that Mr Al Hassan was likely motivated by a desire to receive his family visit before the recommencement of daily trial hearings in his case on 23 August 2021. In view, however, of pertinent practical and procedural matters, such as the duration of any such family visit, the application of any quarantine requirements, the time required for visa arrangements and the time which even an expedited judicial review procedure before the Presidency would take, it would not be feasible to envisage any implementation of a Presidency decision on the Application so as to enable a family visit to be completed prior to the 23 August 2021. In view of these circumstances, the Presidency sees no need to further consider any exceptional approach to the admissibility of the Application.
14. Accordingly, the Presidency considers that the Application is not properly before it in accordance with regulation 220 of the Regulations and should be dismissed *in limine*.

The Presidency hereby **REJECTS** the Application *in limine*.

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

A handwritten signature in black ink, appearing to read 'Hofmański', with a large, stylized flourish above it.

Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 27 July 2021

At The Hague, The Netherlands