

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 26 April 2019

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 Document

Decision on Defence Counsel's Application to Withdraw

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

Mr Esteban Peralta Losilla

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Péter Kovács, designated on 28 March 2018 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* (“Al Hassan case”),¹ decides as follows.

I. Procedural history

1. On 27 March 2018, the Chamber, acting pursuant to article 58 of the Rome Statute (“Statute”), issued a warrant for the arrest of Mr 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 and is now held at its Detention Centre in The Hague.³

3. On 3 April 2018, the Single Judge scheduled the first appearance for 4 April 2018.⁴

4. On 4 April 2018, the Registrar informed the Chamber that, by letter of 3 April 2018, Mr Yasser Hassan had been assigned to represent Mr Al Hassan throughout the first appearance proceedings before the Court.⁵

5. That day, at the first appearance hearing, the Single Judge scheduled the confirmation hearing to commence on Monday, 24 September 2018.⁶

6. On 12 April 2018, Mr Al Hassan appointed Mr Yasser Hassan as counsel to represent him before the Chamber.⁷ That day Mr Yasser Hassan agreed to represent him.⁸

¹ “Decision Designating a Single Judge”, dated 28 March 2018 and 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”, dated 27 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

³ ICC-01/12-01/18-11-US-Exp.

⁴ “Order Scheduling the First Appearance of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 3 April 2018, ICC-01/12-01/18-12-tENG.

⁵ “Notification of the Appointment of Mr Yasser Hassan as Duty Counsel for Mr AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG HASSAN”, ICC-01/12-01/18-14.

⁶ Transcript of first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-FRA ET.

7. On 16 April 2018, the Registrar made official Mr Yasser Hassan's appointment as Counsel for the Defence of Mr Al Hassan ("Mr Yasser Hassan" or "Defence Counsel").⁹
8. On 20 July 2018, the Single Judge issued his "Decision Postponing the Date of the Confirmation Hearing",¹⁰ rescheduling the hearing for 6 May 2019.
9. On 18 April 2019, the Single Judge issued a decision instructing the Prosecutor to file the document containing the charges by Wednesday, 8 May 2019 and rescheduling the confirmation hearing for Monday, 8 July 2019.¹¹
10. On 24 April 2019, Mr Yasser Hassan filed an application seeking leave of the Single Judge to withdraw from the case as Defence Counsel ("Application").¹²

II. Analysis

11. Defence Counsel for Mr Yasser Hassan seeks leave of the Single Judge to withdraw from Mr Al Hassan's Defence team in accordance with regulation 78(1) of the Regulations of the Court. Mr Yasser Hassan points out that this decision was taken in agreement with the suspect.¹³ Furthermore, he states that the withdrawal will take effect on 1 May 2019, unless the Chamber determines otherwise.¹⁴ Lastly, Mr Yasser Hassan states that he is aware of his obligations under the Code of

⁷ "Notification of the Appointment of Mr Yasser Hassan as Counsel for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 16 April 2018, ICC-01/12-01/18-19 and ICC-01/12-01/18-19-AnxI.

⁸ Annex II to the "Notification of the Appointment of Mr Yasser Hassan as Counsel for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 16 April 2018, ICC-01/12-01/18-19-AnxII.

⁹ Annex III to the "Notification of the Appointment of Mr Yasser Hassan as Counsel for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 16 April 2018, ICC-01/12-01/18-19-Conf-AnxIII.

¹⁰ ICC-01/12-01/18-94-Red-tENG.

¹¹ "Decision Setting a New Date for Filing the Document Containing the Charges and for the Commencement of the Confirmation Hearing", 18 April 2019, ICC-01/12-01/18-313, paras. 18-20.

¹² "Application for leave to withdraw from the representation of Mr Al Hassan", ICC-01/12-01/18-317-Conf-Exp.

¹³ Application, paras. 5-6.

¹⁴ Application, para. 8.

Professional Conduct for counsel (“Code of Conduct”) and makes clear that he will continue to fulfil his duties until replacement Defence Counsel is appointed.¹⁵

12. The Single Judge notes article 67(1)(d) of the Statute, regulations 23 *bis* and 78 of the Regulations of the Court and articles 8, 15(2), 17(2), 18(3) and 19 of the Code of Conduct.

13. Noting Mr Yasser Hassan’s application to withdraw from the present case as Defence Counsel for Mr Al Hassan and that the decision was taken in agreement with the suspect, the Single Judge decides to grant the Application. However, as Mr Yasser Hassan himself points out, to ensure that the suspect remains duly represented, the withdrawal will take effect only after new counsel has been appointed to defend Mr Al Hassan and, therefore, Mr Yasser Hassan shall continue to represent the suspect until such time.

14. Moreover, the Single Judge reminds Mr Yasser Hassan that, under rule 22(3) of the Rules of Procedure and Evidence (“Rules”), he is subject to the Statute, the Rules, the Regulations of the Court and the Code of Conduct, and the Single Judge underscores that that rule continues to apply after his withdrawal, as, under articles 8, 17(2) and 18(2) of the Code of Conduct, he remains bound by professional secrecy and confidentiality.

15. In view of the foregoing, the Single Judge instructs the Registrar to take the necessary measures, in accordance with rules 20 to 22 of the Rules, so that Mr Al Hassan is in a position to choose a new Defence Counsel promptly.

III. Confidentiality

16. The Single Judge notes that the Application was filed as “confidential”. However, as the present decision contains no information to warrant that classification, and, for the purpose of the publicity of the hearings, the Single Judge

¹⁵ Application, para. 9.

sees fit to issue the decision as “public”. Furthermore, he instructs the Defence team for Mr Al Hassan (“Defence”) to file a public redacted version of its submissions.

FOR THESE REASONS, the Single Judge

GRANTS Mr Yasser Hassan leave to withdraw from the *Al Hassan* case;

DECIDES that the withdrawal will take effect only upon the date of appointment of new Counsel for the Defence of Mr Al Hassan;

INSTRUCTS the Registrar to take the necessary measures to ensure that Mr Al Hassan is in a position to choose a new Defence Counsel promptly; and

INSTRUCTS the Defence to file a public redacted version of its submissions within two days of the notification of the present decision.

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

[signed]

Judge Péter Kovács

Single Judge

Dated this 26 April 2019

At The Hague, Netherlands