Cour
Pénale
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International
Criminal
Court

Original: **English**

No.**: ICC-01/18**
Date: **28 May 2025**

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN STATE OF PALESTINE**

**Public**

**Prosecution's Request for Leave to Submit Observations on "Hungary's submission for the purpose of proceedings under article 87(7) of the Rome Statute", 23 May 2025, ICC-01/18-433-AnxII**

**Source: Office of the Prosecutor**

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Hungary

## I. INTRODUCTION

1. The Prosecution respectfully seeks leave to provide observations on "Hungary's submission for the purpose of proceedings under article 87(7) of the Rome Statute" ("Hungary's Submissions").[1] These submissions represent the first time that Hungary has explained to the Court why it failed to provisionally arrest Mr Benjamin NETANYAHU ("NETANYAHU") during his stay in Hungary from 3 until 6 April 2025, notwithstanding Pre-Trial Chamber I's request for his provisional arrest under article 92 ("Request for Provisional Arrest").[2] Hungary raises issues of law and fact which the Prosecution wishes to address in order to assist the Chamber in making its determination pursuant to article 87(7) of the Statute.

2. Accordingly, the Prosecution requests leave to respond to Hungary's Submissions, as further detailed below. If leave were granted, the Prosecution would file observations on the identified issues succinctly and expeditiously.

## II. BACKGROUND

3. On 20 May 2024, the Prosecutor filed an application for a warrant of arrest for NETANHYAHU, as well as four other applications, pursuant to article 58 of the Statute, in the *Situation in the State of Palestine*.[3]

4. On 21 November 2024, the Chamber issued three warrants of arrest, including an arrest warrant for NETANYAHU ("Warrant of Arrest"). In the Warrant of Arrest, the Chamber instructed the Registrar to send a request to any State Party to provisionally arrest NETANYAHU when the opportunity to do so would arise.[4]

5. On 3 April 2025, the Registry, having confirmed that NETANYAHU had arrived in Hungary a few hours earlier that day, transmitted to Hungary the request for the provisional arrest of NETANYAHU pursuant to article 92 of the Statute.[5]

6. 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, when he left the country.[6]

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[1] ICC-01/18-433-AnxII.
[2] ICC-01/18-421, para. 3. The Prosecution will refer to Pre-Trial Chamber I as "the Chamber" or "PTCI".
[3] ICC-01/18-421, para. 1.
[4] ICC-01/18-421, para. 2.
[5] ICC-01/18-421, para. 3
[6] ICC-01/18-421, para. 4.

7. On 16 April 2025 the Chamber invited Hungary to submit observations regarding its failure to provisionally arrest NETANYAHU pursuant to the Warrant of Arrest.[7]

8. On 22 May 2025, Hungary filed its Submissions.[8]

## III. SUBMISSIONS

9. As a preliminary matter, the Prosecution notes that the Chamber, with a different composition and in another situation, has recently held that the issue of a State Party's alleged non-cooperation "is a separate and ancillary procedure to the proceedings against [a suspect]".[9] In similar situations before the Court, different Chambers have either accepted and taken into consideration a Prosecution's response to a government's submissions [10] or granted a Prosecution's request for leave to reply to such submissions.[11] In an abundance of caution, the Prosecution seeks the Chamber's leave to provide observations and respond to Hungary's Submissions. It further notes that Pre-Trial Chamber II has recognised that the Prosecution, as the source of the arrest warrant application, has a relevant role in non-compliance proceedings.[12] The Prosecution believes that its observations on the issues raised by Hungary will assist the Chamber in making its determination pursuant to article 87(7) of the Statute.

10. Hungary's first explanation for failing to provisionally arrest NETANYAHU contains issues of law and fact that the Prosecution has not had the opportunity to address. The Prosecution therefore seeks leave to respond to Hungary's Submissions with respect to the following issues:

(1) Whether Hungary, a State Party to the Rome Statute, can be relieved from its obligations under the Statute to provisionally arrest NETANYAHU because it purports to adhere to a dualist model and has failed to promulgate domestically the Rome Statute that it has ratified.[13]

(2) Whether Hungary can invoke article 98(1) of the Statute to justify its failure to provisionally arrest NETANYAHU at this stage and when it had failed to consult with the Court pursuant to article 97 of the Statute.[14]

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[7] ICC-01/18-421, paras. 5-6.
[8] ICC-01/18-433-AnxII.
[9] ICC-01/11-170, para. 8.
[10] *See* ICC-02/05-01/09-303 and ICC-02/05-01/09-309.
[11] *See* ICC-01/09-02/11-891.
[12] ICC-02/05-01/09-286, para. 6.
[13] ICC-01/18-433-AnxII, paras. 2-3. This would include the lack of promulgation of article 27 of the Rome Statute.
[14] ICC-01/18-433-AnxII, para. 4.

(3) Whether Hungary, as a State party to the Rome Statute, can be relieved from its obligations under the Statute to provisionally arrest NETANYAHU on the basis of its view that "the Court's jurisdiction in this matter cannot be established under Article 12 and that the arrest warrant issued against Prime Minister Netanyahu cannot be regarded as an impartial and objective legal act, but rather as a politically motivated instrument".[15]

11. Accordingly, the Prosecution wishes to make submissions on the above issues, which are of relevance to the procedure currently before the Chamber. Because of its role as well as for being the source of the Warrant of Arrest application for NETANYAHU, the Prosecution is well placed to provide relevant submissions to the Chamber on this matter, and believes it can assist it in its determination pursuant to article 87(7) of the Statute.

## IV. CONCLUSION

12. For the reasons set out above, the Prosecution respectfully requests leave to provide observations on the above issues arising from Hungary's Submissions.

**Nazhat Shameem Khan, Deputy Prosecutor, Officer-in-Charge**

Dated this 28th day of May 2025
At The Hague, The Netherlands

[15] ICC-01/18-433-AnxII, para. 5.