



Original: English

No.: ICC-RoR221-01/10

Date: 9 June 2010

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Fatoumata Dembele Diarra, First Vice-President
Judge Hans-Peter Kaul, Second Vice-President

Public redacted

Decision on the admissibility of Aprodec's "Requête en Annulation de la Décision du Refus de Visite opposé par le Greffier le 5 janvier 2010. Et, Contestation du Comportement et l'Aptitude du Greffier à exercer les Fonction prévues à l'Article 43(1)."

Decision to be notified in accordance with regulation 31 of the Regulations of the Court**to:****The Applicant**

Aprodec asbl

Counsel for the Defence of Mathieu**Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila

Prof Jean-Pierre Fofé Djofia Malewa

Counsel for the Defence of Germain**Katanga**

Mr David Hooper

Mr Andreas O'Shea

Counsel for the Defence of Thomas**Lubanga Dyilo**

Ms Catherine Mabilile

Mr Jean-Marie Biju Duval

Counsel for the Defence of Jean-Pierre**Bemba Gombo**

Mr Nkwebe Liriss

Mr Aimé Kilolo-Musamba

REGISTRY

Registrar

Ms Silvana Arbia

Detention Section

Mr Anders Backman

Deputy Registrar

Mr Didier Preira

The Presidency of the International Criminal Court (hereinafter “Court”) has before it the application of the *Association pour la Promotion de la démocratie et du développement de la République Démocratique du Congo, association sans but lucratif* (hereinafter “Aprodec asbl”) for, *inter alia*, judicial review of the Registrar’s decision refusing it permission to visit the Congolese persons in the custody of the Court [REDACTED].

I. PROCEDURAL HISTORY

1. On 19 November 2009, Aprodec asbl (hereinafter “applicant”), a Belgian non-profit organisation which aims to defend the interests and rights of the Democratic Republic of the Congo, Congolese citizens and people of Congolese origin,¹ requested the Registrar to permit its President, Mr Benjamin Kalombo, to visit Messrs Jean-Pierre Bemba Gombo, Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui (hereinafter “detainees”).²
2. On 5 January 2010, the Registrar refused to grant the permission sought (hereinafter “Impugned Decision”).³
3. On 8 January 2010, the applicant requested the reasons for her refusal.⁴
4. On 13 January 2010, the Registrar explained the reasons for her refusal.⁵
5. On 27 January 2010, the applicant sought from the Presidency judicial review of the Impugned Decision and contested the behaviour of the Registrar and her ability to exercise her functions as set out in article 43(1) of the Rome Statute (hereinafter “Application”).⁶
6. On 22 February 2010, the applicant supplemented its Application (hereinafter “Supplementary Application”, the Application and Supplementary Application will be collectively referred to as the “Applications”).⁷
7. On 24 February 2010, the Registrar submitted observations to the Presidency pursuant to regulation 24*bis* of the Regulations of the Court (hereinafter “Observations”).⁸

¹ Application, paragraph 6, cited in full at footnote 6 below.

² ICC-RoR221-01/10-1-Conf-Exp-Anx1, ICC-RoR221-01/10-1-Conf-Exp-Anx2, ICC-RoR221-01/10-1-Conf-Exp-Anx3, ICC-RoR221-01/10-1-Conf-Exp-Anx4.

³ ICC-RoR221-01/10-1-Conf-Exp-Anx8.

⁴ ICC-RoR221-01/10-1-Conf-Exp-Anx8.

⁵ ICC-RoR221-01/10-1-Conf-Exp-Anx6.

⁶ Corrigendum, Requête en Annulation de la Décision du Refus de Visite opposé par le Greffier le 5 janvier 2010. Et, Contestation du Comportement et l’Aptitude du Greffier à exercer les Fonctions prévues à l’Article 43(1), ICC-RoR221-01/10-1-Corr.

⁷ Note Supplémentaire à l’appui de la Requête en Annulation de la Décision de Refus de Visite opposé par le Greffier le 5 janvier 2010. Et, Contestation du Comportement et l’Aptitude du Greffier à exercer les Fonctions prévues à l’Article 43(1) du Statut de Rome, ICC-RoR221-01/10-2.

8. On 1 March 2010, the applicant sought leave to file a reply to the Observations.⁹

II. RELIEF SOUGHT

9. The applicant prays the Presidency to quash the Impugned Decision on the grounds that the Registrar failed to act with procedural fairness,¹⁰ acted without jurisdiction¹¹ and committed an error of law.¹²
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. The applicant prays the Presidency for leave to file a reply to the Registrar's Observations.¹³
14. The applicant prays the Presidency to reclassify all of the public documents in the present proceedings as confidential.¹⁴
15. The applicant prays the Presidency to order the detainees to submit observations on the Impugned Decision and the Registrar's Observations.¹⁵
16. The applicant prays the Presidency to convene an *ex parte* hearing between it, the Registrar, the detainees and their counsel.¹⁶

III. ADMISSIBILITY

17. The Presidency must resolve preliminary procedural issues concerning the admissibility of the main submissions in the Applications.

A. Request for judicial review

⁸ Observations du Greffe en vertu de la Norme 24bis du Règlement de la Cour en relation avec les documents ICCRoR221-01/10-1 et ICC-RoR221-01/10-2, ICC-RoR221-01/10-3.

⁹ Demande d'Autorisation de formuler une Réplique au Document intitulé: «Observations du Greffier en vertu de la Norme 24bis du Règlement de la Cour en relation avec les documents ICC-RoR221-01/10-1 et ICC-RoR221-01/10-2» Et, Demande de participation de tous les Détenus de Nationalité Congolaise dans la Procédure en vertu des normes 91, 100, 101 et 106 du Règlement de la Cour, ainsi que les normes 180, 220 et 221 du Règlement du Greffe, ICC-RoR221-01/10-4 (hereinafter «Demande»).

¹⁰ Application, paragraphs 16 and 20.

¹¹ Application, paragraph 34.

¹² Application, paragraph 36.

¹³ Demande, paragraph 32(a).

¹⁴ Demande, paragraph 32(b).

¹⁵ Demande, paragraph 32(d).

¹⁶ Demande, paragraph 32(e).

18. Regulation 180(4) of the Regulations of the Registry (hereinafter all references to regulations are to the same unless otherwise stated) provides: “[t]he detained person whose visits have been denied may file a complaint”. From the wording of that provision, the right to complain against the refusal of a visit is vested solely in a detained person. This understanding of regulation 180(4) is consistent with the tenor of the complaints procedure, as set out in regulation 106 of the Regulations of the Court and Section 5 of Chapter 5 of the Regulations of the Registry, which has, as its primary purpose, the safeguarding of the rights of detained persons. As such, the applicant’s request for judicial review of the Impugned Decision is inadmissible for want of legal basis.
19. Pursuant to regulation 180(3), where “*any* request for permission to visit” a detained person is denied (emphasis added), the detained person must be notified in writing by the Registry and the reasons for such refusal must be provided to him. This is the case for all such refusals, regardless of whether the request for a visit originates from the detained person or from the prospective visitor. Notification of such refusals is essential in order to enable a detained person to exercise his right to file a complaint pursuant to regulation 180(4) as set out above. In the instant case, the applicant submits that there is no indication that the Registrar has notified the Impugned Decision to the detainees.¹⁷ If that is the case, the Registrar is ordered to notify the detainees of her Impugned Decision and the reasons therefor as set out in annexes 6 and 8 of the Application, so that they may consider whether to seek judicial review thereof. Since the Presidency is already seized of the issue, any application from a detainee may be submitted to it directly.¹⁸ If any detainee does intend to challenge the Impugned Decision, either by adopting the arguments of the applicant at paragraphs 15-36 of the Application or by presenting new arguments, they are required, for reasons of judicial economy [REDACTED] to give notice thereof to the Presidency.
20. As a consequence of the inadmissibility of the request for judicial review of the Impugned Decision, the request for leave to file a reply to the Observations is denied.

[REDACTED]

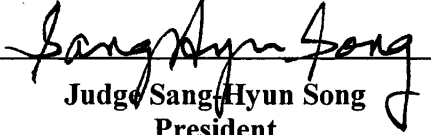
¹⁷ Application, paragraph 20.

¹⁸ Cf. Decision on the Application of Mr Germain Katanga in respect of the new policy in the detention centre on the registration of telephone contacts, ICC-RoR221-02/09-6-Corr, 17 September 2009, paragraph 16.

IV. ORDERS

25. If she has not already done so, the Registrar is ordered to notify the detainees of the Impugned Decision as set out in annexes 6 and 8 of the Application by 25 March 2010.
26. The detainees are ordered to indicate whether they intend to challenge the Impugned Decision by 9 April 2010.
27. [REDACTED]
28. The Presidency will set out any further deadlines thereafter.

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


Judge Sang-Hyun Song
President

Dated this 9 June 2010

At The Hague, The Netherlands