

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: French

No.: ICC-01/04-01/07

Date: 23 October 2009

TRIAL CHAMBER II

**Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Confidential

**Decision on Mr Jean-Louis Gilissen's application to withdraw from his
representation agreement for Applicants a/0114/08, a/0363/09 and a/0390/09**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting pursuant to regulations 79, 80 and 82 of the Regulations of the Court and articles 12, 13, 16 and 18 of the Code of Professional Conduct for Counsel, decides as follows:

I. Procedural background

1. On 22 July 2009, the Chamber ordered the Registry, in consultation with the legal representatives, to assist the victims in the case in choosing a common legal representative (“the Order of 22 July 2009”).¹ The Chamber had considered it necessary to create two groups of victims, the first comprising former child soldiers who allegedly took part in the attack on Bogoro on 24 February 2003, and the second comprising all other victims.²
2. On 31 July 2009, the Chamber issued the dispositive part of the decision on the 345 applications for participation, granting the status of victim participating in the proceedings to 288 applicants, including Applicant a/0363/09. Furthermore, it requested additional information from 45 applicants, including Applicants a/0114/08 and a/0390/09.³ The grounds for that decision were filed on 23 September 2009.⁴
3. On 22 September 2009, the Registry transmitted to the Chamber a report appointing Mr Fidel Nsita Luvengika as the permanent common legal representative of the main group of victims⁵ and Mr Jean-Louis Gilissen as the legal representative of eight victims from the group of former child soldiers.⁶ In that report, the Registry invited Mr Gilissen to “[TRANSLATION] confirm or deny formally to the Court whether there

¹ *Order on the organisation of common legal representation of victims*, 22 July 2009, ICC-01/04-01/07-1328.

² *Ibid.*, paras. 12 and 13.

³ *Dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure*, 31 July 2009, ICC-01/04-01/07-1347; *Corrigendum du dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure*, 5 August 2009, ICC-01/04-01/07-1347-Corr.

⁴ *Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims*, 23 September 2009, ICC-01/04-01/07-1491-Red-tENG and ICC-01/04-01/07-1491-Conf-Exp-Anx.

⁵ Registry, “*Désignation définitive de Me Fidel Nsita Luvengika comme représentant légal commun du groupe principal de victimes et affectation des victimes aux différentes équipes*”, 22 September 2009, ICC-01/04-01/07-1488.

⁶ *Ibid.*, pp. 4 and 7.

is a conflict of interest(s) concerning the representation of Victim a/0363/09, and if so, to apply to the Court for authorisation to withdraw from representing Victim a/0363/09 pursuant to regulation 82 of the Regulations of the Court”.⁷

4. On 28 September 2009, Mr Gilissen submitted an application under regulation 82 of the Regulations of the Court to withdraw from his legal representation agreement with respect to three applicants, a/0114/08, a/0363/09 and a/0390/09⁸ (“the Application”).

II. Mr Gilissen’s Submissions

5. In support of his Application, Mr Gilissen submits that, in order to avoid any risk of a conflict of interests within the meaning of article 16 of the Code of Professional Conduct for Counsel, he wishes to end his agreement to represent Victim a/0363/09, since this victim does not fall within the category of former child soldiers.⁹ Furthermore, he states that Applicants a/0114/08 and a/0390/09 submitted their applications for participation via intermediaries and that he himself did not have any direct contact with them. He adds that he is unable to establish such contact with those applicants and hence is unable to gather the information sought by the Chamber, to employ the means necessary for attaining the objectives of his representation within the meaning of article 14(2)(b) of the Code of Professional Conduct for Counsel, or to comply with the provisions of article 15 of the Code governing communication between counsel and the client.¹⁰

III. Discussion

6. The Chamber notes that regulation 82 of the Regulations of the Court permits legal representatives to seek the leave of the Chamber to withdraw from a “case”, not to

⁷ *Ibid.*, p. 7.

⁸ Legal Representative of Victims, “*Demande de retrait du représentant légal des victimes 0333/07, 0110/08, 0111/08, 0112/08, 0114/08, 0136/08, 0314/09, 0315/09, 0316/09, 0363/09, 0390/09 de son mandat de représentation des victimes a/0114/08, a/0363/09 et a/0390/09*”, 28 September 2009, ICC-01/04-01/07-1502-Conf.

⁹ *Ibid.*, p.3.

¹⁰ ICC-01/04-01/07-1502-Conf, p. 4.

terminate an agreement to represent an individual. This legal basis on which Mr Gilissen relies is therefore not apposite. A legal representative may only decline, refuse or terminate a representation agreement in the circumstances set out in the Code of Professional Conduct for Counsel, in particular, articles 12, 13, 16 and 18.

7. Under article 16(3)(a) of said Code, “[w]here a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either: (a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation”.
8. The Chamber notes that Victim a/0363/09 claims to have suffered mental harm from anxiety and suffering endured following the attack on Bogoro on 24 February 2003, and is not a former child soldier.¹¹ This victim does not therefore belong to the group which Mr Gilissen is to represent. Accordingly, as the Chamber noted in its Order of 22 July 2009, such a situation may create a conflict of interests between the victims in the group of former child soldiers and the others.¹²
9. Consequently, the Chamber grants Mr Gilissen leave under article 16 of the Code of Professional Conduct for Counsel to terminate his agreement to represent Victim a/0363/09. Furthermore, it notes that, since 22 September 2009, the Registry has provisionally assigned representation of this victim to the group represented by Mr Fidel Nsita Luvengika.¹³
10. Turning now to Applicants a/0114/08 and a/0390/09, the Chamber notes that Mr Gilissen requests that his representation agreement be terminated since he has so far been unable to establish direct contact with the persons concerned. In light of the information provided in his Application, the Chamber is of the view that such a lack

¹¹ ICC-01/04-01/07-1491-Conf-Exp-Anx, pp. 593 to 595.

¹² *Ibid.*, p. 3. See also Order of 22 July 2009, para. 12(c).

¹³ ICC-01/04-01/07-1488, p. 5.

of direct contact with the applicants cannot, at this stage, constitute a valid ground to terminate his legal representation agreement.

11. Nevertheless, the Chamber notes that the Registry has taken the initiative to contact Mr Gilissen to request additional information about the reasons for his Application. It observes that the Registry also offered to assist him in establishing initial contact with the applicants in order to obtain the clarifications sought by the Chamber in the aforementioned decision of 31 July 2009. Accordingly, the Chamber is of the view that it must await the action taken by the Registry before it rules on the Application in respect of Applicants a/0114/08 and a/0390/09.

FOR THESE REASONS,

AUTHORISES Mr Jean-Louis Gilissen to terminate his legal representation agreement for Victim a/0363/09 and **INVITES** him to inform the Chamber of the outcome of the action taken by the Registry to assist him in establishing initial contact with Applicants a/0114/08 and a/0390/09.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Christine Van den Wyngaert

Dated this 23 October 2009
At The Hague, The Netherlands