



**DISCIPLINARY BOARD OF THE INTERNATIONAL CRIMINAL COURT**

**Original: French**

**Reference: DO/2011/015/DAB/AC**

**Date: 28 November 2011**

**Before:** Ms Aïcha Condé, chair  
Ms Marie Pierre Poulain, permanent member  
Mr Mbuy-Mbiye Tanayi, ad hoc member

**In the case of: *The Registrar v. Mr Joseph Keta***

**Public Redacted Version**

**Decision of the Disciplinary Board**

Counsel for Mr Joseph Keta:  
Mr Jean-Louis Gilissen

Commissioner:  
Mr Nigel Hampton

The Disciplinary Board of the International Criminal Court (“the Board”) issues this decision in the case of *The Registrar v. Mr Joseph Keta*, pursuant to the complaint submitted on 29 March 2010 by Trial Chamber I.

By decision of 29 March 2010, Trial Chamber I (“the Chamber”) of the International Criminal Court considered that there was *prima facie* evidence to establish that Mr Joseph Keta had disregarded his duty of confidentiality as counsel for victims by providing unauthorised individuals with access to sensitive and confidential material from 30 November to 12 December 2009. Accordingly, the Chamber considered it necessary to refer the matter to the Registrar pursuant to articles 8, 31 and 34(1)(a) of the Code of Professional Conduct for counsel (“the Code of Conduct”).

Accordingly, the Chamber submitted the potential breach of confidentiality obligations on the part of Mr Joseph Keta by way of a complaint to the Registry. Upon referral of the complaint by the Registry, the Commissioner initiated an investigation in accordance with article 33(1) of the Code of Conduct and then prepared a report, which he submitted on 25 October 2010 to the Disciplinary Board pursuant to article 39 of said Code.

Having satisfied itself that the adversarial principle was respected, the Disciplinary Board summonsed Mr Joseph Keta and his counsel on 15 March 2011 to appear at a disciplinary hearing on 13 May 2011.

By a brief notified on 13 April 2011, Mr Keta requested the Disciplinary Board:

- to find that the Commissioner expanded the ambit of his referral to include facts broader than those expressly contemplated by Trial Chamber I in its decision of 29 March 2010 and referred to him by the Registrar of the Court;
- to find that, in so doing, the Commissioner exceeded both his remit and the ambit of the referral;
- to hold that the Commissioner’s investigation and his report are flawed and that, accordingly, the rights of the respondent’s defence and the fairness of the proceedings have been violated;
- to find that the violations of the respondent’s defence rights and of the fairness of the proceedings are of such gravity that they appear to be irreparable;
- in the alternative, should the Disciplinary Board consider that these violations may be sufficiently countervailed and remedied to allow the proceedings to continue with sufficient safeguards for the rights of the respondent’s defence and the fairness of the proceedings, to define such remedies;

- in that event, to note that, prior to any consideration of the merits concerning Mr Keta's acts during the period of June 2009 to January 2010, his Defence intends to interview various witnesses and to submit various documents insofar as it considers them necessary for a useful and effective defence.

By decision dated 13 May 2011, the Disciplinary Board dismissed the admissibility challenge and invited Mr Keta to submit substantive pleadings.

Accordingly, the Disciplinary Board called Mr Joseph Keta to a disciplinary hearing to be held on 3 October 2011. Since one of the members of the Disciplinary Board was unavailable, the matter was postponed until the hearing of 18 October 2011.

On 12 September 2011, Mr Keta requested the Disciplinary Board to call Ms Gaëlle Carayon and [REDACTED] to appear as witnesses.

In respect of Ms Gaëlle Carayon, the Defence for Mr Keta indicated that it wished for her to explain during her evidence the conditions in which she accessed the CITRIX program and to state the period(s) in which access to CITRIX was available to her.

In respect of [REDACTED], the Defence for Mr Keta indicated that it wished to obtain from him all technical information which would enable the particulars of this matter to be comprehended.

Mr Nigel Hampton, the Commissioner, was unable to attend the hearing on 18 October 2011 and, in order not to further delay consideration of the matter, submitted to the Board a memorandum dated 25 September 2011 in response to Mr Keta's observations.

In his memorandum, the Commissioner indicated that, in his view, three options were open to the Disciplinary Board:

Firstly, if, on the basis of the material in the submission on behalf of Mr Keta, the Board is of the view that either or both these persons should be called and heard, then the Board as presently advised might consider issuing a summons for one or both to be called and heard at the next sitting of the Board in this matter, when the disciplinary proceedings should be substantively decided.

Secondly, if, on the basis of the material in the submission, the Board is not of the view that the two persons should be summonsed to be heard, but wished to take account of the fact that Mr Keta's counsel had interviewed the two proposed witnesses and then provided further information to the Board for the Board thereafter to make an informed decision as to whether these persons rightly can be "deemed useful" to be called and heard "for the establishment of the truth", then the Board should issue appropriate directions accompanied by an appropriate timetable for Mr Keta to comply with.

Thirdly, if, on the basis of all the materials presently before it, including the recent Submission made on behalf of Mr Keta, the Board takes the view that the substantive hearing should proceed, then either:

- a) the matter should be decided by the Board “based on documents and facts available so far” (Articles 41 and 42), which the Commissioner suggests might be appropriate; or
- b) the Board should set a fresh date for the substantive hearing, accompanied by appropriate directions and timetabling, for Mr Keta to comply with.

After considering the matter, the Disciplinary Board renders the following decision:

In his memorandum, the Commissioner noted that Mr Keta did not deem it useful to provide to the Board a written statement from each of the persons whom he wishes to call, so that the Board could properly determine, in exercise of its discretion, whether the application to call those persons should be allowed.

Mr Gilissen responded to this point orally at the hearing, stating that the procedure before the Board has not been fixed on this point, and that he chose to act as appeared to him to be consistent with his professional ethics, which is that one does not contact witnesses or arrange meetings with them to obtain statements from them. He indicated that, in his view, hearing witnesses is a prerogative of the Disciplinary Board.

The Disciplinary Board recalls that it is not bound by any domestic laws and that it must take into account the various applicable legal systems, provided that they respect the general principles of law, fairness in the investigation of the case, and the rights of the defence.

The general principles of law include the right of any accused person to a fair trial; the right to call witnesses may be understood as being one of its pillars.

Pursuant to article 39(7) of the Code of Professional Conduct for counsel, the Disciplinary Board may call and hear any person deemed useful for the establishment of the truth.

Under article 15(7) of the Rules and Procedures of the Disciplinary Board, at any time during the hearing, the Disciplinary Board may, after hearing the Commissioner and counsel appearing on his or her own behalf or his or her representative, decide to:

- adjourn the matter to a future date, *inter alia*, to hear witnesses;
- request further written or oral information from any person or organ of the Court that may be able to assist it in establishing the truth.

Pursuant to these principles, the Disciplinary Board hereby decides to grant the request to call and hear Ms Gaëlle Carayon and [REDACTED].

The date of the hearing for these witnesses to give evidence will be notified to them via a summons, and to the Commissioner and Mr Keta and his counsel.

Furthermore, in his brief of 12 September 2011, Mr Keta requested the Board to take formal note that he intends, as matters stand, for the sake of diligence and economy of resources, to limit his request to hear only the two aforementioned witnesses, but that he reserves the right, if need be, to apply for additional interviews if, for one reason or another, the information obtained via the two individuals to be interviewed were to prove insufficient for understanding the full details of this case.

Mr Keta repeated this point at the hearing of 18 October 2011.

The Disciplinary Board notes in this respect that Mr Keta has been aware since March 2010 of the misconduct alleged against him by Trial Chamber I and of the Commissioner's findings, and that the procedural documents were transmitted to him and his counsel more than one year ago.

Accordingly, he should be sufficiently familiar with the particulars of his case to know the number of witnesses required to provide all necessary clarifications without the Board having to hold further hearings unnecessarily.

Hence the Disciplinary Board instructs Mr Keta to be prepared to make his substantive pleadings not later than 6 January 2012, and reminds him of the undertaking made via his counsel concerning examining witnesses at the same hearing as the substantive hearing.

### **FOR THESE REASONS**

The Disciplinary Board

Ruling unanimously,

- Orders that Ms Gaëlle Carayon and [REDACTED] be called to give evidence;
- Decides that Ms Gaëlle Carayon and [REDACTED] will be informed by summons of the date of their appearance to give evidence before the Disciplinary Board; and
- Instructs Mr Joseph Keta to submit his lines of defence not later than 6 January 2012.

**Ms Aïcha Condé**

**Ms Marie Pierre Poulain**

**Mr Tanayi Mbuy-Mbiye**