



**DISCIPLINARY BOARD OF THE INTERNATIONAL CRIMINAL COURT**

(Constituted on 14 December 2015 to 24 November 2017)

**Original: French**

**Reference: SDO-2018-02-DB Decision**

**Date: 13 March 2018**

**Before:** Ms Diane Turner, Chair  
Mr Assane Dioma Ndiaye, Presiding member  
Mr Vincent Asselineau, ad hoc member

**CASE: DISCIPLINARY COMPLAINT AGAINST MR PAUL DJUNGA**

**Public**

**Decision of the Disciplinary Board for counsel: Redaction of complainant's name**

Counsel for the complainant:  
Mr Geoffrey Roberts

## **Application:**

On March 6, 2018 the Disciplinary Board, constituted to hear the disciplinary matter of Mr. Paul Djunga, received a confidential application to redact the name of the complainant in the decision that was rendered on September 6, 2017 and in the transcripts of the proceedings. No such application was made at the hearing or during submissions before the Board.

Mr. Djunga was provided the opportunity to respond on March 15, 2018 and the Board considered his response received on April 3, 2018.

## **Issues:**

- I. Jurisdiction of the Board
- II. Factual Basis for redaction
- III. Legal basis for redaction

## **Decision:**

### **I. Jurisdiction**

In relation to the issue of the jurisdiction of the Board to decide upon the issue of redaction, the Board agrees with the written submission of counsel for the complainant that the matter is one of a technical nature. In addition, the issue of redaction, within a decision already pronounced, is one which involves a final determination. The Board agrees that article 36(11) of The Code of Professional Conduct for counsel (Code) is applicable in these circumstances:

"[p]ermanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined including all appeals."

### **II. Factual basis of redaction**

Counsel for the complainant submits that she finds the events deeply distressing and that repetition of them, with her name associated, causes her to re-live the events and to have to explain matters to friends and colleagues. Her name is linked with the decision on the internet and therefore is widely available.

Complainants are not provided legal assistance through the disciplinary process as the Commissioner's role, like a prosecutor's, does not contemplate provision of legal assistance to the complainant. Equally, that role cannot fall to the Secretariat who must maintain impartiality throughout the disciplinary process.

Some provision should be made for assisting complainants with complaints of a sexually sensitive nature, to avoid some of the difficulties posed in this case.

The Board accepts the submissions of counsel for the complainant, that the harm caused by identifying her is disproportionate to any benefit which might be gained.

### **III. Legal Basis for the redaction**

The Code and the Rules and Procedures of the Disciplinary Board and the Disciplinary Appeals Board (Rules) require a public process, including the hearing and publication of the decision. The rationale is to provide counsel with direction as to what constitutes unprofessional conduct and in certain cases, such as this one, for the decision to operate as a public reprimand. The issue of redaction of the complainant's name, or any other names, is not addressed in the Code, nor in the Rules.

The publication of a complainant's name may deter a complainant from coming forward in cases involving certain types of disciplinary breaches. The prevention of inappropriate conduct of a sexual nature or of sexual harassment is of crucial importance in the demanding professional environment in which counsel at the ICC operate. It is a testament to the changed standards in professional environments that those who are exposed to inappropriate sexual conduct have recourse and feel empowered to pursue a remedy. Publication of a complainants name is unnecessary, as the identity of the complainant is not in any way relevant to the findings of the Board.

Despite the wording of article 41 of the Code which mandates that decisions be public, the Board finds that it is not inconsistent with the Code, Rules or the rights of counsel to use initials in place of the complainant's name in cases involving sexual misconduct. Redaction is a situation which is not covered in the Code and therefore resort must be made to article 4 of the Rules and Procedures of the Disciplinary Board and the Disciplinary Appeals Board which states that:

"[w]here the situation is not foreseen by the Rules, or where they do not provide a solution to an issue raised, the Disciplinary Board and the Disciplinary Appeals Board shall take necessary interim or any other appropriate measure to ensure that it is dealt with effectively, expeditiously and in a manner that is neither contrary to nor inconsistent with the rights of counsel subject to the disciplinary procedure. Where necessary, the Disciplinary Board and the Disciplinary Appeals Board shall decide to propose an amendment to the Rules pursuant to article 23."



The Board agrees with counsel for the complainant that the ICC legal framework should be applied in a manner which is consistent with internationally recognised human rights, and acknowledges that the UNDP and UNHCR policies take all necessary action to maintain the confidentiality of the process in cases of sexual harassment.

The Board hereby authorizes the redaction of the complainant's name from the decisions available on the ICC website. Since transcripts are not made publically available on the website, the Board need not make a determination as to redaction of the transcripts.

This decision has only a prospective, not a retrospective, effect.

### Amendment Proposal

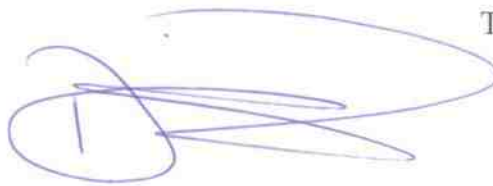
The Board, through this decision, also proposes an amendment pursuant to article 23, of the Rules to article 16 of the Rules, so that it reads as follows:

#### Article 16 - Decision rendered following the disciplinary hearing

[...]

6. "When the decision is final, it shall be published in the Official Journal of the Court and transmitted to the national authority. *In matters involving sexual misconduct, the name of the complainant must be redacted.*"

The Hague, 13 March 2018

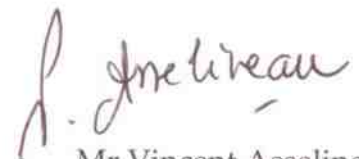


Ms Diane Turner

Mr Assane Dioma Ndiaye



Maitre Assane Dioma NDIAYE  
AVOCAT A LA COUR  
Tél: +221 77 638.79.13



Mr Vincent Asselineau