



DISCIPLINARY BOARD OF THE INTERNATIONAL CRIMINAL COURT

Original: French

Reference: SDO-2017-18-DB Decision
Date: 6 September 2017

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

Case: Disciplinary complaint against Mr Paul Djunga

Public Document

Decision of the Disciplinary Board

Counsel for Mr Djunga:
Ms Adèle Ndaya Kalambay

Alternate Commissioner:
Mr Philippe Moriceau

Factual basis of the complaint as given in the summons to appear:

1. In August 2014, Mr Paul Mudimbi Djunga was appointed Lead Counsel for Aimé Kilolo Musamba. ██████████ joined the Defence team for Mr Aimé Kilolo Musamba in March 2014 and was officially appointed case manager in June 2014.
2. On 11 September 2014, charges were confirmed against Aimé Kilolo Musamba and, shortly thereafter, Mr Djunga organized a mission to meet a witness in Germany. ██████████ was informed by Mr Djunga that he required her attendance and asked her to organize the affairs related to the mission. Mr Djunga reserved two hotel rooms at the Lösch Pfälzer Hof in Germersheim, Germany.
3. On Sunday, 7 September 2014, Mr Djunga drove his vehicle to ██████████ apartment at approximately midday, having been informed of her address by ██████████ by text message that morning. On the journey, during which Mr Djunga and ██████████ took turns driving, Mr Djunga engaged in unseemly conversation and used inappropriate language. Between Trier and Germersheim, Mr Djunga lit a cigarette and used the words, "*c'est la cigarette que j'allume pas toi* ([TRANSLATION] It's the cigarette I'm lighting up, not you)".
4. They arrived at the hotel in Germersheim at approximately 21.30 and took their luggage up to their respective rooms. On Mr Djunga's instructions, ██████████ carried his suit from the car to his room, but left without entering and returned to her room to make a telephone call. Approximately 20 minutes later, Mr Djunga attended ██████████ room and, discovering her room to be larger, suggested that they exchange rooms after dinner.
5. Mr Djunga insisted on a take-away meal at a Chinese restaurant for dinner, which he suggested they eat in one of the two rooms. Once they returned to the hotel from the restaurant, Mr Djunga said that his room was too small and that they would come to ██████████ room to eat. She suggested that they exchange rooms and Mr Djunga refused.
6. ██████████ became concerned that certain of Mr Djunga's remarks, such as "missions bring people closer together", might have a double and inappropriate meaning and felt very uneasy. While in ██████████ room for the purpose of eating dinner, Mr Djunga stretched out on the bed, in a partial state of undress, saying things which ██████████ found provocative and untoward. When she said she would feel more comfortable sleeping in the other room, Mr Djunga stated words to the effect: "It's fine, we'll get to know each other better, don't feel embarrassed."
7. ██████████ went into her bathroom and remained there for some time making telephone calls to various individuals about what was occurring. ██████████ told Mr Djunga she was going to another room and he became insistent that she remain and come to bed or lie down. She left the room in a panic and, finding the front desk unattended, ran outside and hid behind a

dark-coloured car to conceal herself. The WhatsApp conversation she engaged in indicated: "08/09/2014 00:20:33: [REDACTED] : "I'm scared outside." « J'ai peur, je suis dehors ».

8. Various individuals contacted by [REDACTED] on the telephone expressed their concern to her and told her to leave the room. Conversations and texts were recorded on WhatsApp on [REDACTED] smartphone and provided a real-time chronology of some of the events outlined in the complaint by [REDACTED].
9. At approximately 00.00, Ms Petra van Schwartzberg, one of the hotel staff, was alerted, by way of a telephone call by an unknown male, to the fact that a French-speaking hotel guest might be outside and require assistance. Mr Roland Lösch joined Ms van Schwartzberg in looking for the woman and found [REDACTED] outside the hotel and brought her to the restaurant area of the hotel. Mr Lösch asked Mr Till van Schwartzberg around 00.30 for help in translating. They determined [REDACTED] wanted a taxi to the train station to leave [REDACTED] for The Hague as soon as possible. According to the hotel staff, [REDACTED] was very frightened, distraught and crying. Mr Lösch offered her another room in the hotel which she initially refused and then agreed to occupy until the first available train to The Hague.
10. Mr Djunga attended the hotel reception and was requested to pay and leave the hotel. [REDACTED] was driven to the train station by Mr van Schwartzberg at 3.30 for the 4.09 train to The Hague, as no taxis were available at that time in the morning.
11. The police were informed and attended the hotel at approximately 12.00 on 8 September 2014. Witness statements were provided to the police by Roland Lösch and Petra and Till van Schwartzberg.

Summary of procedural history:

On 22 June 2016, a summons to appear was sent with the dates of the first hearing, scheduled for 3 and 4 November 2016.

Further to Mr Djunga's request of 26 July 2016, the hearing was adjourned to 19 and 20 November 2016.

On 11 November 2016, Mr Djunga again requested an adjournment to prepare closing statements for a case he was pleading for a trial before the Court. The hearing was then postponed to 8 and 9 December 2016.

For technical reasons, the hearing of 8 and 9 December 2016 was adjourned to 19 and 20 December 2016.

At Mr Djunga's request on 18 December 2016, for which he did not provide any specific reason, the hearing was adjourned to 17 and 18 January 2017.

On 9 January 2017, Mr Djunga notified the Secretariat by email that he had a death in the family and requested the hearing to be adjourned. The hearing was adjourned to 29 and 30 March 2017.

The first hearing took place on 29 and 30 March 2017 with the consent of Mr Paul Djunga, who was absent for family reasons. He was represented by his counsel, Ms Adèle Ndaya Kalambay.

The witness, [REDACTED] was examined by the Commissioner, the Committee members and Ms Adèle Ndaya Kalambay.

The Board adjourned the hearing until 4 and 5 September at 9.30 as Mr. Djunga's counsel indicated he desired to attend before it.

The hearing continued on 4 and 5 September, during which time Mr Djunga and his counsel were heard. In accordance with article 15.9 of the Rules and Procedures of the Disciplinary Board and the Disciplinary Appeals Board Mr Djunga was the last to speak after the Commissioner and counsel for Mr. Djunga provided their oral submissions.

Summary of positions of the parties:

Testimony of [REDACTED]:

[REDACTED] testified that Mr Djunga created an unprofessional and sexualized environment in the vehicle on the way to Germany by making the following comments:

- *"C'est ta cigarette que j'allume, pas toi ([TRANSLATION] It's your cigarette I'm lighting up, not you)"*;
- *"Le corps était comme du pain et qu'il fallait le pétrir ([TRANSLATION] The body is like bread and it needs to be kneaded)"*, explaining the lyrics of a Congolese song;
- *"Les missions, ça rapproche ([TRANSLATION] Missions bring people together)"*.

At the hotel, there was a mix-up with their rooms and [REDACTED] ended up with the larger room. She repeatedly asked Mr Djunga to change rooms. During dinner, she did not know where the key to smaller room was located.

[REDACTED] furthermore described that, after they fetched their food from the restaurant, Mr Djunga insisted that they eat in the larger room and again behaved in a sexually suggestive manner by:

- repeating his comment in the car that "missions bring people together;
- getting his pyjamas from his room (the smaller room);
- changing his clothes in the bathroom and lying on the bed of the room occupied by [REDACTED];
- taking his shirt off;
- imploring her to "[g]et a grip, [REDACTED] Come and lie down on the bed."



Testimony of Mr Paul Mudimbi Djunga:

Mr Paul Djunga denied making the sexually suggestive comments referred to by [REDACTED] and maintained that, even if he had said such things, his comments were incorrectly interpreted.

Mr Paul Djunga categorically denied taking his shirt off and asking [REDACTED] to come to bed. He admitted in his written submissions that he was lying on the bed, although during the hearing he claimed that he was sitting on the bed. He described that he had changed into his casual clothing in the bathroom of the room occupied by [REDACTED] because he considered it to be his room. He stated that he had already given the key to the smaller room to [REDACTED].

Mr Paul Djunga described that he felt that his attire was not inappropriate, but later modified his position before the Board and indicated that, in hindsight, he should not have behaved in the fashion that he did on 7 September 2014.

Commissioner's position:

The Commissioner concluded that the Committee should confirm the charge of professional misconduct, submitting that Mr Paul Mudimbi Djunga's behaviour and actions were in breach of the rules of ethical conduct with respect to his subordinates, and also held the same view with regard to the claims of sexual advances. The Commissioner invoked the Administrative Instruction on Sexual and Other Forms of Harassment (ICC/AI/2005/005), issued by the Registry of the International Criminal Court of 14 July 2005.

Position of counsel for Mr Paul Mudimbi Djunga:

Ms Adèle Ndaya Kalambay, counsel for Mr Paul Mudimbi Djunga, introduced the hypothesis of a conspiracy to have Mr. Djunga removed from the case. She voiced criticism that the case was examined within an unreasonable time period. She also referred to the terms of the summons which she submitted did not enable her client to properly prepare his defence. As for the alleged events counsel for Mr Djunga contended that the complaints against Mr Paul Mudimbi Djunga were based merely on the victim's word and on the witnesses to whom she told her story. She concluded that the Commissioner had only the plaintiff's version of events upon which to rely.

Ms Kalambay took the position that [REDACTED] is a woman who knows what she wants. She submitted that on the night in question, when she was tired and they were on their way to the restaurant she found a way to tell Mr Djunga that she is not willing to

drive which shows that "when she wants something she gets it and she knows how to say it. That she was an assertive individual, fully in control of the organization of the mission."

Findings of the Disciplinary Board

The Disciplinary Board finds that there was a misunderstanding between [REDACTED] and Mr Djunga over the rooms each of them was occupying. [REDACTED] initially occupied the larger hotel room, while Mr Djunga occupied the smaller room. At Mr Djunga's suggestion, the parties had dinner in the larger room which held all of [REDACTED] belongings, but which Mr Djunga considered to be reserved for him.

The Disciplinary Board accepts that, during and after dinner, eaten in the larger, disputed room, an unprofessional and sexually suggestive atmosphere was created in that room which made [REDACTED] feel extremely uncomfortable.

The Disciplinary Board finds that the following acts committed by Mr Paul Djunga were inappropriate and constitute a breach of article 7.1 of the Code of Professional Conduct for counsel:

1. Failing to remain outside the disputed room until keys were exchanged and all belongings were moved;
2. Leaving his belongings in the smaller room and arriving at the disputed room with his pyjama and a toothbrush;
3. Changing clothes in the bathroom of the disputed room, very late in the evening, into professionally inappropriate attire;
4. Remaining, from approximately from 22.00 to 23.00, in a room which held all of [REDACTED] belongings;
5. Placing himself on the bed in the disputed room, which held [REDACTED] belongings.

The Board is of the view that it need not be established whether Mr Djunga took his shirt off or made the various alleged statements which were of a sexual nature. The five acts, outlined above, in and of themselves, created an environment that had sexual overtones and was completely inappropriate for the professional mission undertaken by the parties.

The Disciplinary Board also finds that, as it is, the Administrative Instruction on Sexual and Other Forms of Harassment (ICC/AI/2005/005), issued by the Registry of the International Criminal Court does not apply. Mr Djunga is defence counsel and, as such, is independent and his behaviour is governed by the Code of Professional Conduct for counsel.

The Board rejects the argument of counsel for Mr Djunga that there was a delay in the investigation of this complaint, constituting a violation of the rights of counsel. The

Commissioner's inability to obtain the Franco-German police file and the late receipt of Mr Djunga's submission caused a delay which was not unreasonable considering all of the circumstances. In addition, the Board was not convinced that Mr Djunga had insufficient information to prepare his defence.

Further, the Board rejects the existence of a conspiracy between [REDACTED] and the team members to remove Mr Djunga from the case by making a disciplinary complaint.

Finally, the Disciplinary Board rejects, without reservation, the submission that a young, somewhat inexperienced, case manager must take the initiative to assert herself in the circumstances in which [REDACTED] found herself. The responsibility of a team leader and lead counsel carries with it duties and obligations towards the members of his team and, in this matter, Mr Djunga has undeniably failed in his task.

Mr Djunga must be reminded that the role of a lawyer is one involving a position of trust, and requires an exemplary performance in all circumstances, not only with respect to one's client, but also with respect to those who work on the client's behalf.

Decision

"The Disciplinary Committee, after deliberating on this matter, by majority vote, determines:

- That the conduct of Mr Paul Djunga, during the night between 7 and 8 September 2014, while in the company of [REDACTED] in a hotel room in Germany, constitutes professional misconduct within the meaning of articles 7.1 and 31(a) of the Code of Professional Conduct for counsel;
- That the administrative instruction applicable to employees of the International Criminal Court does not apply to lawyers, who are independent counsel;
- That undisputed evidence has not been submitted in support of the claim that Mr Paul Djunga made inappropriate comments during the trip between The Hague and Gemersheim, or in the hotel room;
- That Mr Paul Djunga expressed remorse at the hearing of 4 September 2017 by stating that perhaps he should not have acted as he did;
- That Mr Paul Djunga does not have a disciplinary record with the ICC or with the Paris Bar.

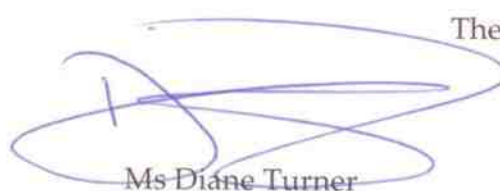
Consequently, the Disciplinary Board:

Decides to impose on Mr Paul Djunga the disciplinary sanction of a public reprimand, to be entered in counsel's personal file, in accordance with article 42.1(b) of the Code of Professional Conduct for counsel.

Informs Mr Paul Djunga that under article 43 of the Code of Professional Conduct for counsel, he is entitled to appeal the decision within thirty (30) as of the issuance of the decision.

[This decision was delivered orally at the hearing of 5 September 2017.]

The Hague, 6 September 2017

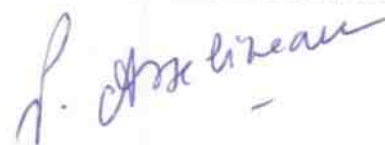
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Ms Diane Turner

Ms Assane Dioma Ndiaye

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Mr Vincent Asselineau

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