

Disciplinary Board

of the Judicial District of Amsterdam

By e-mail CONFIDENTIAL Extraordinary Chambers in the Courts of Cambodia Attn. Atty K. Roberts PO Box 71 PHNOM PENH - CAMBODIA	Clerk of the Board Mrs Atty S. van Excel Deputy clerk Mrs Atty P.J. Verdam Assistant Clerks Mrs A.M. Koster Mrs M.H. van de Roemer
--	--

E-mail: roberts13@un.org; cc: ghezzi@un.org

Amsterdam 16 July 2018
Your reference
Our reference 18-083/A/A
In the case of Cambodia Trial Chamber / Mr V. Koppe

ឯកសារទទួល	
DOCUMENT RECEIVED/DOCUMENT REÇU	
ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/Date de reception): 25 / 07 / 2018	
ម៉ោង (Time/Heure): 13:30	
មន្ត្រីទទួលបន្ទុកឯកសារ/Case File Officer/L'agent chargé du dossier: SANN RADA	

Dear Sir,

I hereby send you a copy of the decision of the Disciplinary Board dated 16 July 2018.

Sincerely yours,

on behalf of Atty S. van Excel, Clerk of the Board

[signed]

M.H. van de Roemer

Cc: Maddalena Ghezzi

PS: Kindly notify any change of address immediately to the Office of the Clerk of the Board?

Mailing address:

PO Box 76334, 1070 EH Amsterdam
T: 088- 205 37 20 F: 088- 205 37 02,
E: griffieamsterdam@raadvandiscipline.nl www.raadvandiscipline.nl

Disciplinary Board

of the Judicial District of Amsterdam

Decision

Decision of the Disciplinary Board of the Judicial District of Amsterdam dated 16 July 2018

in the case 18-083/A/A

on the complaint of:

The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia

Complainant

authorised representative Mr K. Roberts

PO Box 71

Phnom Penh (Cambodia)

about:

Atty V.L. Koppe

advocate established in Phnom Penh (Cambodia)

Defendant

1. PROCEDURAL BACKGROUND

- 1.1 By letter dated 11 December 2015, the Complainant filed a complaint with the Dean of the Bar Association of the Judicial District of Amsterdam (hereafter referred to as the "Dean") against the Defendant. The Complainant supplemented this complaint with letters dated 19 February 2016 and 26 July 2017.
- 1.2 By letter to the Board dated 25 January 2018 with reference 40-15-0862, received by the Board on 26 January 2018, the Dean referred the complaint to the Board.
- 1.3 The complaint was dealt with at the hearing of the Board of 4 June 2018 in the presence of the Defendant. A transcript was drawn up of the hearing.
- 1.4 The Board took cognisance of:
 - the letter referred to under 1.2 from the Dean to the Board and documents 1 through 20 on the inventory list attached to this letter;
 - the e-mail with attachment from the Complainant to the Board dated 23 April 2018;
 - the e-mail from Complainant to the Board dated 9 May 2018.

2. FACTUAL BACKGROUND

Having regard to the documents and what was explained in the session, the Board proceeded on the basis of the following facts for assessing the complaint.

Disciplinary Board

of the Judicial District of Amsterdam

Decision

- 2.1 The Defendant acts as a lawyer for Mr C who, as one of the accused, is being tried for crimes against humanity, genocide, war crimes and violations of international humanitarian law committed during the regime of Democratic Kampuchea (the “Khmer Rouge”) in Cambodia between 17 April 1975 and 7 January 1979. The Defendant has been acting for years now (starting at the end of 2007) on behalf of Mr C and, in order to be able to do so effectively, established himself permanently in Cambodia on 1 January 2014, with the approval of the Dutch Bar Association to maintain a firm outside of the Netherlands. The Complainant is the Trial Chamber of the international tribunal established on the basis of an agreement between the United Nations and the Kingdom of Cambodia where the case against Mr C is being handled, the Extraordinary Chambers in the Courts of Cambodia (hereafter referred to as the “ECCC”). The Complainant is composed of five judges, two of whom are international judges and three are Cambodian judges. The Trial Chamber adjudicates cases in the first instance. Within the ECCC the Supreme Court Chamber handles appeals.
- 2.2 On 19 September 2007, Mr C was arrested in Cambodia and taken into pre-trial detention. Shortly thereafter, the Defendant - together with a former firm colleague, Atty P, and a Cambodian lawyer - assumed the defence of Mr C.
- 2.3 The trial against Mr C was divided into two parts, hereinafter respectively referred to as the first trial (Case 002/01) and the second trial (Case 002/02). On 7 August 2014, the Trial Chamber issued its judgement in Case 002/01. Mr C was sentenced to life imprisonment. Appeal was filed against this judgement on 29 September 2014. On the same date, the Defence for Mr C filed an application for disqualification seeking the disqualification of the judges of the Trial Chamber in the first trial, i.e. the three Cambodian judges, the French judge Mr L. and the New Zealand judge Mrs C. The application for disqualification was dismissed on 14 November 2014.
- 2.4 On 26 August 2015, a hearing was held in Case 002/02 before the Trial Chamber. The two international judges forming part of the Complainant were at that moment the above-mentioned French judge, Mr L and the Austrian judge Mrs F. In addition, three Cambodian judges formed part of the Complainant. The session of August 26th was a “Key Documents Presentation Hearing”. During the hearing, the Defendant objected to the production of certain documents by the prosecution. After the objection was overruled by the Complainant and the decision was confirmed, the Defendant left the courtroom. The Trial Chamber was forced to adjourn the hearing, because the other lawyers of Mr C also left the courtroom. The transcript of the hearing includes the following:
- “[DEFENDANT]:*
- “But then we will officially withdraw from our document presentation because this is a farce.”*
- 2.5 The hearing resumed on 27 August 2015. The transcript of the hearing includes the following:
- “[DEFENDANT]:*
- (...) with your leave, Mr President, I will start explaining what happened yesterday. And in order to be able to do this, I think I should paint a broader context. And for this, we have to go back and I would like to start with something that happened on the 8th of February 2013. There was a decision of the Supreme Court Chamber, (...) I am referring to document E163/5/1/30. It is the Supreme Court Chamber’s decision on the Co-Prosecutor’s immediate appeal of your Decision concerning the scope of Case 002/01. (...) the Supreme Court Chamber, (...), ruled as follows, I quote:*

Disciplinary Board

of the Judicial District of Amsterdam

Decision

(...)

"A composition of a second trial panel would safeguard against any potential concerns about actual or appearance of bias of Judges from the first trial adjudication the second trial" End of quote.

So, to summarize, not only for reasons of expediency, also because of fear that you would not be impartial after having rendered the judgment in the first trial, Mr President, the Trial Chamber chose to ignore this advice. Then in August 2014, the Judgment came, which was a total shock to our client, [Mr C]. Not only because of its poor quality, we have identified 223 grounds of appeal, which must have been a record in the history on international criminal justice.

The Judgment was also a shock because of the way it was formulated. It was clear to us that the Supreme Court Chamber had been right and that it was not possible that [Mr C] could have had a second trial with the same Judges that would also be fair. Precisely, for this reason, in October last year, we filed a very lengthy and very principled motion for disqualification. One of the things we said was that, you, [Mr L], had made cowardly decisions and lack judicial integrity.

[Mrs F], we didn't ask for your disqualification, but I am regretting this decision to do this very much. Compared to what we have experienced in this second trial, [Mrs C] was indeed a shiny and bright beacon of impartiality.

(...)

MR. PRESIDENT:

(...) we advise you that we have the discretion to intervene when you raise the points. We need to make sure that you actually address the points that are relevant to the proceedings. And you are supposed to give the reasons for your withdrawal in relation to the presentation of the key documents. And yesterday the hearing that was supposed to be happening for the whole day and it cost the Court a lot to delay the proceedings. (...)

[DEFENDANT]:

Mr President, it is indeed true that it is your prerogative to shut me up; it is my prerogative not to say a word anymore. So, it's take it or leave it, or nothing.

(...)

[MR L]

The Chamber is still awaiting explanations regarding the legal grounds of the decision that led you to walk out of the proceedings. Today, what is your stance from a legal standpoint?

[DEFENDANT]:

I was giving you my reason and you don't want to listen.

[MR L]:

(...) If you don't want to provide any explanations, well then we consider that there are no valid explanations.

[DEFENDANT]:

To be honest, [Mr L], I don't really care what you think. You either give me time to express my reasons or you don't.

(...) the walking out yesterday from Court, indeed without any legal justification, in a common law court might have been considered as contempt of court. But we are not in a common law court, but if we were and if I were charged with contempt of court, I would happily plead guilty. I have indeed nothing but professional contempt for the International Judges of this Tribunal."

- 2.6 In December 2015, a journalist from the Mekong Review, a literary magazine in Cambodia, interviewed the Defendant.
- 2.7 On 1 January 2016, the Defendant was deregistered as an advocate in the Netherlands.

Disciplinary Board

of the Judicial District of Amsterdam

Decision

Since that date the Defendant has been registered as a lawyer solely in Cambodia.

- 2.8 On 3 February 2016, the interview that the Defendant had given in December 2015 was published in the Mekong Review. It contains the following passages, amongst others:

“On 15 December 2015 the Khmer Rouge tribunal filed a complaint to the Amsterdam Bar Association, where [Defendant] is registered, regarding his “professional misconduct” in court in August of that year, when he described the proceedings as a “farce”, before storming out of the courtroom. His former colleague and fellow Dutchman [Atty P] was similarly referred to the same bar for misconduct in court. “The circle is full”, [Defendant] said today. “We are now both in the same position.” (...)

You almost anticipated this, correct me if I'm wrong. Would there be any consequences?

I sincerely doubt it. My predecessors, [Atty P] and (...), got complaints at their Amsterdam and New York bars [respectively]. I don't think they responded. As a matter of fact, as I said to the [press], I'm actually quite happy with it.

So it won't change your behaviour?

No. I have strong professional contempt for the French judge [Mr L] particularly. If that is going too far, so be it.

Do you have something against him?

Yes.

Because he's French?

[Laughs] No, not because he's French. No, I like French people. It would be too easy. He does everything he can to prevent me asking questions. He is on an active path to try to prevent [Mr C's] story being told.

(...)

I'm proud that I said it. It was an act of rebellion ... a well-thought-out act of rebellion. The words: “/ have nothing but professional contempt for the international judges” was a sentence that I thought out before I said it.

Did you anticipate the response?

Yes, I've chosen those words very carefully. I've chosen those words because they were and they still are on the very edge of what I can say professionally. [I had] to find that balance ... being in the courtroom, being bound by professional responsibilities, ethical rules, rules of behaviour.

You are playing a game of brinkmanship?

It's a balancing act. [It's a] difficult balance. What I'm doing is operating within this structure, [while] at the same time heavily criticising that power structure.

(...) was famous for his rupture strategy? Do you have such a strategy?

I have long conversations with (...), my ex-wife, who is a professor of law at a university. She's teaching students on the responsibilities of a lawyer, and she says, on the one hand [there is] the rupture way of doing things, and on the other hand, [there is] (...), trying to do the best within a perverse system.

(...)

The central goal of any trial is to ascertain the truth, to determine whether the accused is guilty of the crimes he's allegedly committed. And the truth is what this is all about. Finding the truth, [but] the ECCC is not about finding the truth.

(...)

Why did you decide to quit?

Disciplinary Board

of the Judicial District of Amsterdam

Decision

The straw that broke the camel's back was the decision of the Supreme Court chamber, again, to dismiss all the evidence we had which would back his story. They dismissed it summarily without any reasoning. Witnesses that we've been asking for eight years, again, dismissed... I can no longer be part of this farce, I told him and he implored me not to do it.

There was scepticism at the time that your decision to quit was part of a strategy, a tactical move. You're saying it was genuine?

To be really honest, I was really down and out. (...)

Over this case?

If you're in that courtroom day in day out, you know ... it's unbearable, day in day out, to be faced with that French judge, who is the ultimate combination of bias, incompetence and dumbness. People don't understand how hard that is."

2.9 On 4 February 2016, excerpts from this interview appeared in the "The Cambodia Daily" newspaper.

2.10 On 21 November 2016, the Appeal Judgement was issued in Case 002/01 partially reversing the Trial Judgement, but upholding the life sentence imposed on Mr C.

2.11 On 3 May 2017, the Defendant sent an e-mail to the investigating judge in Case 002/02 against Mr C, stating *inter alia* that:

"As you know, we filed our closing brief yesterday. This is an extremely important document to our defence. Public and media are very keen on receiving a copy as soon as possible. Meanwhile the TC has instructed us to file it confidentially and just now the legal officer sent us the email below.

This is all unacceptable to my client. (...) So I urge you in the strongest possible terms to end this order and to make sure the Cambodian public and the international community will be able to read at the earliest possibility what it has been waiting for for many, many years."

2.12 On 4 May 2017, the investigating judge in Case 002/02 against Mr C sent an e-mail to the Defendant, stating *inter alia*:

"I have already expressed my reasons on this matter in my memo to the Trial Chamber. The Chamber has made its ruling accordingly. Nothing has changed since then.

Please also note that I do not consider it appropriate for counsel in Case 002 to intervene directly with the OCIJ in this manner. Any request for reconsideration should have been transmitted via the Chamber."

2.13 On 4 May 2017, the Defendant sent an e-mail to the investigating judge in Case 002/02 against Mr C, stating *inter alia*:

"I find it completely irrelevant if you deem it appropriate or not that I directly intervene with you. You are now the one that is effectively gagging my client. That is as I wrote to you yesterday unacceptable. I do not consider myself bound by whatever you or the Trial Chamber has to say on the matter of confidentiality any longer and shall therefore act accordingly."

2.14 On 12 May 2017, an article was published in "The Cambodia Daily" newspaper, stating *inter alia* that:

"The second trial of the two highest-ranking surviving Khmer Rouge leaders was a biased, "disheartening sham" rife with political interference that stood in the way of ascertaining the truth, argues the closing brief in the defense of [Mr C], the regime's second-in-command. Scathing, fierce and at times sarcastic, the mammoth 550-page confidential document, which the Cambodia Daily obtained this week, lambasts the court for what it describes as its "blatant disinterest in the truth" and lets few of those connected to the prosecution off the hook."

3 COMPLAINT

18-083/A/A; 4.1; 8.2

5

Original Dutch: 01579190-01579199 (Unrevised translation)

Disciplinary Board

of the Judicial District of Amsterdam

Decision

- 3.1 Stated succinctly, the complaint asserts that the Defendant acted in a disciplinarily objectionable manner as referred to in article 46 of the *Advocatenwet* [Act on Advocates] because he:
- a) engaged in misconduct vis-à-vis the judges forming part of the Trial Chamber (Complainant), because he made certain comments during the hearing and then left the courtroom;
 - b) shared with the media comments that qualify as misconduct;
 - c) in violation of the prohibition to keep his so-called “closing brief” confidential, he shared them with the media.

4 DEFENCE

- 4.1 The Defendant presented the defence which, in so far as relevant, will be reproduced below.

5 ASSESSMENT

- 5.1 The Board will first examine *proprio motu* whether, and to what extent, it is competent to hear the present complaint. The jurisdiction of the Board to adjudicate disciplinary matters is based on the Act on Advocates. Such disciplinary proceedings can only be taken against advocates within the meaning of the Act on Advocates, visiting advocates within the meaning of article 16b of the Act on Advocates, and advocates registered in the Netherlands who exercise their profession on the basis of a certificate of registration issued by a country of origin as provided for in article 16h of the Act on Advocates. Given that as of 1 January 2016 the Defendant was no longer registered in the Netherlands as an advocate and is not a “visiting advocate” within the meaning of article 16b of the Act on Advocates, the Board is - in so far as the complaint focuses on an action and/or omission of the Defendant as of 1 January 2016 - not competent to hear the complaint, given that as of 1 January 2016, the Defendant’s acts and/or omissions no longer fall under Dutch legal jurisdiction. In this connection, the Board notes perhaps superfluously that the ECCC itself also has a complaint procedure. The Board infers from Rule 38 of the ECCC Internal Rules, available on the latter’s website (and to which the Complainant refers in its letter dated 11 December 2015), that the Complainant can impose sanctions on an advocate in a suitable case.
- 5.2 In light of the foregoing, the Board finds that it lacks jurisdiction to hear paragraph c) of the complaint, given that the action of the Defendant covered by this part of the complaint dates from *after* 1 January 2016.
- 5.3 With regard to paragraph b) of the complaint, the Board *is* competent, because although the interview that this part of the complaint deals with was published after 1 January 2016, it was recorded in December 2015. In December 2015, the Defendant made the comments to the journalist of the *Mekong Review* to which paragraph b) of the complaint relates.
- 5.4 Paragraph a) of the complaint relates to acts and/or omissions of the Defendant dating from prior to 1 January 2016, and so the Board is competent to hear that part.
- 5.5 In so far as the complaint deals with the Defendant’s acts and/or omissions dating from

Disciplinary Board

of the Judicial District of Amsterdam

Decision

before 1 January 2016, the Board considers as follows. The Board will first, *proprio motu*, examine whether the Complainant's own interest in its complaint is sufficiently direct. The right provided for in the Act on Advocates to file a complaint against an advocate does not belong to everyone, but only to those who, as a result of the act or omission complained of, are or can be directly affected in their interest. In so far as a disciplinary procedure is required in the general interest, the right of complaint is exercised by the Dean who, on the basis of article 46f of the Act on Advocates, has the power to bring objections raised against an advocate to the knowledge of the Board.

5.6 Paragraphs a) and b) of the complaint essentially focus on comments of the Defendant relating to two international judges, Mr L and Mrs F, who form part of the Trial Chamber (Complainant). However, the Trial Chamber (the Complainant) is in addition composed of three Cambodian judges, so that the Complainant hereby, in the Board's judgement, does not have a sufficient direct interest of its own. Furthermore, the Complainant in its letter of 23 February 2017 to the Dean indicated that it considered that the Defendant intentionally tried to injure the trust in the judicial power of the ECCC. In so far as the general interest is addressed in a disciplinary proceeding, it can only be assessed on the basis of an objection brought by the Dean, which is not present in this case. We therefore conclude that the Complainant does *not* have a cause of action in paragraphs a) and b) of the complaint.

DECISION

The Disciplinary Board:

- declares that it lacks jurisdiction to hear paragraph c) of the complaint;
- declares that the Complainant does not have a cause of action in paragraphs a) and b) of the complaint;

So decided by Atty P.M. Wamsteker, Chairman, Attys S. van Andel, R. Lanterman, H.B. de Regt and C. Wiggers, members, assisted by Atty P.J. Verdam, Clerk, and issued in public session on 16 July 2018.

Clerk

President

[signed]

[signed]

Mr P.M. Wamsteker

Disciplinary Board

of the Judicial District of Amsterdam

Decision

Communications of the Registrar for information:

sending

Copies of this decision were sent on 16 July 2018 to:

- the Complainant
- the Defendant
- the Dean of the Bar Association of the Judicial District of Amsterdam
- the Dean of the Dutch Bar Association
- the Secretary of the Dutch Bar Association
- the Board of Supervision of the Dutch Bar Association

legal recourse

This decision may be appealed before the Disciplinary Court by:

- the Complainant
- the Defendant
- the Dean of the Bar Association of the Judicial District of Amsterdam
- the Dean of the Dutch Bar Association

The appeal must be filed within 30 days after notification of the decision by filing a notice of appeal setting out the grounds of appeal and justification. The notice of appeal must be submitted in septuplicate together with six copies of the decision being appealed.

The first day of the 30-day period is the day following the day on which the decision is notified. The notice of appeal must be in the possession of the office of the Registrar of the Disciplinary Court no later than the thirtieth day of this period. No extension of this 30-day period is possible.

The notice of appeal may be submitted to the Disciplinary Court:

a. By post

The postal address of the Office of the Registrar of the Disciplinary Court is:
P.O. Box 85452, 2508 CD Den Haag

b. By hand delivery

The Office of the Registrar is located at:
Kneuterdijk 1, 2514 EM Den Haag

In order to be certain that receipt will be acknowledged or that parcels that cannot be fit in a regular letter box can be deposited, you must contact the Office of the Registrar of the Court by telephone at 088-2053777.

c. By fax

The fax number of the Disciplinary Court is 088-2053701

Simultaneously with the submission by fax, the notice of appeal must be sent by post together with the decision being appealed in the required number of copies, with an original signature, to the Office of the Registrar of the Court.

d. By e-mail

The e-mail address of the Disciplinary Court is: griffie@hofvandiscipline.nl.

Disciplinary Board

of the Judicial District of Amsterdam

Decision

Simultaneously with the submission by e-mail, the notice of appeal must be sent by post together with the decision being appealed in the required number of copies, with an original signature, to the Office of the Registrar of the Court.

information also available on www.hofvandiscipline.nl