

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 18 September 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

Public Document

Decision on the Defence's Application to Suspend the Proceedings

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

The Office of the Prosecutor
Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence
Nkwebe Liriss
Aimé Kilolo Musamba

Legal Representatives of the Victims
Marie Edith Douzima-Lawson
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Defence Support Section

Deputy Registrar
Didier D. Preira
Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”) in the case of the *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Mr Jean-Pierre Bemba”),¹ is seized of a Defence application to suspend the proceedings.²

1. On 23 May 2008 Pre-Trial Chamber III issued a warrant of arrest against Mr Jean-Pierre Bemba³ and on 24 May 2008 he was arrested in the Kingdom of Belgium.

2. On 10 June 2008 Pre-Trial Chamber III issued the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo”.⁴ On the same date, Pre-Trial Chamber III issued a new warrant of arrest, which entirely replaced the one of 23 May 2008.⁵

3. On 3 July 2008 Mr Jean-Pierre Bemba was surrendered to the seat of the Court where his first appearance took place before Pre-Trial Chamber III on 4 July 2008.⁶

4. On 10 October 2008 the Pre-Trial Chamber III issued the “Decision on the Defence’s Application for Lifting the Seizure of Assets and Request for Cooperation to the Competent Authorities of Portugal”, according to which the Chamber authorized, on a temporary basis, to release the amount of € 36.260 each month from a bank account located in Portugal.⁷ Out of this sum, the amount of € 30.150 was released to cover the legal fees for the Defence team, effective as of 1 October 2008.

¹ Pre-Trial Chamber II, “Decision Designating Single Judges”, ICC-01/05-01/08-393.

² « CORRIGENDUM REQUETE AUX FINS DE SUSPENSION DE TOUTE LA PROCEDURE EN COURS », ICC-01/05-01/08-452-Corr.

³ ICC-01/05-01/08-1.

⁴ ICC-01/05-01/08-14-tENG.

⁵ ICC-01/05-01/08-15.

⁶ ICC-01/05-01/08-T-3-ENG ET.

⁷ Pre-Trial Chamber III, ICC-01/05-01/08-251-Anx.

5. On 31 December 2008 the Single Judge⁸ issued the “Decision on the Defence Urgent Application for Lifting the Seizure dated 29 December 2008 and Request for Cooperation to the Competent Authorities of Portugal” (the “31 December 2008 Decision”).⁹

6. On 19 March 2009 the Presidency decided to dissolve Pre-Trial Chamber III and to assign the situation in the Central African Republic to Pre-Trial Chamber II.¹⁰

7. On 15 June 2009 the Chamber issued the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, in which it was decided, *inter alia*, that there is sufficient evidence to establish substantial grounds to believe that the accused is criminally responsible under article 28(a) of the Rome Statute (the “Statute”) for two counts of crimes against humanity and three counts of war crimes, and to commit him to a Trial Chamber (the “15 June 2009 Decision”).¹¹

8. On 29 June 2009 the Single Judge held a hearing pursuant to rule 118 of the Rules of Procedure and Evidence during which the Defence raised concerns about the non-payment of legal fees for some members of the Defence team, thus, representing an obstacle to the effective representation of Mr Jean-Pierre Bemba’s interests before the Chamber.¹²

9. On 17 July 2009 the Single Judge received an application from the Defence followed by a corrigendum on 20 July 2009 (the “Defence’s Application”) in which it requested the suspension of the entire proceedings until “the resources needed to enable the Defence to function effectively and efficiently [...] have been gathered”.¹³

⁸ Pre-Trial Chamber III, Decision Designating a Single Judge, ICC-01/05/01/08-293.

⁹ Pre-Trial Chamber III, ICC-01/05-01/08-339-Conf.

¹⁰ ICC-01/05-01/08-390.

¹¹ Pre-Trial Chamber II, ICC-01/05-01/08-424.

¹² Pre-Trial Chamber II, ICC-01/05-01/08-T-13-ENG WT, p. 10, lines 14-25.

¹³ ICC-01/05-01/08-452-Corr.

10. On 7 August 2009 the Prosecutor responded to the Defence's Application and requested its dismissal on different grounds.¹⁴

11. The Single Judge notes articles 21(1) (a), (2) and (3), 67(1) of the Statute.

12. The Single Judge observes that the core issue underlying the Defence's request to stay the proceedings is the alleged lack of "effective and efficient" defence as a result of non receipt of legal assistance paid by the Court. In advancing its argument the Defence stated that the delay in implementing the 31 December 2008 Decision, working with a smaller team, and the Registry's decision denying legal assistance paid by the Court, make it impossible to "fulfill its duties".

13. The Single Judge is neither persuaded by the Defence's arguments nor by the requested remedy for the alleged violation set forth in its application. The Single Judge wishes to inform the Defence that the Chamber together with the Registry has taken all the necessary steps to ensure that the issue of non-payment is resolved and there are clear indications known to the Chamber that the Registry is in the process of reaching a solution on this matter. The same holds true with respect to the non-implementation of the 31 December 2008 Decision, where every step has been taken so far to ensure its execution at the earliest opportunity.

14. The Single Judge does not believe that neither the delay in implementing the 31 December 2008 Decision, nor the Registry's temporary decision denying legal assistance paid by the Court, nor the reduction in the members of the Defence team curtailed the Defence from effectively performing its duties towards Mr Jean-Pierre Bemba. On the contrary, Mr Jean-Pierre Bemba was properly and adequately represented throughout the entire pre-trial proceedings and in particular, during the confirmation hearing and thereafter. The Single Judge also considers that effective representation is not dependent on the number of staff involved in a Defence team,

¹⁴ ICC-01/05-01/08-471.

but instead on whether the accused received meaningful representation. This is best exemplified by the most recent filings received from the Defence, which reveal that Mr Jean-Pierre Bemba remains effectively represented.¹⁵

15. Moreover, even assuming *arguendo* that there was a violation as determined by the Defence, this cannot stand, in the context of the present case, to justify such an excessive remedy as a stay of proceedings. As the Appeals Chamber stated:

Not every infraction of the law or breach of the rights of the accused in bringing him/her to justice will justify stay of proceedings. The illegal conduct must be such as to make it otiose, repugnant to the rule of law to put the accused on trial. [...] [Thus], [t]he power to stay proceedings should be sparingly exercised.¹⁶

16. The Single Judge considers that the reference to the last sentence “to stay proceedings should be sparingly exercised”, indicates that the remedy of stay should not be resorted to arbitrarily; rather it should always be weighed in light of the factual circumstances of each case bearing in mind the competing interests at stake, including the expeditiousness of the proceedings as one of the fundamental tenets of its fairness. In this regard, the Single Judge recalls the “Note d’information” submitted by the Defence on 7 September 2009 in which it expressly stated that it would not lodge a request for leave to appeal the 15 June 2009 Decision in order to ensure that proceedings *continue* in an expeditious manner. Considering that a stay would certainly cause unwarranted delay in the proceedings, which even jeopardizes the rights of the accused to a speedy trial, and that the cause for the alleged violation raised by the Defence is currently in the process of being effectively remedied, the Single Judge cannot but reject the Defence’s Application.

¹⁵ ICC-01/05-01/08-518; ICC-01/05-01/08-516; ICC-01/05-01/08-506; ICC-01/05-01/08-505-Conf.

¹⁶ Appeals Chamber, “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006”, ICC-01/04-01/06-772, paras. 30-31.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **rejects** the Defence's Application;
- b) **orders** the Registrar to report to the competent chamber on the progress made to resolve the financial problems encountered by Mr Jean-Pierre Bemba's Defence team.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday 18 September 2009

At The Hague, The Netherlands