



Witness detained on the premises of the International Criminal Court did not fall within the Netherlands' jurisdiction

In its decision in the case of [Djokaba Lambi Longa v. the Netherlands](#) (application no. 33917/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a Congolese national transferred to the International Criminal Court (ICC) to give evidence as a defence witness, who applied for asylum in the Netherlands after giving testimony.

Ruling for the first time on the issue of the power to keep individuals in custody of international criminal tribunals having their seat within the territory of a Contracting State, the Court concluded that the applicant, detained on the territory of a Contracting State (the Netherlands) by an international criminal tribunal (the ICC) under arrangements entered into with a State not party to the Convention (the Democratic Republic of the Congo) did not fall within the jurisdiction of the Netherlands.

Principal facts

The applicant, Bède Djokaba Lambi Longa, is a Congolese national who was born in 1966. He was at all relevant times detained in the United Nations Detention Unit within Scheveningen Prison, The Hague, Netherlands.

Mr Djokaba Lambi Longa was a prominent member of the Union of Congolese Patriots (Union des patriotes congolais, "UPC"), a political movement created in the Ituri region of the Democratic Republic of the Congo. The UPC's military wing, the Forces Patriotiques pour la Libération du Congo ("FPLC"), was one of the armed factions active in that area in recent years.

On 19 March 2005 he was arrested in Kinshasa together with other members of UPC or FPLC including Thomas Lubanga Dyilo, the UPC's president and the FPLC's commander-in-chief. Mr Djokaba Lambi Longa was apparently charged with participation or complicity in the murder of nine Bangladeshi members of the United Nations Organization Mission in the Democratic Republic of the Congo (*Mission de l'Organisation des Nations Unies en République démocratique du Congo*, "MONUC"). Mr Djokaba Lambi Longa's detention on remand was extended several times until 2 July 2007. He stated that no subsequent extension had ever been authorised and that he had been detained without title ever since.

On 27 March 2011 Mr Djokaba Lambi Longa was transferred from detention in the Democratic Republic of the Congo to the custody of the International Criminal Court (ICC) in The Hague to give evidence at Mr Lubanga Dyilo's trial as a defence witness, which he did on various dates between 30 March and 7 April 2011.

On 1 June 2011 the applicant lodged an asylum request with the Netherlands authorities – he had declared that he feared reprisals upon his return to the Democratic Republic of the Congo. On the same day he asked the ICC to order a stay of his removal to this country. In its decision the ICC (Trial Chamber I) recognised that it had an obligation to return the applicant to his country once he had completed his evidence, which was the case. It further observed that it was for the Netherlands authorities, not for the ICC, to

consider the applicant's asylum request and to decide whether it would take control of Mr Djokaba Lambi Longa during the proceedings. The Netherlands' position was that the applicant was to remain in custody of the ICC pending the consideration of his asylum application.

On 4 September 2012 Mr Djokaba Lambi Longa withdrew his asylum request.

Complaints, procedure and composition of the Court

Relying on Articles 5 (right to liberty and security) and 13 (right to an effective remedy), the applicant complained that he had been unlawfully held on Netherlands soil and denied an opportunity to seek his release.

The application was lodged with the European Court of Human Rights on 1 June 2012.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Egbert **Myjer** (the Netherlands),
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Preliminary observation

Although it was unclear whether the applicant wished the European Court of Human Rights to address the merits of his case, as he had withdrawn his asylum request, the Court observed that his application touched on essential aspects of the functioning of international criminal tribunals having their seat within the territory of a Contracting State and invested with the power to keep individuals in custody. The Court therefore decided not to strike this case out of its list.

Articles 5 and 13

The Court first recalled that Convention liability normally arose in respect of an individual who was "within the jurisdiction" of a Contracting State, in the sense of being physically present on its territory (Article 1 of the Convention), even if the Court had recognised exceptions in its case-law.

The Court, in its decisions in the cases of *Galić v. the Netherlands* and *Blagojević v. the Netherlands*¹, had concluded that it was not self-evident that a criminal trial engaged the responsibility under public international law of the State on whose territory it was held.

Moreover it would be unthinkable in the Court's view for any criminal tribunal, domestic or international, not to be invested with powers to secure the attendance of witnesses and to keep them in custody. The power to keep them in custody, either because they

¹ [Galić v. the Netherlands](#), no. 22617/07, decision of 9 June 2009. [Blagojević v. the Netherlands](#), no.49032/07, decision of 9 June 2009.

were unwilling to testify or because they were detained in a different connection, was a necessary corollary.

The applicant had been brought to the Netherlands as a defence witness in a criminal trial pending before the ICC. He was already detained in his country of origin and remained in the custody of the ICC. The fact that Mr Djokaba Lambi Longa was deprived of his liberty on Netherlands soil did not of itself suffice to bring questions touching on the lawfulness of his detention within the "jurisdiction" of the Netherlands as that expression is to be understood for purposes of Article 1 of the Convention. The Court concluded that there was no legal vacuum in this regard as the ICC was in fact waiting to comply with its obligation to return the applicant to the Democratic Republic of the Congo. As long as he was neither returned to this country nor handed over to the Netherlands authorities at their request, the legal ground of Mr Djokaba Lambi Longa's detention remained the arrangement entered into by the ICC and the authorities of the Democratic Republic of the Congo under the Statute of the ICC.

Turning to the question of the human rights guarantees offered by the ICC, the Court noted that the ICC had powers under its Rules of Procedure and Evidence to order protective measures, or other special measures, to ensure that the fundamental rights of witnesses were not violated. The ICC had in fact made use of these powers through its Victims and Witnesses Unit.

Finally, in view of its case-law, the Court could not agree with Mr Djokaba Lambi Longa's argument that since the Netherlands had agreed to examine his asylum request, this country had taken it upon itself to review the lawfulness of his detention on the premises of the ICC. The Court recalled in this regard that Contracting States had the right to control the entry, residence and expulsion of aliens, that the Convention did not guarantee a right to enter, reside or remain in a State of which one was not a national and that States were under no obligation to allow foreign nationals to await the outcome of immigration proceedings on their territory.

Consequently, the Court declared the application inadmissible as the alleged violation was not attributable to a Contracting State (incompatibility *ratione personae*).

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.