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Cameroon

CM/01 - Dieudonné Ambassa Zang

***Decision adopted unanimously by the IPU Governing Council at its 201st session
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Dieudonné Ambassa Zang, a former member of the National Assembly of Cameroon, and to the decision it adopted at its 197th session (October 2015),

Recalling the following information on file with regard to the facts of the case:

- Mr. Ambassa Zang was Minister of Public Works from August 2002 to December 2004 and was elected in 2007 on the ticket of the Cameroon People's Democratic Rally (RDCP);
- Mr. Ambassa Zang left Cameroon before the National Assembly Bureau lifted his parliamentary immunity on 7 August 2009 to permit an investigation into allegations of misappropriation of the public funds he had managed as Minister of Public Works;
- According to the authorities, the charges laid against Mr. Ambassa Zang stem from audits prompted by a complaint from the French Development Agency (AFD), the funding source for renovation works on the Wouri Bridge, for which Mr. Ambassa Zang was responsible. According to the Prosecutor General, State companies, ministries and other State bodies managing public funds are subject to annual audits by the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office (CONSUPE);
- On the basis of the audits, the Head of State first opted for criminal proceedings on a charge of misappropriation of public funds. On 11 June 2013, more than two years after the police had completed their investigation, the Prosecutor General of the Special Criminal Court filed charges before the examining judge of that court, directed against 15 persons including Mr. Ambassa Zang. By an order dated 9 June 2014, the Prosecutor General referred him and four other defendants to that court, which, in its decision of 18 June 2015, found him guilty and sentenced him in absentia to: (i) a penalty of life imprisonment; (ii) payment to the State of Cameroon of the sum of 5.8 billion CFA francs in damages; and (iii) lifelong forfeiture of his civil rights. Mr. Ambassa Zang sought the Supreme Court's annulment of the Special Criminal Court's decision, arguing that: (i) there was a material error in the amount of the financial penalty, the difference being not less than 91 million CFA francs; (ii) the arbitral award raised problems concerning the authority of res judicata; and (iii) Article 7 of the 2006 law organizing the judiciary stipulates that judges must state reasons for their decisions in law and in fact;
- While criminal proceedings were under way, on the orders of the Head of State a decision was signed on 12 October 2012 referring the accusations against Mr. Ambassa Zang to the Budget and Finance Disciplinary Council (CDBF), before which, unlike in a criminal procedure, defendants can be represented in their absence by legal counsel. It would seem that this decision was notified to Mr. Ambassa Zang's counsel only in May 2013, or nearly seven months after it was signed, without any explanation. On 20 August 2013, Mr. Ambassa Zang

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received a partial request for information from the CDBF rapporteur, to which he responded in two extensive defence memorandums. More than two months later, the CDBF rapporteur sent a second partial request for information, to which Mr. Ambassa Zang responded on 13 December 2013 with another defence memorandum,

Recalling the following observations made on the legal proceedings and the accusations against Mr. Ambassa Zang:

- According to the complainant, under the terms of Article 1, Decree No. 2013/287 of 4 September 2013, CONSUPE “is under the direct authority of the President of the Republic, from whom it receives instructions and to whom it is accountable”; the complainant affirms therefore that CONSUPE is an “instrument” in the service of the President of the Republic and must “follow orders and submit to pressure”. The complainant points out that CONSUPE technical staff lack professional expertise and capacities, and their reports therefore lack credibility and tend to spark controversy. According to the complainant, Mr. Ambassa Zang was never informed about the original audits, invited to contribute to the audit process, informed of the conclusions or invited to comment on them; the complainant affirms that the CDBF rapporteur broke the rules of procedure, including by formulating a second partial request for information and formulating accusations in addition to those mentioned in the audits. In response, the President of the CDBF stated that CDBF’s rules of procedure strictly comply with the general principles of presumption of innocence and the right of defence and that “should one or several new incidents arising from the rapporteur’s investigations be closely connected to the presumed offences on the basis of which the respondent was brought before the CDBF, the rapporteur is authorized, in accordance with consistent case law, to take them into account in his examination of the case; this principle is at all times limited to the management period considered by the audit.” According to the complainant, invoking the concept of “connectivity” in a case before the CDBF is both an abuse of authority and a serious violation of the ethical principles governing the proceedings before this financial body and leaves the door wide open for arbitrary decisions;
- According to the complainant, Mr. Ambassa Zang had been known for having fought corruption within that ministry; the complainant affirms that there was no wrongdoing or misappropriation in Mr. Ambassa Zang’s favour of any sum whatsoever, the accusations relate to objective facts and the relevant documents are available at the Ministry of Public Works, the Office of the Prime Minister, the Tenders Regulation Agency and donors such as the AFD; moreover, on 13 July 2010, the International Chamber of Commerce handed down an arbitral award in *UDECTO v. State of Cameroon*, a dispute concerning the execution of the Wouri Bridge renovation works; the complainant affirms that, because Cameroon won that case, the company UDECTO having been sentenced to pay it substantial sums, and also on the strength of the legal principle of *non bis in idem*, the accusations brought against Mr. Ambassa Zang regarding a prejudice he allegedly caused Cameroon are no longer applicable; the AFD Director General specified in her letter of 7 January 2014 that the AFD had filed no complaint against Mr. Ambassa Zang relating to his activities in the context of the proceedings against him before the CDBF and that, owing to the blocking statute, it was not in a position to provide any observations that could be used as proof in administrative or judicial proceedings abroad, except pursuant to an official request made as part of international judicial assistance procedures;
- Mr. Simon Foreman (partner, Courrégé Foreman law office and lawyer at the Paris Bar) was mandated to attend and report on the hearing which took place in this case before the Special Criminal Court on 17 September 2014; in his report he states: “It is worth stressing that the examining judge’s order seizing the court and presenting the charges against the accused mentions no sign whatsoever of personal enrichment on behalf of Mr. Ambassa Zang. Many of the accusations against him relate to the fact that the auditors found no justifying documents for various budgetary expenses, for which he could not account. Given that ministers do not normally leave office taking accounting documents with them, much of Mr. Ambassa Zang’s defence arguments relies on the suggestion that such documents might be found, for instance, in the archives of the Ministry of Public Works or the Ministry of Finance. In any event, his inability to provide detailed justification for expenses that occurred 10 to 12 years ago (2002-2004) does not

amount to evidence of criminal misappropriation. In the absence of criminal intent, it should at the most qualify as mismanagement, possibly resulting in disciplinary proceedings. In reading the examining judge's order, I found no mention of any sign of criminal intent, let alone personal enrichment";

- The IPU Committee and Governing Council have expressed long-standing doubts about the fairness of the proceedings against Mr. Ambassa Zang, leading it to conclude that the conditions have never been met to enable equitable and objective treatment of this case should Mr. Ambassa Zang, who enjoys official refugee status abroad, return to Cameroon. With regard to the verdict itself against Mr. Ambassa Zang, the IPU has expressed the following concerns: (i) the verdict does not show how the accusations amount to criminal misappropriation and personal enrichment and constitute a criminal offence; (ii) Mr. Ambassa Zang has provided extensive and detailed rebuttals of each of the accusations made against him; (iii) the main accusation against Mr. Ambassa Zang relates to the Wouri Bridge renovation works, which matter the International Chamber of Commerce has already fully adjudicated by finding the company UDECTO at fault; (iv) the State of Cameroon does not seem to have formally requested any information that the AFD or other donors may have at their disposal to shed further light on the accusations against Mr. Ambassa Zang; (v) there is a discrepancy between the amount of money mentioned in the original accusations and the one mentioned in the verdict against Mr. Ambassa Zang;
- According to the complainant, Mr. Ambassa Zang's prosecution must be seen in the context of "*Opération Épervier*" (Operation Sparrow Hawk), which was widely criticized as a campaign originally intended to combat corruption and misappropriation of public funds, but instead was used to silence critically-minded public figures who, like Mr. Ambassa Zang, expressed views not always in line with those of their party,

Considering that the Supreme Court has not yet ruled on Mr. Ambassa Zang's request to annul the verdict of the Special Criminal Court,

Considering that, on 30 June 2017, the CDBF found Mr. Ambassa Zang guilty of several management irregularities which had resulted in a loss of 7.5 billion CFA francs to the State Treasury, the CDBF also sentenced Mr. Ambassa Zang to pay a special fine totalling 2 million CFA francs; according to the complainant, Mr. Ambassa Zang had not been notified of the CDBF's verdict, which prevented him from bringing annulment proceedings before the competent administrative court, a remedy provided for by Act No. 74/18 of 5 December 1974, as amended and supplemented by Act No. 76/4 of 8 July 1976 (art. 12),

1. *Is deeply concerned* about the decision adopted by the CDBF against Mr. Ambassa Zang in light of the serious allegations that the right to a fair trial was not followed, the severity of the penalty imposed on him and the firm replies he has provided to refute each of the accusations; *regrets* that, seemingly, the Cameroonian authorities again did not make use of the possibility to formally request the French Development Agency to offer assistance, given that the Agency seemed well placed to help shed full light on the matters at hand;
2. *Is concerned* that Mr. Ambassa Zang has still not received a copy of the CDBF decision and is thus prevented from legally challenging it; *calls on* the authorities to provide him with a copy of the decision as soon as possible;
3. *Is deeply concerned* that in the criminal proceedings the Supreme Court has still not pronounced on the request to annul the verdict; *reaffirms* the important principle that justice delayed is justice denied; *trusts* that the Supreme Court will consider this request as a matter of urgency; *wishes* to receive confirmation thereof;
4. *Reaffirms its views* in this regard that the proceedings leading to Mr. Ambassa Zang's conviction were fraught with irregularities, to the point that they can in no way justify his conviction; *considers*, in fact, that the various elements of concern in this case, when taken together, lend strong weight to the accusation that he was subjected to a criminal procedure motivated by other than legal concerns;

5. *Trusts* that the Supreme Court, in reaching its decision on the request for annulment of the sentence, will therefore take due account of these procedural irregularities;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.