

Judge Wants to Restart Case 003

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Investigations in the Khmer Rouge tribunal's Case 003 are being resumed on the orders of UN-nominated International Co-Investigating Judge Laurent Kasper-Ansermet, who has also applied for the disqualification of Pre-Trial Chamber president Prak Kimsan, the judge said in a statement yesterday.

Swiss national Kasper-Ansermet said he is under a "legal obligation to investigate" cases 003 and 004 – both opposed by the government – according to the agreement between the UN and the Royal Government of Cambodia and the laws governing the Khmer Rouge tribunal. "The International Reserve Co-Investigating Judge therefore enjoys full legal authority to undertake his functions regardless of the Supreme Council of the Magistracy's rejection of his appointment as standing co-investigating judge," Kasper-Ansermet wrote in his statement.

The UN supports this position, and UN Special Expert David Scheffer has said Kasper-Ansermet has "clear authority to fulfill" his duties as international co-investigating judge.

On this basis, the judge issued an order to resume the judicial investigation in Case 003, which was closed in April 2011 amid much public outcry of political interference and inadequate investigations by the two investigating judges.

The then-international co-investigating judge Siegfried Blunk resigned six months later, citing perceptions of political interference.

Kasper-Ansermet has been at loggerheads with his Cambodian counterpart, Judge You Bunleng, since Blunk's resignation in October, and the Cambodian Supreme Council of the Magistracy has refused to accept Kasper-Ansermet as Blunk's replacement.

Yesterday's explosive statement from the Swiss judge is the latest in a series of combative public statements from the two investigating judges.

Contacted by the Post last night, You Bunleng said he would not comment on his colleague's statement in detail.

"But, even until now, [Kasper-Ansermet] has no duty to do anything, as he has not been officially appointed to do his job," You Bunleng said. "He has no right to do anything. I will check it [the statement] and decide how to respond to that."

Sources close to the matter told the Post that You Bunleng had already begun drafting a retaliatory response last night.

Kasper-Ansermet's order to resume investigative action in government-opposed Case 003 was in line with requests made by international co-prosecutor Andrew Cayley in May 2011.

Kasper-Ansermet's statement also said he had submitted to the Pre-Trial Chamber two records of disagreement between himself and You Bunleng over the conduct of investigation into cases 003 and 004, but that the disagreements were seemingly dismissed in an unreasoned memorandum by the Chamber, which was apparently of the view Kasper-Ansermet did not have any legal authority to act.

Kasper-Ansermet said this raised "serious concerns about the lack of impartiality of Mr Prak Kimsan, President of the Pre-Trial Chamber". "On these grounds, an application for his disqualification was submitted to the Pre-Trial Chamber, calling upon Mr Prak Kimsan to step down voluntarily from any proceedings related to CF003 and CF004," Kasper-Ansermet said.

Prak Kimsan, could not be reached for comment last night as his phone was switched off.

Documentation Center of Cambodia legal adviser Anne Heindel said the issue of Kasper-Ansermet's authority to act was more of a political issue than a judicial one. "[UN Special Expert] David Scheffer's view is that Kasper-Ansermet should be able to act, and he has the authority to continue investigations, which he has the right to continue to do unless the Pre-Trial Chamber agrees by supermajority that he should stop," Heindel said.

Open Society Justice Initiative's Clair Duffy told the Post that Kasper-Ansermet's decision to resume investigations in Case 003 was the first decision in a "long time" to come from the Office of the Co-Investigating Judges that had any "integrity". "His order outlines the absurdity of the rejection of Cayley's investigative requests," Duffy said.