



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧/អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007/ECCC/SC

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 07-Jun-2019, 15:10
CMS/CFO: Sann Rada

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Phillip RAPOZA
Judge YA Narin

Date: 7 June 2019
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON KHIEU SAMPHÂN’S APPLICATION FOR REVIEW OF DECISION ON REQUESTS FOR EXTENSIONS OF TIME AND PAGE LIMITS ON NOTICES OF APPEAL

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for NUON Chea
SON Arun
Doreen CHEN

Accused
KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively);

NOTING KHIEU Samphân’s Application for Review of Decision on Requests for Extensions of Time and Page Limits on Notices of Appeal, dated 3 May 2019 (“Review Request”),¹ which seeks reconsideration of the time and page limit extensions granted by the Supreme Court Chamber to file notices of appeal (“Decision”)² in view of all of KHIEU Samphân’s submissions in his First Request³ and subsequent replies to the Office of Co-Prosecutors and Civil Party Lead Co-Lawyers;⁴

OBSERVING that the Internal Rules do not provide a statutory basis for review and reconsideration of its previous decisions;

NOTING however that the Supreme Court Chamber may reconsider a previous decision if an error has been demonstrated or if it is necessary to prevent injustice;⁵

NOTING that, contrary to KHIEU Samphân’s assertions,⁶ the Supreme Court Chamber reviewed relevant points which have direct bearing on the matters before it;

CONSIDERING that the Review Request is largely repetitive of KHIEU Samphân’s First Request and his subsequent replies, particularly with regard to the complexity of Case 002/02 compared to Case 002/01 and other international(ized) criminal trials, and submissions concerning a proposed timetable for filing notices of appeal in Case 002/02;⁷

¹ *Demande de KHIEU Samphân de réexamen de la décision sur l’extension du délai et du nombre de pages des déclarations d’appel*, 3 May 2019, F44.

² Decision on Nuon Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43.

³ *Demande de la Défense de KHIEU Samphân aux fins d’extension du délai et du nombre de pages de sa déclaration d’appel*, 3 April 2019, F39/1.1 (notified on 17 April 2019).

⁴ *Réplique et réponse de KHIEU Samphân à l’Accusation sur l’extension du délai et du nombre de pages des déclarations d’appel*, 23 April 2019, F41/1 (notified on 23 April 2019) (“Reply to OCP”); *Replique de KHIEU Samphân aux parties civiles sur l’extension du délai et du nombre de pages des déclarations d’appel*, 25 April 2019, F42/1 (notified on 25 April 2019) (“Reply to Civil Party Lead Co-Lawyers”).

⁵ See e.g. *Prosecutor v. Ratko Mladić*, Public Redacted Version of the “Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Motion to Vacate the Trial Judgement and Stay the Proceedings”, MICT-13-56-A, 26 June 2018, p. 2.

⁶ Review Request, paras 5-6.

⁷ Review Request, paras 5-6, 8-9, 12. See also First Request, paras 18-23; Reply to OCP, paras 14, 18-24.

NOTING that the Supreme Court Chamber considered the parties' submissions and in its Decision granted extensions of time and page numbers after a holistic appraisal of the factors outlined therein;⁸

NOTING that the Trial Chamber's corrigendum filed on 25 April 2019⁹ corrected clerical errors, namely misattributions of one interviewer's interviews and a translation of one excerpt from KHIEU Samphân's book, *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, neither of which amount to substantive changes or affect the trial judgment;

COGNIZANT of the need to ensure expeditious proceedings in accordance with the ECCC's legislative framework and international standards;¹⁰

CONSIDERING that the Internal Rules' separate regimes for filing notices of appeal and appeal briefs serve distinct purposes and that, in particular, the preparation of notices of appeal is intended to be a temporally and substantively limited procedure compared to the preparation and filing of fully-reasoned submissions on appeal;¹¹

CONSIDERING further that Co-Counsel for KHIEU Samphân have been retained in such capacity for the duration of proceedings in Case 002/02 and are therefore uniquely placed to identify alleged errors of law which could invalidate the Trial Chamber's findings and/or alleged errors of fact which may have occasioned a miscarriage of justice without the degree of forensic examination averred in the Review Request;¹²

NOTING that while the ECCC's legislative framework is silent on the amendment of grounds of appeal after the filing of notices, there is no absolute prohibition on this practice¹³ and the Supreme Court Chamber is not prevented from considering leave applications to correct substantive omissions, and may, in the appropriate circumstances, exercise its jurisdiction to prevent a potential miscarriage of justice;

NOTING also that the Decision was rendered without prejudice to future requests for extensions of time or page limits on appeal briefs;

⁸ Decision, paras 8-10.

⁹ Request for Correction, 23 April 2019, E465/Corr-1 (filed on 25 April 2019). *See also* Review Request, para. 12.

¹⁰ Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, articles 33 *new*, 37 *new*; International Covenant on Civil and Political Rights, articles 14(3)(c), 14(5).

¹¹ Internal Rules 106(1), (4)-(5), 107.

¹² *See* Review Request, para. 12.

¹³¹³ *Cf* Review Request, paras 8, 12; First Request, paras 7-10.

CONSIDERING that KHIEU Samphân's disagreement with the Decision does not amount to the demonstration of an error or circumstances justifying review in order to avoid injustice;

FINDING therefore that there is no merit in the Review Request;

HEREBY:

DISMISSES the Review Request.

Phnom Penh, 7 June 2019

President of the Supreme Court Chamber



KONG Srim