



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

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 18-Oct-2013, 16:25
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(27)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(27)

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Florence Ndepele Mwachande MUMBA
Judge SOM Sereyvuth
Judge YA Narin

Date: 18 October 2013
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON REQUEST BY DEFENCE FOR KHIEU SAMPHÂN FOR IMMEDIATE STAY OF PROCEEDINGS

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
KHIEU Samphân

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU-FORT

Co-Lawyers for KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

1. **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) is seized of the “*Demande urgente de la Défense de M. KHIEU Samphân d’arrêt immédiat de la procédure*” filed by the Defence for KHIEU Samphân (“Defence”) on 7 August 2013 (“Request”).¹ The Co-Prosecutors responded to the Request on 19 August 2013 (“Response”),² and the Defence filed an addendum to the Request on 4 September 2013 (“Addendum”).³

2. The Defence requests the Supreme Court Chamber to acknowledge the repeated violations of KHIEU Samphân’s rights, to stay the trial currently underway, and to order his immediate release.⁴ In support of its requests, the Defence submits that, since the beginning of the trial, the Trial Chamber has repeatedly dealt with questions of crucial importance with indecisiveness and inconsistency, causing a prolonged period of uncertainty, obscurity and confusion to subsist.⁵ In particular, the Defence contends that the Trial Chamber has been chronically unable to define the scope of Case 002/01,⁶ that it has obfuscated the assessment and establishment of KHIEU Samphân’s and NUON Chea’s alleged criminal responsibility under the charge of Joint Criminal Enterprise,⁷ and that it has failed to set a clear legal framework for the management of documentary evidence and witness testimony within Case 002/01.⁸ The Defence further avers that the cumulative effect of the Trial Chamber violations of KHIEU Samphân’s fair trial rights demonstrates an absence of intent on the Trial Chamber’s part to hear the Defence, or to provide the means to prepare an effective defence and to debate the evidence.⁹ The Defence avers that the Request is admissible by virtue of the inherent power of judges to terminate proceedings where there is an abuse of process.¹⁰

3. The Co-Prosecutors respond that the Request is manifestly inadmissible and untimely,¹¹ and that the Defence makes a number of assertions which are disrespectful to the Trial

¹ E275/2/1/1.

² Co-Prosecutors’ Response to KHIEU Samphan’s Request for a Stay of Proceedings, E275/2/1/2, 19 August 2013.

³ *Demande urgente de la Défense de M. KHIEU Samphân d’arrêt immédiat de la procédure – ADDENDUM*, E275/2/1/3, 4 September 2013.

⁴ Request, paras. 1, 103.

⁵ Request, paras. 9-68. *See also* Addendum.

⁶ Request, paras. 19-35.

⁷ Request, paras. 19, 36-51.

⁸ Request, paras. 19, 52-68.

⁹ Request, paras. 69-101.

¹⁰ Request, paras. 2-8. *See also* Request, para. 102.

¹¹ Response, paras. 1-17.

Chamber.¹² The Co-Prosecutors accordingly request that the Supreme Court Chamber dismiss the Request in full.¹³

4. Pursuant to Rule 104(4) of the Internal Rules, only the following decisions of the Trial Chamber are subject to immediate appeal: (a) decisions which have the effect of terminating the proceedings; (b) decisions on detention and bail under Rule 82 of the Internal Rules; (c) decisions on protective measures under Rule 29(4)(c) of the Internal Rules; and, (d) decisions on interference with the administration of justice under Rule 35(6) of the Internal Rules. Other decisions may only be appealed at the same time as an appeal against the judgment on the merits.

5. The Defence's argument regarding admissibility is limited to invoking the general principle that judges are duty-bound to safeguard the fairness of the proceedings.¹⁴ In support of its argument, the Defence relies principally on Rule 21 of the Internal Rules, as applied and interpreted by the Pre-Trial Chamber of the ECCC.¹⁵

6. The Supreme Court Chamber recalls that there is no general right to interlocutory appeal that may be curtailed by the narrow jurisdiction under Rule 104(4) of the Internal Rules,¹⁶ and that Rule 21 of the Internal Rules, "far from automatically ensuring the Accused a favourable interpretation of the Internal Rules in every instance, 'is to be read to mean that the interpretation of the Internal Rules must not lead to [the] infringement of any interests of the Accused that emanate from fundamental rights guaranteed under statutes and applicable legal instruments.'"¹⁷

7. While the termination of proceedings is a possible remedy for demonstrable abuse of process, the Supreme Court Chamber is not persuaded that the alleged violations to KHIEU Samphân's fair trial rights would *prima facie* justify such a radical remedy under Rule 21 of the Internal Rules. The Defence does not demonstrate that the refusal to admit the Request at this stage of the proceedings would infringe KHIEU Samphân's fundamental rights, or cause him prejudice of such nature or degree that would require such an extraordinary intervention. The Supreme Court Chamber recalls that challenges regarding KHIEU Samphân's detention fall to be considered pursuant to the existing appellate avenue under Rule 104(4)(b) of the Internal Rules and, indeed, the matter has recently been subject of examination and opinion of this Chamber

¹² Response, para. 18.

¹³ Response, para. 19.

¹⁴ Request, paras. 2-3.

¹⁵ Request, paras. 4-8, and references cited therein.

¹⁶ See, e.g., Decision on IENG Sary's Appeal Against the Trial Chamber's Decision on its Senior Legal Officer's *Ex Parte* Communications, E154/1/1/4, 25 April 2012 ("IENG Sary Decision"), para. 15.

¹⁷ IENG Sary Decision, para. 14, quoting Decision on Immediate Appeals by NUON Chea and IENG Thirith on Urgent Applications for Immediate Release, E50/2/1/4, 3 June 2011, para. 39.

with due regard given to issues resulting from the severance of Case 002.¹⁸ Regarding the other allegations in the Request, namely those concerning time and evidence management, the Defence may still raise the same before the Trial Chamber and, if the alleged prejudice persists, in its appeal brief in the event of an appeal against the trial judgement in Case 002/01.

8. For the foregoing reasons, the Supreme Court Chamber **DECLARES** the Request inadmissible.

Phnom Penh, 18 October 2013

President of the Supreme Court Chamber



KONG Srim

¹⁸ Decision on Immediate Appeal against the Trial Chamber's Decision on KHIEU Samphân's Application for Immediate Release, E275/2/3, 22 August 2013.