

D164/4/11

BEFORE THE PRE-TRIAL CHAMBER OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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REQUEST FOR CLARIFICATION OF STATEMENT BY PRE-TRIAL CHAMBER

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1. In its 'Decision on Request to Reconsider Its Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25'<sup>1</sup> the Pre-Trial Chamber considered that:

The Pre-Trial Chamber notes that the procedure is not driven by the parties and therefore it is not obliged to address all the arguments raised.<sup>2</sup>

2. The defence submits that each judicial decision must provide reasons for the conclusions it reaches. This is a principle embedded in human rights law, as laid down in Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights.
3. One of the underlying reasons is that 'in order to be able to appeal, it is essential to know the reasons for the failure at the earlier instance'.<sup>3</sup> The European Court of Human Rights further added that the application of fair trial rights, including this aspect of it, extends beyond the judgment, and thus also applies to the appeals phase.<sup>4</sup> Moreover, the obligation to give reasons is not limited to judgments, but to any judicial decision. In *Bricmont v. Belgium* the European Commission on Human Rights held that Article 6 of the European Convention prescribes a specific duty for the judge to provide reasons for its decision. More specifically it considered:

*La Commission estime que le droit garanti par l'article [6(3)(d)] est un droit spécifique et que le juge doit donner les raisons pour lesquelles il décide de ne pas convoquer les témoins dont on lui demande expressément l'audition. En effet, le pouvoir d'appréciation du juge n'est pas si étendu qu'il puisse vider en fait l'article 6 [6(3)(d)] de tout contenu en s'abstenant de démontrer l'absence de pertinence de ce qui doit faire l'objet de l'audition des témoins.*<sup>5</sup>

4. This can be considered a general principle of law, which has been acknowledged by the European Court, which held in *Hadjianastassiou v. Greece*:

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<sup>1</sup> PTC, Decision on Request to Reconsider Its Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25, 20 October 2009, Document No. D164/4/9.

<sup>2</sup> *Ibid.*, para. 29.

<sup>3</sup> S. Trechsel, *Human Rights in Criminal Proceedings* (2005), p. 102.

<sup>4</sup> *Assanidze v. Georgia*, Judgment, ECHR, Appl. No. 71503/01, 8 April 2004, para. 181.

<sup>5</sup> *Bricmont v. Belgium*, Report of the Commission, ECHR, 15 October 1987, para. 152.

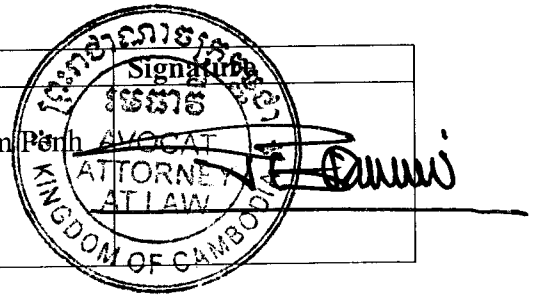
“The national courts must (...) indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him.”<sup>6</sup>

5. Whilst a court’s obligation to provide reasons cannot be understood as requiring a detailed answer to every single argument raised,<sup>7</sup> the defence submits that if the court decides to dismiss an argument raised by one of the parties and that argument could be decisive for the outcome of the issue at stake, such dismissal must be reasoned. In the case of *Ruiz Torija v. Spain*, the European Court indeed held:

In the present case Mr Ruiz Torija pleaded, inter alia, that the action brought by the lessor for his eviction was time-barred. This submission was made in writing before the first-instance court and was formulated in a sufficiently clear and precise manner. Furthermore evidence was adduced to support it. The Audiencia Provincial, which quashed the first-instance decision and gave a fresh ruling on the merits, was bound, under the applicable procedural law, to review all the submissions made at first instance [...], at least in so far as they had been “the subject of argument” and regardless of whether they had been expressly repeated in the appeal.

6. The defence respectfully submits that the Pre-Trial Chamber consideration referred to under paragraph above seems to negate the general principle of law that decisions must be reasoned. It is for this reason that the defence requests clarification of said statement.

Party	Date	Name Lawyers	Place
Co-Lawyers for Ieng Thirith	30 October 2009	PHAT Pouv Seang Diana ELLIS, QC	Phnom Penh



<sup>6</sup> *Hadjianastassiou v. Greece*, Judgment, ECHR, Appl. No. 12945/87, 16 December 1992, para. 33.

<sup>7</sup> And this depends on the circumstances of the case, see *Hiro Balani v. Spain*, Judgment, ECHR, Appl. No. 18064/91, 9 December 1994, para. 28. See also *Ruiz Torija v. Spain*, Judgment, ECHR, Appl. No. 18390/91, 9 December 1994, para. 29.