



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Request for Correction

Case : 002/19-09-2007-ECCC/SC (09)

ឯកភាពដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Nov-2011, 11:19
CMS/CFO: Kuv Keoratanak

To Document No(s):	ERN(s):	Request Date:	Correction Type:
E138/1/4	00754648-00754657	24-11-2011	<input checked="" type="checkbox"/> Change to Original <input type="checkbox"/> Change to Translation <input type="checkbox"/> Reclassification

Reason for changes:

We confused write rule 21(21)

Details:

We confused write rule 21(21) in paragraph (ERN 00754650) so it have been changed to rule 21(2)

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Indictment from the Co-Investigating Judges or the Pre-Trial Chamber.”⁷ Legal systems in the civil law tradition, including Cambodia and France, recognise that a tribunal is seised both *in rem* and *in personam* – the tribunal has jurisdiction over all the facts presented in the Closing Order and exercises jurisdiction only over persons specified therein. However, it also *must exercise jurisdiction* over those persons.⁸

5. Where proceedings have been stayed at the trial stage, the Co-Prosecutors remain an adversarial party to the proceedings against the Accused.⁹ Therefore, it would be wholly improper for the Co-Prosecutors to exercise any *proprio motu* powers related to restrictions on her liberty. The Co-Prosecutor’s only coercive measure under the Rules is the Rule 51 power to order the judicial police to take a suspect into custody for the purposes of inquiry. Any such detention is strictly limited to a 72-hour period and subject to numerous protections for the rights of the Accused. No other basis can be found in the ECCC legal architecture to authorise and lawfully regulate the power ostensibly conferred on the Co-Prosecutors in the Impugned Decision.
6. For the Trial Chamber to delegate any aspect of its competence over the Accused to the Co-Prosecutors falls foul of both the guarantee of the separation of powers between prosecution and adjudication under Rule 21(1)(a), and the requirement of effective control by competent “judicial authorities” under ~~Rule 21(2)~~ ~~Rule 21(21)~~. Indeed, any system for monitoring the health of the Accused with a view to recommencing criminal proceedings must either depend on the exercise of coercive measures to compel an Accused to submit to medical tests or be wholly ineffective. This amplifies the Co-Prosecutors’ submission that the Trial Chamber effectively terminates the proceedings against the Accused, and that the Impugned Decision is invalidated by this error of law.

III. SUPPLEMENTARY SUBMISSIONS ON SCOPE OF COMPETENCE TO RESTRICT THE LIBERTY OF THE ACCUSED

(i) *As an error of law invalidating the Impugned Decision*

7. In reference to paragraphs 7 to 14 of the Appeal, the Trial Chamber based its decision granting the Accused unconditional release on the principle of strict construction of criminal law and interpretation of criminal law most favourable to the accused,¹⁰ on “general principles of international criminal and human rights law”¹¹ and the right to liberty under Article 9 of the ICCPR. At the outset, the Co-Prosecutors affirm that the

⁷ Rule 79(1).

⁸ Jean Pradel, *Procédure pénale* (13th edition), ss. 837, 846.

⁹ *Ibid.*, s. 164, where the author notes: “...le parquet...est donc *partie* au **procès** pénal, non juge” and specifies the scope of powers of the prosecution.

¹⁰ E138 Impugned Decision, *ibid.* at para. 80.

¹¹ E138 Impugned Decision, *ibid.* at para. 79.