



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

C 26 / I / 25

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC04)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 23 April 2008

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification):
 23 / 04 / 2008

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
 du dossier: NUP S.OTHAN VICHET

**DECISION ON APPLICATION TO ADJOURN HEARING ON PROVISIONAL DETENTION
APPEAL**

Co-Prosecutors

CHEA Leang
Robert PETIT
PICH Sambath
Alex BATES

Charged Person

KHIEU Samphan

Lawyers for the Civil Parties

HONG Kim Suon
LOR Chunthy
NY Chandy
KONG Pisey
Silke STUDZINSKY

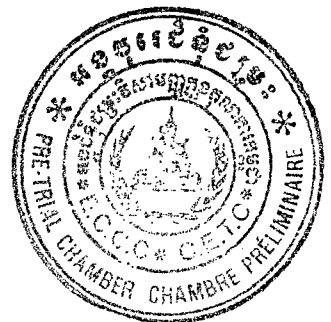
Co-Lawyers for the Defence

SAY Bory
Jacques VERGÈS

ឯកសារដើម
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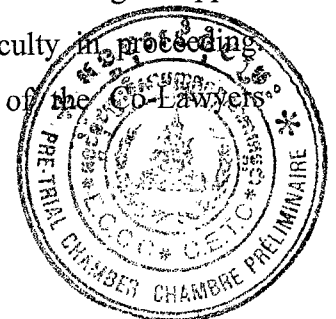
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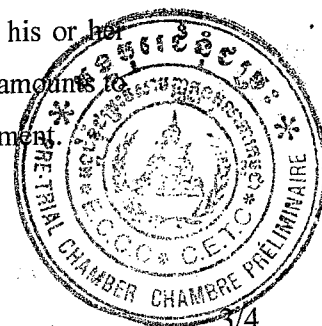
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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") scheduled a hearing on the Appeal against the Provisional Detention Order of the Charged Person for 23 April 2008. The hearing opened in public and then proceeded *in camera* in accordance with the prior directions of the Chamber.
2. At the commencement of the *in camera* session, following deliberations by the Chamber on miscellaneous matters raised by the parties, the Charged Person requested an adjournment of the proceedings. The request was on the basis that his International Co-Lawyer had declined to continue to act on his behalf for the reason that all documents in the Case file are not available in the French Language. He submitted that he was deprived of legal representation by one lawyer and no longer felt confident in the hearing of his appeal.
3. After hearing the parties, the Chamber rendered an oral decision granting the application. The President announced on behalf of the Chamber that the reasons would be given in full, in a written decision, immediately after the adjournment of the hearing.
4. The background of the application is that the international Co-Lawyer announced after the beginning of the hearing his intention to remain silent during the proceedings on the basis that not all documents in the Case File were available in French. Therefore, he declared that he would not participate in the hearing. He submitted that as a French-speaking lawyer he was entitled to all documents concerning the case in French, being an official language of the ECCC, in order to conduct the defence of his client.
5. The Pre-Trial Chamber notes that the appeal brief against the Provisional Detention Order of 19 November 2007 was filed on 21 December 2007 and signed by both Co-Lawyers for the defence. The application on 13 February 2008 regarding a public hearing was also signed by the International Co-Lawyer. All filings concerning the appeal have been made available in Khmer, English and French. On 18 April 2008, following the submission of written arguments by the Lawyers for the Civil Parties, the national Co-Lawyer filed and signed an application on behalf of the Co-Lawyers for the defence, requesting that those submissions be translated urgently into Khmer and French. These translations were made available to the defence prior to the hearing.
6. No indication had been given to the Pre-Trial Chamber between the time of filing the appeal brief and the day of the hearing that there was any potential difficulty in proceeding. Indeed, the request of 18 April may be taken as an indication of the Co-Lawyers' preparedness to proceed.



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7. Internal Rule 21(1)(d) provides in part that the Charged Person has the right to be defended by a lawyer of his choice. By Internal Rule 22, a Charged Person has the right to choose from amongst national and foreign lawyers who are included on a list as provided in Internal Rule 11(2)(d).
8. It is noted that no adjournment was earlier sought or any notification given to the Pre-Trial Chamber by the International Co-Lawyer of his inability to represent the Charged Person in the matter of the appeal against the detention order.
9. The refusal of the International Co-Lawyer to continue to act is a constructive withdrawal from the appeal and has a direct and adverse effect upon the fundamental right of the Charged Person to be represented before the Pre-Trial Chamber.
10. In the circumstances mentioned above, the Charged Person has been placed in a position where he is unable to exercise this fundamental right. The Pre-Trial Chamber therefore granted the request for an adjournment to a date to be advised. The Pre-Trial Chamber sees this as the only alternative in order to protect the Charged Person rights.
11. The conditions leading to the withdrawal of the International Co-Lawyer have existed from when he first started to act. No application for an adjournment or complaint related to the linguistic problems was made to the Pre-Trial Chamber. His refusal to continue to act in this appeal was first announced on the day of the hearing and has resulted in his client not being able to have his appeal heard promptly. This violated the Charged Person's fundamental right to a timely hearing and the representation of a lawyer of his choice, which are internationally recognized rights applicable before the ECCC.
12. The structure of the Internal Rules recognizes the need for collaboration between the national and foreign co-lawyer. Internal Rule 21(1) effectively directs this. In this way linguistic and legal issues may be fully addressed by a team of lawyers representing a charged person. The alternative, if such collaboration is not possible, is for the Charged Person to make a request for a new lawyer to represent him.
13. Internal Rule 38 reads:
 1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement.



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2. The Co-Investigating Judges or the Chambers may also refer such misconduct to the appropriate professional body.

3. Any foreign lawyer practising before the ECCC who is subject to disciplinary action by the BAKC may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC. Such appeal shall suspend enforcement of the decision unless the Pre-Trial Chamber decides otherwise. The decision of the Pre-Trial Chamber shall not be subject to appeal.

4. Where, as a result of any such disciplinary action, a person is struck off the list of lawyers approved to appear before the ECCC, the lawyer shall transmit all related material to the appropriate unit within the Office of Administration, so that it may ensure continuity of representation.

14. Article 21(3) of the ECCC Agreement states that "Any counsel, whether of Cambodian or non-Cambodian nationality, engaged by or assigned to a suspect or an accused shall, in the defence of his or her client, act in accordance with the present Agreement, the Cambodian Law on the Statutes of the Bar and recognized standards and ethics of the legal profession".

15. As a consequence of the behavior of the International Co-Lawyer advising with effectively no notice that he will not continue to act in this appeal within the circumstances mentioned above, a warning is given to him pursuant to Internal Rule 38(1) as he has abused the processes of the Pre-Trial-Chamber and the rights of the Charged Person.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES:

- (1) To adjourn the hearing of the appeal against the Provisional Detention Order to a date to be advised.
- (2) To issue a warning to the international Co-Lawyer pursuant to Internal Rule 38.

Phnom Penh, 23 April 2008

Pre-Trial Chamber

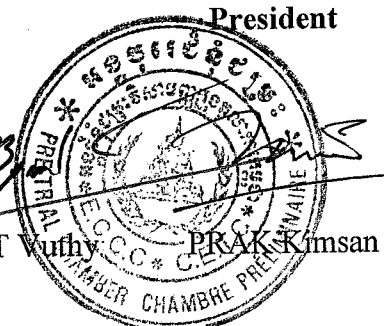
President


 Rowan DOWNING


 NEY Thol


 Katinka LAHUIS


 HUOT Vuthy




 PRAK Kimsan