



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៨/អវតក/អជសដ

Case File/Dossier No. 001/18-07-2007/ECCC/TC

Before:

Judge NIL Nonn, President

Judge Silvia CARTWRIGHT

Judge YA Sokhan

Judge Jean-Marc LAVERGNE

Judge THOU Mony

Date:

13 March 2009

Classification:

PUBLIC

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):

13 / 03 / 2009

ម៉ោង (Time/Heure): 14:30

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: Ratanak

ឯកសារប្រតិបត្តិការត្រឹមត្រូវតាមច្បាប់

CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ ការបញ្ជាក់ (Certified Date/Date de certification):

13 / 03 / 2009

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: UCH ARUN

DECISION ON MOTION REGARDING DECEASED CIVIL PARTY

Co-Prosecutors

CHEA Leang

Robert PETIT

Accused

KAING Guek Eav alias "DUCH"

Lawyers for the Civil Parties

KONG Pisey

HONG Kimsuon

YUNG Panith

KIM Mengkhy

MOCH Sovannary

Silke STUDZINSKY

Martine JACQUIN

Philippe CANONNE

TY Srinna

Pierre Olivier SUR

Alain WERNER

Brianne McGONIGLE

Annie DELAHAIE

Elizabeth RABESANDRATANA

Karim KHAN

Lawyers for the Defence

KAR Savuth

François ROUX



E 2/5/3

THE TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”),
BEING SEISED of Case File No. 001/18-07-2007-ECCC/TC pursuant to the “Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav Alias Duch,” rendered orally by the Pre-Trial Chamber on 5 December 2008, and filed in Khmer on 9 December 2008 (“Decision”);

HAVING RECEIVED the “Notification” of the death of Civil Party D25/24¹, including a request to the President of the Trial Chamber to recognize the right for the husband of Civil Party D25/24 to act as Civil Party on behalf of his deceased wife, filed in Khmer and English on 23 January 2009 by the Lawyer of Civil Party D/25/24 (“the Motion”);

HAVING CONSIDERED the submissions made orally by the Parties during the Initial Hearing held on 17 and 18 February 2009;

PURSUANT to Rule 23(1) and (2) of the Internal Rules;

BACKGROUND AND FINDINGS:

A. BACKGROUND:

1. On 23 January 2009, Civil Party lawyer Ms. Ty Srinna (Group 1) filed a motion informing the President of the Trial Chamber that one of her clients, Civil Party D25/24 who had filed an application before the Co-Investigating Judges and been recognized as Civil Party in case No. 001/18-07-2007/ECCC/OCIJ, which is now Case No. 001/18-07-2007/ECCC/TC², had died on 27 December 2008.
2. By the same motion Ms. Ty Srinna asked the President of the Trial Chamber to recognize the right of the husband of her late client to act as Civil Party on her behalf.
3. This request was renewed orally during the Initial Hearing. The Civil Party lawyers (Group 1) submitted that before her death, Civil Party D25/24 had thumb-printed a delegation to her husband, of all her rights to participate in the ECCC proceedings, as she could no longer be involved. Civil Party D25/24’s death certificate dated 12 January 2009, the delegation mentioned above and the family registration book N° K02629 are attached to the Motion.
4. The lawyers submitted further that if there is no relevant rule in the Internal Rules, the Chamber must refer to article 254 of the Cambodian Code of Civil Procedure which

¹ Document E2/5/1

² Letter of the Greffiers of the Co-Investigating Judges dated 6 August 2008, Document E2/5/1.5



E2/5/3

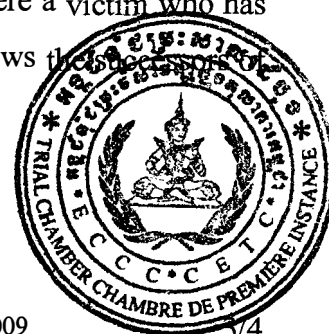
event is already contemplated, and where the successor of a deceased civil party must inform the investigating Judge whether he/she intends to continue the civil action.

5. During the Initial Hearing the other parties were invited to respond to this submission. The international Lawyer of Civil Party Group 4 submitted that in the current situation, the issue is whether the husband can join the civil action as his late wife's successor, or whether he can apply directly if he has also suffered personal damage. In his view the latter option prevails in the current case.
6. The Civil Party lawyer for Group 1 reiterated that the primary application is to authorize the husband to continue, as the successor of his deceased wife and on her behalf, the civil action begun by her. In the alternative, he submitted that the husband had also suffered harm and should therefore be allowed to participate in the proceedings as a Civil Party.
7. No further submissions were made by other Civil Party lawyers, by the Co-Prosecutors, or by the Defence.

B. FINDINGS:

8. Civil action is normally introduced before the Civil Courts; its exercise before Criminal Courts is an exceptional right and must therefore be interpreted strictly within the limits defined by the law³. The exceptional nature of this right is reinforced where the civil action is before the ECCC, which, under Rule 23(1) entitles victims to seek only "collective and moral reparations". This limited right given to Civil Parties clearly distinguishes their action from civil actions brought before other Civil or Criminal Courts.
9. It is for the victim to decide if he/she intends to join a criminal proceeding as a Civil Party. As a Civil Party's right and obligation is to support the prosecution and to participate in a criminal trial where an accused may be convicted and sentenced this must be a personal decision. Clear expression of such intention is also essential when the Civil Party seeks moral reparations which are founded exclusively on a personal perception of what is appropriate.
10. Although the Internal Rules have not expressly foreseen a situation where a victim who has already filed a Civil Party application dies, Cambodian Law clearly allows the deceased party to continue the civil action:

³ French Cour de Cassation Criminal Chamber, 9 November 1992.



E21513

- Article 254 of the 1965 Cambodian Code of Civil Procedure establishes a particular procedure before the Investigative Judge to enquire if the successor of a deceased Civil Party intends to continue the civil action initiated by that party;
- Article 173 -2 (a) of the 2006 New Cambodian Code of Civil Procedure provides that in the case of the death of a party “the heir of the decedent party, or the person bound by law to maintain the action, ... shall succeed to the litigation.”;
- Article 16 of the Code of Criminal Procedure provides that “in case of death of a victim, a civil action may be started or continued by his successor”.

11. The last provision, requires that, in order to obtain moral reparation, the successors of a dead victim who intend to act on behalf of this party must demonstrate that he or she has filed a Civil Party application.
12. In the absence of proof that a Civil Party application has been filed by a victim, successors can act only for themselves to seek reparation for personal damage arising from the death of the victim, and the death must be linked directly to an offence with which the accused has been charged.
13. In the present case, having seen the motion and attachments, it is clear that Civil Party D25/24 filed an application and was recognized as a Civil Party. It has also been established to the satisfaction of the Chamber that her husband is her successor. Consequently, the Trial Chamber accepts the Motion and states that Civil Party D25/24’s husband is authorized, as successor and on behalf of his deceased wife, to continue the civil action introduced in case No. 001/18-07-2007/ECCC/TC.

DECISION:

FOR THE FOREGOING REASONS:

THE TRIAL CHAMBER ACCEPTS the Motion; and

DECIDES that the husband of Civil Party D25/24 is authorized, as successor and on behalf of his deceased wife, to continue the civil action introduced in case No. 001/18-07-2007/ECCC/TC. *EW NW12*

Phnom Penh, 13 March 2009

President of the Trial Chamber



Nil Noni