



ព្រះរាជាណាចក្រកម្ពុជា **P6/2**  
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

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 001/18-07-2007-ECCC/SC

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): ..... 18 ..... 10 ..... 2010 .....	
ម៉ោង (Time/Heure): ..... 10:00 .....	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: ..... Uch Arun .....	

**Before:** Judge KONG Srim, President  
 Judge Motoo NOGUCHI  
 Judge SOM Sereyvuth  
 Judge Agnieszka KLONOWIECKA-MILART  
 Judge SIN Rith  
 Judge Chandra Nihal JAYASINGHE  
 Judge YA Narin

**Date:** 18 October 2010

**Classification:** PUBLIC

**DECISION ON REQUEST OF THE CO-LAWYERS FOR KAING GUEK EAV ALIAS DUCH  
 TO EXTEND THE TIME LIMIT FOR FILING OF AN APPEAL BRIEF AGAINST THE  
 JUDGEMENT OF THE TRIAL CHAMBER OF 26 JULY 2010**

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KAING Guek Eav alias 'DUCH'

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**THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the “Request of the Co-Lawyers for KAING Guek Eav *alias* Duch to Extend the Time Limit for Filing of an Appeal Brief against the Judgement of the Trial Chamber Issued on 26 July 2010” (“Request”).<sup>1</sup>

## I. PROCEDURAL HISTORY

1. On 24 August 2010, the Co-Lawyers for KAING Guek Eav *alias* Duch (“Accused”) filed the “Notice of Appeal by the Co-Lawyers for KAING Guek Eav *alias* Duch against the Trial Chamber Judgement of 26 July 2010” (“Accused’s Notice of Appeal”).<sup>2</sup> The Request was filed on 10 September 2010.
2. On 28 September 2010, the Co-Prosecutors attempted to file the “Co-Prosecutors’ Response to Kaing Guek Eav *Alias* Duch’s Application for Extension of Time to File his Appeal Brief” (“Response”).<sup>3</sup> Pursuant to Article 10 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction”),<sup>4</sup> the Greffiers of the Supreme Court Chamber returned the Response to the Office of the Co-Prosecutors because it did not comply with Articles 8.3 and 9 of the Practice Direction. On 29 September 2010, the Office of the Co-Prosecutors submitted the Response to the Greffiers with reasons for the delay.<sup>5</sup>

## II. REASONING

### A. Applicable Law

3. The Internal Rules provide as follows:

Notice of appeal against a judgment of the Trial Chamber, as provided in Rule 105(3), shall be filed within 30 (thirty) days of the date of pronouncement of the judgment or its notification, as appropriate. The appeal brief shall be filed within 60 (sixty) days of the date of filing the notice of appeal . . .

...

[T]he Chambers may, at the request of the concerned party or on their own motion:

- (a) extend any time limits set by them.<sup>6</sup>

4. The relevant parts of the Practice Direction are the following:

<sup>1</sup> 10 September 2010, F6.

<sup>2</sup> E188/8.

<sup>3</sup> 28 September 2010, F6/1.

<sup>4</sup> ECCC/01/2007/Rev.4.

<sup>5</sup> Pursuant to Article 9 of the Practice Direction, these reasons were included in the Filing Instruction for the Co-Prosecutors (“Filing Instruction”).

<sup>6</sup> Internal Rules 107(4), 39(4)(a) (Rev. 6).



Unless otherwise provided in the Internal Rules or this Practice Direction or ordered by a Chamber of the ECCC, pleadings and applications shall be filed with the greffier of the Chamber hearing the case together with the relevant authorities in accordance with the following timetable, subject to the right in Rule 39 of the Internal Rules to request an extension of time limits.

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...

Any response to pleadings shall be filed together with any list of authorities within 15 calendar days of notification, in the ECCC official language which the party has elected under Article 2.2, of the document to which the participant is responding. Any response to an application shall be filed within 5 days of notification.

...

A document may be filed outside the time limits as set out in [Internal] Rule 39 . . . In such cases, the person filing the document shall indicate the reasons for the delay on the Filing Instructions. The Judges or Chamber before which the document is filed shall decide whether to accept the document despite its later filing.<sup>7</sup>

### B. Admissibility

5. The Supreme Court Chamber considers that the Accused is “the concerned party” within the meaning of Internal Rule 39(4)(a). The Request was filed well in advance of the time limit within which the appeal brief of the Accused must be filed, and the Request sets out the reasons why it should be granted. The Request is therefore admissible.
6. The Supreme Court Chamber considers that the Request is an “application” within the meaning of Article 8.3 of the Practice Direction. The Response was therefore filed late. The Co-Prosecutors provided the following reasons for the delay:

The Co-Prosecutors do not wish to oppose the application filed by Duch. They simply wish to place on record their reasons for doing so. This will assist the Supreme Court Chamber in reaching a just decision on this application. An acceptance of this filing, albeit beyond the statutorily permissible date, will therefore serve the interests of justice.<sup>8</sup>

7. The Supreme Court Chamber notes that these reasons from the Co-Prosecutors do not explain why the Response was filed late. The Chamber also considers that the substance of the Response does not “assist the Supreme Court Chamber in reaching a just decision” on the Request. The Response is therefore inadmissible.

<sup>7</sup> Articles 8.1, 8.3, 9.

<sup>8</sup> Filing Instruction.



## C. Merits

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8. The Request asks the Supreme Court Chamber to extend the time limit for filing the appeal brief of the Accused by 30 days.<sup>9</sup> The Co-Lawyers provide the following reasons for the Request:
- i. The size and complexity of this Case necessitate an extended time for preparation of an appeal brief . . .
  - ii. . . [T]he Trial Chamber made a number of novel pronouncements on questions of fact and law. The novelty of this case, the first to be tried by the ECCC, presents unique challenges to the Co-Lawyers . . .
  - iii. Extending the time limit for filing a Defence appeal brief will offer some measure of remedy to the disparity of facilities available to parties to this Case. The Accused's legal team consists of only four individuals: two Co-Lawyers, a case manager and a legal consultant. It was apparent at trial that the Office of the Co-Prosecutor operates with 3-4 times as many legal officers in its employ. This places heavy demands on the Co-Lawyers when crafting a defence on behalf of the Accused. The Co-Lawyers must also devote substantial time to considering the interventions of 17 Civil Party lawyers in this Case . . .
  - iv. Shortly after the release of the verdict on 26 July 2010, the Accused hired Dr. Kang Ritheary to act as Co-Lawyer for the purposes of an appeal. As newly-appointed counsel Dr. Ritheary requires additional time to review the trial proceedings and study the judgement.<sup>10</sup>
9. The Supreme Court Chamber considers that the reason provided by the Co-Lawyers in paragraph 8(iii) above does not constitute good cause<sup>11</sup> to grant the Request. The resources available to the Co-Prosecutors relate to the fact that the Office of the Co-Prosecutors has more duties at the ECCC than the Co-Lawyers for the Accused. Regarding the resources available to the Accused, the Supreme Court Chamber emphasizes that, in exercising his right to choose legal representation, the Accused must bear in mind the need to respect procedural time limits in order not to unduly protract proceedings.
10. The Supreme Court Chamber finds that the cumulative effect of the reasons provided by the Co-Lawyers in paragraph 8(i)-(ii), (iv) above constitutes good cause to extend the time limit within which to file the appeal brief of the Accused by 30 days. The Request is therefore granted. The appeal brief of the Accused must be filed within 90 days of the date of filing the Accused's Notice of Appeal.

<sup>9</sup> Request, paras. 2, 4.

<sup>10</sup> Request, para. 3(i)-(iv).

<sup>11</sup> International Criminal Court, Regulations of the Court, ICC-BD/01-02-07, 26 May 2004 (as amended by the Regulations of the Appeals Chamber, 2007) at 35(2).



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**III. DISPOSITION**

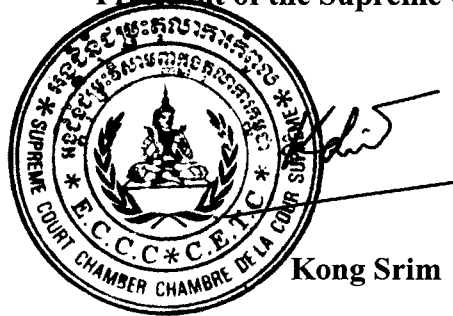
**FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER DECIDES:**

- 1. The Request is admissible;
- 2. The Response is inadmissible;
- 3. The Request is granted.

**Phnom Penh, 18 October 2010**

**President of the Supreme Court Chamber**

*[Handwritten signature]*



**Kong Srim**

