



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 29-Aug-2014, 15:39
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧/អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007/ECCC/SC

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Florence Ndepele Mwachande MUMBA
Judge YA Narin

Date: 29 August 2014
Language(s): Khmer/English
Classification: PUBLIC

**DECISION ON DEFENCE MOTION FOR EXTENSION OF TIME AND PAGE LIMITS
ON NOTICES OF APPEAL AND APPEAL BRIEFS**

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for NUON Chea
SON Arun
Victor KOPPE

Accused
KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively) is seized of request filed on 13 August 2014 by both the Defence for KHIEU Samphân and the Defence for NUON Chea (together, “Defence”) for an extension of time and of page limit for the filing of their respective notices of appeal and appeal briefs (“Request”).¹ The Co-Prosecutors responded to the Request on 21 August 2014 (“Response”).² The Defence replied to the Response on 25 August 2014 (“Reply”).³

2. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01,⁴ convicting both KHIEU Samphân and NUON Chea of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), and sentencing them each to life imprisonment.⁵

3. The Defence wishes to appeal the Trial Judgment,⁶ but submits that the time and space permitted by the Internal Rules⁷ and the Practice Direction⁸ are insufficient to allow a meaningful appeal in the present case,⁹ considering that the notice of appeal must be exhaustive as there is no avenue for amendment after it is filed.¹⁰ The Defence argues that the size and complexity of the case, the length of the Trial Judgment, the amount of novel issues expected on appeal and the fact that documents must be submitted in Khmer and either English or French, are exceptional circumstances that constitute good cause to extend the prescribed deadlines and page numbers.¹¹

4. The Defence accordingly requests that the applicable time and page limits for the filing of the notice of appeal be extended to 74 days from the notification of the Trial

¹ *Demande urgente de la Défense de M. KHIEU Samphân et de la Défense de M. NUON Chea aux fins de prorogation des délais et d’extension du nombre de pages des conclusions en appel*, F3, 13 August 2014.

² Co-Prosecutors’ Response to the KHIEU Samphan and NUON Chea Defence Request for Extended Deadlines and Page Limits in Regards to Case 002/01 Judgment Appeals, F3/1, 21 August 2014.

³ Reply to Co-Prosecutors’ Response to the KHIEU Samphan and NUON Chea Defence Request for Extended Deadlines and Page Limits in Regards to Case 002/01 Judgment Appeals, F3/2, 25 August 2014.

⁴ Case 002/01 Judgement, E313, 7 August 2014 (“Trial Judgment”).

⁵ Trial Judgment, p. 622.

⁶ Request, para. 2.

⁷ Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

⁸ Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction”).

⁹ Request, paras. 2, 9-30.

¹⁰ Request, paras. 9-16.

¹¹ Request, paras. 17-30.

Judgment and 50 pages in English or French with its equivalent in Khmer, respectively.¹² It similarly requests that the applicable time and page limits for the filing of the appeal briefs be extended to 117 days from the filing of the notice of appeal and 150 pages in English or French with its equivalent in Khmer, respectively.¹³

5. The Co-Prosecutors do not object to the requested extension of page limits for the notices of appeal.¹⁴ They do not object to the requested page extension for the appeal briefs either, but request that whatever page limit is ordered for the individual defence team appeal briefs, the same cumulative page allowance be granted for the Co-Prosecutors' response.¹⁵ In other words, if 150 pages are granted to each Defence team for their respective appeal briefs, the Co-Prosecutors request an allowance of 300 pages.¹⁶ With respect to time limits, the Co-Prosecutors respond that the requested extension for notices of appeal is unnecessary.¹⁷ They do consider, however, that an extension of time for the filing of the appeal briefs is warranted, but suggest that 30 additional days would suffice, resulting in 90 days total from the filing of the notice of appeal.¹⁸ They further suggest that allowing 90 days for each party to respond would be reasonable.¹⁹

6. In their Reply, the Defence submits that, should the Chamber choose to grant the Defence request for an allowance of 150 pages for each defendant, the Co-Prosecutors' joint response should accordingly be limited to 200 pages only.²⁰ The Defence further objects to the Co-Prosecutors' request for an extension of the period for their response to the same length as the Defence's briefing period.²¹ Moreover, the Defence suggests an alternative to their 74 days request for extension of time to file their notices of appeal, such as to extend the deadline to 60 days from the issuance of the judgment, with a further 14 days for translation, or alternatively, permission to file in one language.²²

7. Rule 105(3) of the Internal Rules states that “[a] party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds”, and that “the appellant shall

¹² Request, paras. 30, 31.

¹³ Request, paras. 30, 31.

¹⁴ Response, para. 3.

¹⁵ Response, para. 4.

¹⁶ Response, para. 4.

¹⁷ Response, para. 6.

¹⁸ Response, para. 6.

¹⁹ Response, para. 6.

²⁰ Reply, para. 2.

²¹ Reply, para. 3.

²² Reply, paras. 5, 6(c).

subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds”. Rule 107(4) of the Internal Rules specifies that the notice of appeal must be filed within 30 days of the pronouncement of the trial judgment, and that the subsequent appeal brief must be filed within 60 days of the filing of the notice of appeal. According to Article 5.2 of the Practice Direction, the length of any document filed to the Supreme Court Chamber may not exceed 30 pages in English or French, or 60 pages in Khmer. Rule 39(2) of the Internal Rules foresees that, unless provided otherwise by the Internal Rules, judges may set time limits for pleadings, written submissions and documents relating to a request or appeal.” Rule 39(4) of the Internal Rules also empowers judges “to extend any time limits set by them” or to “recognise the validity of any action executed after the expiration of a time limit prescribed in these [Internal Rules] on such terms, if any, as they see fit.”²³

8. With respect to the notice of appeal, the Supreme Court Chamber is not persuaded that the 74 days and 50 pages requested by the Defence are necessary. The notice of appeal is limited to specifying, or merely outlining, the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice, and requires no arguments or authorities in support of each of the grounds.²⁴ The Supreme Court Chamber takes into account that such grounds may also include decisions of the Trial Chamber which were not subject to immediate appeal during the trial proceedings and that “may [therefore] be appealed only at the same time as the judgment on the merits”.²⁵ At this time, however, these require only specifying the alleged errors. The Supreme Court Chamber therefore considers that the Defence has not shown just cause for an extension of the 30-page limit for the filing of the notice of appeal.

9. The Supreme Court Chamber does find, however, that the length of the Trial Judgment (623 pages in English, 777 pages in French, and 981 pages in Khmer), requires additional time to read through thoroughly and discuss the contents thereof within defence teams and with the Accused. To this end, the Supreme Court Chamber considers that an extension of time commensurate to the rendering of its decision on the present matter is appropriate. The notice of appeal must therefore be filed no later than 30 days after the notification of the present decision. Should the Defence require permission to file in one

²³ See also Article 8.1 of the Practice Direction.

²⁴ Rule 105(3) of the Internal Rules. See also Rule 104(1) of the Internal Rules.

²⁵ Rule 104(4) of the Rules.

language only with translation to follow, they may submit such request at the appropriate time.

10. With respect to all submissions in relation to the extension of time and page limits on the appeal briefs and responses, the Supreme Court Chamber is cognizant of the fact that extensions will certainly need to be granted in light of the size and complexity of the case and Trial Judgment. At this time nonetheless, in the absence of the parameters to be supplied in the notices of appeal, it considers that it is premature to determine the amount of extra time and pages that will be required. As to the Co-Prosecutors' request for cumulative page allowance, the Supreme Court Chamber rejects such request for lack of substantiation, considering that just cause must be established in every such request upon demonstration of concrete legal interest of the requesting party. Specifically, the extensions sought for the appeal briefs must be commensurate to the scope of the appeal by the applicant and not merely mirror those requested by the other appellants. By the same token, no determination as to the time or length of pages necessary for response briefs may be determined at this time.

11. For the foregoing reasons, the Supreme Court Chamber:

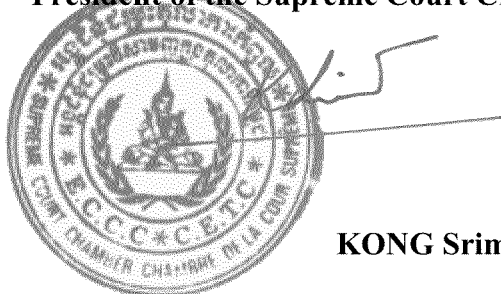
GRANTS the Request in part;

ORDERS that all notices of appeal must be filed no later than 30 days after the notification of the present decision;

DECLARES the present decision without prejudice to any future requests for extension of time or page limits, as required or appropriate.

Phnom Penh, 29 August 2014

President of the Supreme Court Chamber



KONG Srim