



ព្រះរាជាណាចក្រកម្ពុជា
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: 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: 19 November 2015

Language(s): Khmer/English

Classification: PUBLIC

DECISION REQUESTING SUBMISSIONS FROM MR VICTOR KOPPE REGARDING HIS FAILURE TO ATTEND THE APPEAL HEARING

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

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);

NOTING the judgment of the Trial Chamber in Case 002/01 against NUON Chea and KHIEU Samphân (“Trial Judgment”) issued on 7 August 2014;¹

BEING SEIZED of appeals against the Trial Judgment lodged by the Co-Prosecutors, NUON Chea, and KHIEU Samphân;²

NOTING Article 301 of the Cambodian Code of Criminal Procedure, according to which it is mandatory that an accused person be assisted by a lawyer at hearings *inter alia* if the case involves a felony, as well as Internal Rule 81(7), which provides that “[w]here no lawyer is present without justification during the hearing, the Chamber may either adjourn the hearing or, if the Accused requests assistance of a lawyer, request the Defence Support Section to temporarily assign him or her a lawyer [...]”;

NOTING Internal Rule 22(4), which provides that “[i]n their performance of duties, lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions and administrative regulations, as well as the Cambodian Law on the Statutes of the Bar and recognised standards and ethics of the legal profession. Lawyers have an obligation to promote justice and fair and effective conduct of the proceedings”;

NOTING Section 7.1 of the Defence Support Section Administrative Regulations, which provides that “[s]ubject to any order of the ECCC, Co-Lawyers shall conduct the case to finality. Failure to do so, absent just cause approved by the ECCC, may result in forfeiture of fees in whole or in part, as determined by the ECCC”, as well as Section 16.5 of the Defence Support Section Administrative Regulations, which provides that “[a] Co-Lawyer shall be

¹ Case 002/01 Judgement, 7 August 2014, E313.

² Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11; NUON Chea’s Appeal Against the Judgment in Case 002/01, 29 December 2014, F16; [*Corrigé 1*] *Mémoire d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 December 2014, F17 (corrected version filed on 31 December 2014). See also Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, 29 September 2014, E313/3/1; Notice of Appeal Against the Judgment in Case 002/01, 29 September 2014, E313/1/1; *Déclaration d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 September 2014, E313/2/1.

present at the ECCC where necessary for the effective representation of the accused and whenever given reasonable notice to do so [...]”;

RECALLING the Scheduling Order,³ by which the Chamber, *inter alia*, notified the parties that that the appeal hearing for the above-mentioned appeals would commence on Tuesday, 17 November 2015, at 09:00 a.m. in the main courtroom of the ECCC (“Appeal Hearing”);⁴

RECALLING that the International Co-Lawyer for NUON Chea, Mr Victor KOPPE, did not appear at the Appeal Hearing;

RECALLING that the Chamber granted NUON Chea’s request to make a personal address to the Chamber at the beginning of the Appeal Hearing and that in the course of this address he indicated, *inter alia*, that he had instructed his International Co-Lawyer not to be present at the hearing and that he would instruct his National Co-Lawyer, Mr SON Arun, to leave the courtroom after the end of his personal address;

RECALLING that the Supreme Court Chamber ruled at the Appeal Hearing that the National Co-Lawyer for NUON Chea was required to be present in the courtroom to ensure that NUON Chea is legally represented at the Appeal Hearing, as required under the relevant legal framework, even if he did not wish to make submissions on the case and notwithstanding his client’s instruction to the contrary;

RECALLING that, despite the Chamber’s ruling on his obligation to remain in attendance, the National Co-Lawyer for NUON Chea was not present in the courtroom when the Chamber resumed the Appeal Hearing following the morning recess;

RECALLING that, on 18 November 2015, the National Co-Lawyer for NUON Chea filed a document setting out his position regarding his failure to attend part of the Appeal Hearing;⁵

³ Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of the Issues to Be Addressed, 5 November 2015, F30/4 (“Scheduling Order”).

⁴ Scheduling Order, p. 5.

⁵ Response of Mr SON Arun to the Oral Decision by the Supreme Court Chamber Regarding the Events of 17 November 2015, 18 November 2015, F30/13.

CONSIDERING that the conduct of the Co-Lawyers for NUON Chea may potentially lead to disciplinary sanctions or other consequences;

CONSIDERING that, before the Supreme Court Chamber takes further action in this respect, it is appropriate to give the International Co-Lawyer for NUON Chea an additional opportunity to explain the reasons for his failure to attend the Appeal Hearing;

HEREBY:

REQUESTS the International Co-Lawyer for NUON Chea to file, no later than Monday, 23 November 2015, written submissions explaining the reasons for his failure to attend the Appeal Hearing.

Phnom Penh, 19 November 2015

President of the Supreme Court Chamber



KONG Srim