



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 Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: 16 August 2019
Language(s): Khmer/English
Classification: PUBLIC

**DECISION ON KHIEU SAMPHÂN’S REQUEST FOR ANNULMENT OF DECISION
E463/1/3 ON HIS URGENT APPEAL AGAINST THE JUDGEMENT OF
16 NOVEMBER 2018**

Co-Prosecutors

CHEA Leang
Brenda HOLLIS (Reserve)

Co-Lawyers for KHIEU Samphân

KONG Sam Onn
Anta GUISSÉ

Accused

KHIEU Samphan

Civil Party Lead Co-Lawyers

PICH Ang

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 KHIEU Samphân’s Request for Annulment of Decision E463/1/3 on his Urgent Appeal against the Judgement of 16 November 2018 (“KHIEU Samphân’s Request”).¹

I. BACKGROUND

1. On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02 against NUON Chea and KHIEU Samphân, convicting them of crimes against humanity, grave breaches of the Geneva Conventions and genocide, and sentenced them to life imprisonment. The Trial Chamber provided a summary of its reasons and indicated that the authoritative account of its findings would be made available in the written judgement in due course.² The Trial Chamber notified the written judgement in Khmer, English and French on 28 March 2019.³

2. On 19 November 2018, KHIEU Samphân filed an “urgent appeal” against the pronouncement of the trial judgement citing procedural defect and a lack of reasoning.⁴ On 13 February 2019, the Supreme Court Chamber found KHIEU Samphân’s appeal to be inadmissible (“Impugned Decision”).

3. On 20 March 2019, KHIEU Samphân filed his Request motioning the Supreme Court Chamber to annul the Impugned Decision because Judge RAPOZA was not properly designated as a sitting judge at the time of the Impugned Decision’s issuance. KHIEU Samphân requests that the Chamber render a new decision on its appeal by a properly constituted panel.⁵ KHIEU Samphân’s Request was notified on 3 July 2019. The Co-Prosecutors declined to file a substantive response to KHIEU Samphân’s Request.⁶ No other party responded to KHIEU Samphân’s Request.

¹ KHIEU Samphân’s Request for Annulment of Decision E463/1/3 on his Urgent Appeal against the Judgement of 16 November 2018, E463/1/4, 20 March 2019.

² See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), E1/529.1, p. 3 (lines 13-16).

³ Trial Chamber, Case 002/02 Judgement, 16 November 2018, E465 (“Trial Judgement”). The Supreme Court Chamber determined that since it was filed outside official filing hours, the notification was effective from the next working day, i.e. 29 March 2019: Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, F43, 26 April 2019, para. 12.

⁴ KHIEU Samphân’s Urgent Appeal against the Judgement Pronounced on 16 November 2018, E463/1, 19 November 2018 (notified on 20 November 2018).

⁵ KHIEU Samphân’s Request, paras 5-8, 13-14, 22.

⁶ Co-Prosecutors’ Response to Khieu Samphan’s Request for Annulment of the Decision E463/1/3 on his Urgent Appeal of the Judgement of 16 November 2018, E463/1/4/1, 9 July 2019, para. 2 (noting that “the Co-Prosecutors are not privy to the information relevant to a determination of the merits of [KHIEU Samphân’s] Request”).

II. DISCUSSION

4. The Chamber recalls that on 26 September 2012, Judge RAPOZA was appointed as the Reserve Judge of the Supreme Court Chamber by the Supreme Council of the Magistracy of Cambodia following nomination by the Secretary-General of the United Nations.⁷ On 11 December 2018, Judge Agnieszka KLONOWIECKA-MILART resigned as a sitting International Judge of the Supreme Court Chamber.⁸ Judge RAPOZA's appointment continued during this time.⁹ He was sworn in on 17 January 2019. At the time the Impugned Decision was issued on 13 February 2019, Judge RAPOZA was validly appointed and sworn in as a Judge of the Supreme Court Chamber.

5. On the "Designation Order",¹⁰ KHIEU Samphân mischaracterizes the chronology by which the Chamber issued the Designation Order and Impugned Decision. KHIEU Samphân conflates receipt of the Impugned Decision by the Case File Officer with the electronic notification of the Designation Order, thereby incorrectly concluding that the Impugned Decision was made before the Designation Order.¹¹ The Designation Order was filed by the Chamber's greffier in two languages and received by the Case File Officer at 1.46 p.m. on 13 February 2019 in Khmer and 1:47 p.m. in English. The Impugned Decision was subsequently received and stamped by the Case File Officer at 2.52 p.m. on 13 February 2019 in Khmer, and one minute later in English. The Designation Order and Impugned Decision were electronically notified to the parties on the same day at 3.07 p.m. and 3.17 p.m., respectively.

6. KHIEU Samphân's speculative suggestions about the nature, timing and substance of judicial deliberations surrounding the Impugned Decision¹² are, for all intents and purposes, moot. Deliberations by the Chamber are confidential.¹³ Once a decision by the Chamber is reached, the written decision, order or judgment, is finalized in two languages as required by Article 7 of the Practice Direction on Filing of Documents, reviewed, signed, sealed and filed. Cumulatively, this is a lengthy process which exceeds the narrow timeframe envisioned by KHIEU Samphân. Factors such as the timing of a decision's placement on the case file and electronic notification are clerical

⁷ Extraordinary Chambers in the Courts of Cambodia, "Press Release: Appointment of International Judges in the Supreme Court Chamber", 26 December 2012, <https://eccc.gov.kh/en/articles/appointment-international-judges-supreme-court-chamber>.

⁸ See Impugned Decision.

⁹ See ECCC Law, Article 12.

¹⁰ Order Appointing Reserve Judge, F38, 13 February 2019.

¹¹ KHIEU Samphân's Request, paras 7-8.

¹² KHIEU Samphân's Request, paras 9-11, 14.

¹³ See Internal Rules 96(1), 104 *bis*.

minutiae unrelated to the judicial processes of the Supreme Court Chamber and, therefore, have no bearing on the substantive decision in the present instance.

7. The Chamber finds no merit in KHIEU Samphân's Request.

III. DISPOSITION

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

DISMISSES KHIEU Samphân's Request.

Phnom Penh, 16 August 2019

President of the Supreme Court Chamber



KONG Srim