



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

C22/1/68

**អង្គបុរេជំនុំជម្រះ**

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

**Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC03)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

**Date:** 28 August 2008

<b>ឯកសារដើម</b>
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**PUBLIC**

**DECISION ON APPLICATION FOR RECONSIDERATION OF CIVIL PARTY'S RIGHT TO ADDRESS PRE-TRIAL CHAMBER IN PERSON**

**Co-Prosecutors**

CHEA Leang  
Robert PETIT  
YET Chakriya  
William SMITH  
TAN Senarong  
Anees AHMED

<b>ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>
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## V. THE APPLICATION FOR RECONSIDERATION

25. The Application for Reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decisions.<sup>26</sup> The Appeals Chamber of the ICTY has held that a Chamber may “always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice.”<sup>27</sup> This has been described as an inherent power<sup>28</sup> and is particularly important for a judicial body of last resort like the Pre-Trial Chamber. A change of circumstances may include new facts or arguments.<sup>29</sup> The standard for reconsideration has also been described as follows: “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’”<sup>30</sup>
26. The Pre-Trial Chamber finds that no new facts, arguments or change of circumstances have been put forward in the Application for Reconsideration. The Power of Attorney Letter of 30 January 2008 and Lawyer’s Recognition Decision of 31 January 2008 attached to the Application are not new and were already in the Case File well before the Pre-Trial Chamber’s Decision on Request to Address the Court in Person.
27. Further, the Civil Party Theary Chan Seng has not demonstrated that the decision has, in its effects, caused her an unexpected result leading to an injustice.
28. The existence of a Dissenting Opinion does not in itself justify reconsideration. Neither does the fact that the Civil Party prefers the reasoning contained in the Dissenting Opinion.

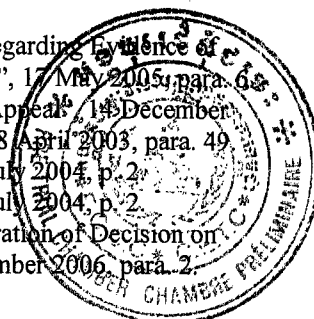
<sup>26</sup> *Prosecutor v. Milošević*, IT-02-54-T, “Decision on Prosecution Motion for Reconsideration regarding Evidence of Defence Witnesses Mitar Balevic, Vladislav Jovanovic, Vukasin Andric, and Dobre Aleksovski”, 17 May 2005, para. 6.

<sup>27</sup> *Prosecutor v. Galić*, IT-98-29-AR73, “Decision on Application by Prosecution for Leave to Appeal”, 14 December 2001, para. 13, and *Prosecutor v. Mucić et al.*, IT-96-21-Abis, “Judgment on Sentence Appeal”, 8 April 2003, para. 49.

<sup>28</sup> *Prosecutor v. Galić*, IT-98-29-A, “Decision on Defence’s Request for Reconsideration”, 16 July 2004, p. 2.

<sup>29</sup> *Prosecutor v. Galić*, IT-98-29-A, “Decision on Defence’s Request for Reconsideration”, 16 July 2004, p. 2.

<sup>30</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-T, “Decision on Prosecution Motion for Reconsideration of Decision on Prosecution Motion for Additional Trial-Related Protective Measure for Witness K56”, 9 November 2006, para. 2.



**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY**

- (1) Denies the Application for Reconsideration on Civil Party's Right to Address the Pre-Trial Chamber filed by the Civil Party Theary Chan Seng.
- (2) Decides that the hearing will not be reopened. mt

Phnom Penh, 28 August 2008

**President of the Pre-Trial Chamber**



**PRAK KIMSAN**