



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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Preliminaire

D361/4/1/3

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 004/07-09-2009-ECCC/OCIJ (PTC46)

THE PRE-TRIAL CHAMBER

Before:

Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

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Date: 19 July 2017

PUBLIC REDACTED

DECISION ON [REDACTED] REQUEST FOR SUSPENSION OF D361/4 DEADLINE PENDING RESOLUTION OF APPEAL PROCEEDINGS

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of the “██████████ Request for Suspension of D361/4 Deadline pending Resolution of Appeal Proceedings” dated 10 July 2017 (the “Suspension Request”).¹

1. On 5 July 2017, the Co-Lawyers for ██████████ (respectively the “Co-Lawyers” and “Applicant”) filed a notice of appeal² before the Greffier of the Office of the Co-Investigating Judges against the Decision denying their request for adequate preparation time and granting a limited extension of deadline for filing investigative action requests until 28 July 2017 (the “Impugned Decision”).³ On 10 July 2017, the Co-Lawyers filed the Suspension Request and, on 13 July 2017, the International Co-Prosecutor filed his response.⁴

2. The Co-Lawyers, relying on the Pre-Trial Chamber’s jurisprudence,⁵ submit that the implementation of the Impugned Decision, which imposes a deadline for filing investigative action requests (28 July 2017) falling prior to the deadline for filing the prospective appeal (4 August 2017), would undermine the substance of the appellate proceedings.⁶ They contend that the appeal has reasonable prospects of success on its merits,⁷ that the requested suspension is supported by good cause,⁸ that its duration would be reasonable,⁹ and that it does not constitute a delaying tactic.¹⁰

3. The International Co-Prosecutor responds that the Co-Lawyers failed to establish good cause, in particular since there will be possibility for further investigative actions requests, should their appeal be successful, and therefore no prejudice to the Applicant’s

¹ Case 004/07-09-2009-ECCC/OCIJ (“Case 004”), ██████████ Request for Suspension of D361/4 Deadline pending Resolution of Appeal Proceedings, 10 July 2017, D361/4/1/1 (“Suspension Request”).

² Case 004, ██████████ Notice of Appeal Against the Decision on ██████████ Request for Adequate Preparation Time, 5 July 2017, D361/4/1.

³ Case 004, Decision on ██████████ Request for Adequate Preparation Time, 5 July 2017, D361/4.

⁴ Case 004, International Co-Prosecutor’s Response to ██████████ Request for Suspension of D361/4 Deadline, 13 July 2017, D361/4/1/2 (“Response”). *See also* Email addressed to the parties, Pre-Trial Chamber’s Instructions to the Parties in Case File N° 004/07-09-2009-ECCC/OCIJ (PTC46), 11 July 2017.

⁵ Suspension Request, paras 8-10.

⁶ Suspension Request, paras 11-13.

⁷ Suspension Request, paras 19-20.

⁸ Suspension Request, paras 14-17.

⁹ Suspension Request, para. 18.

¹⁰ Suspension Request, paras 21-22.



rights.¹¹ He further asserts that the appeal has no reasonable prospects of success on its merits.¹²

4. The Pre-Trial Chamber recalls that it may use its inherent jurisdiction to stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve the fairness of the appellate process.¹³ The Pre-Trial Chamber, however, will not entertain requests to stay an order based on prospective applications or appeals that Co-Lawyers intend to bring before it¹⁴ and will not consider their merits. In the present case, only a notice of appeal has been filed before the Greffier of the Office of the Co-Investigating Judges. The Pre-Trial Chamber is thus not actually seised of an appeal and can neither exercise its appellate jurisdiction nor assess the Suspension Request on the basis of reasons set forth in the prospective appeal.

5. Besides, while the Pre-Trial Chamber acknowledges the existence of concurrent deadlines, it finds that the Applicant has not shown any exceptional circumstances justifying to suspend the Impugned Decision before submitting their appeal. In particular, it is not established that the compliance with the deadline set for filing investigative action requests would defeat the purpose of the eventual appeal or create an irreversible situation, such as the implementation of the Impugned Decision would have a direct impact on the effectiveness or fairness of the appellate proceedings. Indeed, should the prospective appeal succeed on its merits, the Applicant would simply be given adequate time to prepare and file any additional request he deems necessary.

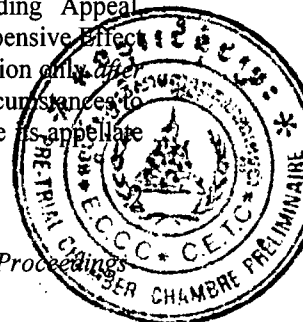
6. In light of the foregoing, the Suspension Request is denied.

¹¹ Response, paras 2-5.

¹² Response, paras 6-9.

¹³ Case 004 (PTC09), Decision on ██████████ Urgent Request to Stay the Execution of Her Summons to an Initial Appearance, 15 August 2014, A122/6.1/3 (“Decision on ██████████ Request”), para. 10 *referring to, inter alia*, Case 002/19-09-2007-ECCC/TC/SC(26), Decision on Co-Prosecutor’s Request for Clarification, 26 June 2013, E284/2/1/2, para. 12; Case 003/07-09-2009-ECCC/OCIJ (PTC03), Order Suspending the Enforcement of the ‘Order on International Co-Prosecutor’s Public Statement Regarding Case File 003’, 13 June 2011, D14/1/2.

¹⁴ *See, e.g.*, Decision on ██████████ Request, para. 11. *See also* Special Tribunal for Lebanon (“STL”), Case No. CH/AC/2011/01, Order on Urgent Prosecution’s Request for Suspensive Effect Pending Appeal, 12 September 2011, para. 4; STL, Case No. STL-11-01/T/AC/AR126.7, Order on Request for Suspensive Effect of Appeal, 4 April 2014, para. 4 (“the Appeals Chamber has jurisdiction to issue orders on suspension only after an appeal has been filed, on the basis of the reasons set forth in the appeal (save in exceptional circumstances to be demonstrated by the applicant). This is because the Appeals Chamber normally cannot exercise its appellate jurisdiction before it is actually seized of an appeal.” [footnote omitted]).



FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

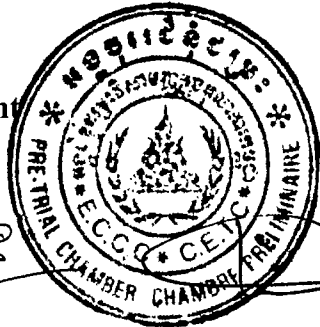
- DISMISSES the Suspension Request.

In accordance with Internal Rule 77(13), the present decision is not subject to appeal.

Phnom Penh, 19 July 2017

President

Pre-Trial Chamber



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PRAK Kimsan Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy