



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

C 26/I/31

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

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC04)

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

Date: 15 October 2008

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**PUBLIC
DECISION RELATING TO NOTICE OF WITHDRAWAL OF APPEAL**

Co-Prosecutors

CHEA Leang
Robert PETIT
PICH Sambath
Alex BATES

ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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Charged Person

KHIEU Samphan

Lawyers for the Civil Parties

HONG Kim Suon
LOR Chunthy
NY Chandy
KONG Pisey
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YONG Phanith
KIM Mengkhy
Martine JACQUIN

Co-Lawyers for the Defence

SA Sovan
Jacques VERGÈS



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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the “Notice of Withdrawal of Appeal” filed on 8 October 2008 by the Co-Lawyers for the Charged Person (the “Notice of Withdrawal”). By this Notice, the Co-Lawyers declare that they withdraw their “Appeal against the Provisional Detention Order of 19 November 2007”, filed on 21 December 2007 (the “Appeal”).
2. The Co-Lawyers argue that a party who seizes the Pre-Trial Chamber of an appeal is free to decide to continue his/her appeal and can renounce, at any time, to the benefit of his/her right to appeal and withdraw it.¹ Although the Co-Lawyers submit that they are entitled to withdraw their Appeal without giving any justification,² they explain that they have decided to do so as the Pre-Trial Chamber has not delivered a decision on the Appeal almost 10 months after it was filed.³ They submit that the Pre-Trial Chamber has not given any reason for this delay and further state that the Pre-Trial Chamber has ignored the rights of the Defence when deciding to determine the Appeal on the basis of written submissions only.⁴
3. The Pre-Trial Chamber recalls that a hearing on the Appeal commenced on 23 April 2008 but that the Charged Person requested an adjournment of the proceedings on the basis that his International Co-Lawyer had declined to continue to act on his behalf because not all documents in the Case File were available in the French language. The Charged Person submitted that he was deprived of legal representation by one of his Co-Lawyers and, as a result, would lose his confidence in proceeding with the Appeal. The Pre-Trial Chamber granted the Charged Person’s request for an adjournment so as to protect his right to be properly represented before the Pre-Trial Chamber.⁵
4. Considering the circumstances in which the Charged Person requested the adjournment, the Pre-Trial Chamber was not in a position to determine when the hearing could resume without any further indication from the Defence. The Pre-Trial Chamber adjourned the hearing “to a date to be advised”⁶, so as to allow time for the Co-Lawyers to organise themselves in the best interests of their client and advise the Chamber of their readiness to proceed.

¹ Notice of Withdrawal, 8 October 2008, C26/I/30, para. 1.

² Notice of Withdrawal, para. 21.

³ Notice of Withdrawal, para. 26.

⁴ Notice of Withdrawal, para. 25.

⁵ Decision on Application to Adjourn Hearing on Provisional Detention Appeal, 23 April 2008, C26/I/25, para. 2.

⁶ Decision on Application to Adjourn Hearing on Provisional Detention Appeal, p. 4.



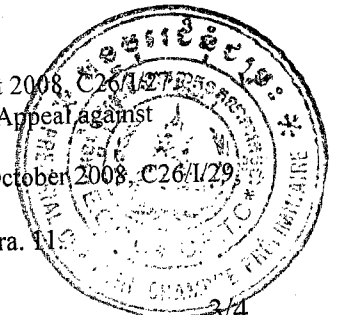
5. No information was provided to the Pre-Trial Chamber by the Charged Person or his Co-Lawyers ("Defence") in the four-month period following the adjournment. Concerned by the inaction of the Defence and to avoid prejudicing the Charged Person's interests, the Pre-Trial Chamber issued directions to the Defence on 15 August 2008 to state their position concerning the Appeal.⁷
6. On 21 August 2008, the Co-Lawyers filed their "Notification of the Pre-Trial Chamber of the Defence's Position Concerning KHIEU Samphan's Appeal against Provisional Detention Order" in which they informed the Pre-Trial Chamber that they "demand translation of the KHIEU Samphan criminal file" and stated that "[a]s long as the translation is not done, the Co-Lawyers for the Defence are unable to cooperate with the Court".⁸
7. On 2 October 2008, the Pre-Trial Chamber issued its "Directions on Continuation of Proceedings related to Appeal against Provisional Detention" where it found that since "[t]he Appeal raises no issue as to translation or the inability to effectively challenge the 'charges underpinning the Charged Person's provisional detention'", the Co-Lawyers are, pursuant to Internal Rule 75(4), barred from raising this issue at this stage of the proceedings.⁹
8. The Pre-Trial Chamber considered that the statements of the Co-Lawyers must be seen as a refusal to participate further in an oral hearing.¹⁰ In these circumstances, the Pre-Trial Chamber found that there was no reason to delay its decision on the Appeal further and decided to determine the Appeal on the basis of the written submissions of the parties only. In accordance with Article 8.4 of the Practice Direction on Filing of Documents before the ECCC, the Pre-Trial Chamber allowed the Co-Lawyers to file a reply in relation to the substantive Appeal within 7 days.
9. The Co-Lawyers did not file a reply. Instead, they filed the Notice of Withdrawal within the time frame for filing a reply.
10. The Pre-Trial Chamber observes that the Internal Rules do not address the issue of the withdrawal of an appeal or discontinuation of proceedings by a party. The Cambodian Code of Criminal Procedure similarly does not provide direct guidance on this issue. However, the Pre-

⁷ Direction to the Defence concerning the Appeal against Provisional Detention Order, 15 August 2008, C26/I/27.

⁸ Notification of the Pre-Trial Chamber of the Defence's Position Concerning Khieu Samphan's Appeal against Provisional Detention Order, 21 August 2008, C26/I/28, paras 9 and 10.

⁹ Directions on Continuation of Proceedings related to Appeal against Provisional Detention, 2 October 2008, C26/I/29, paras 7 and 9.

¹⁰ Directions on Continuation of Proceedings related to Appeal against Provisional Detention, para. 11.



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Trial Chamber notes that in practice, Cambodian Courts accept that an appellant has the right to withdraw his/her appeal before the closing of the debate between the parties. This also appears to be the practice followed by international and internationalised tribunals.¹¹

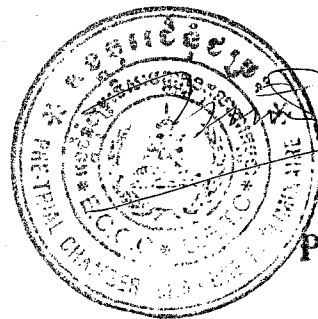
11. The Pre-Trial Chamber finds that a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

ALLOWS the withdrawal of the Appeal against the Provisional Detention Order of 19 November 2007. ort

Phnom Penh, 15 October 2008

President of the Pre-Trial Chamber



PRAK KIMSAN

¹¹ *Prosecutor v. Strugar*, IT-01-42-A, “Final Decision on ‘Defence’s Notice Withdrawing Appeal’ and ‘Withdrawal of Prosecution’s Appeal against the Judgment of Trial Chamber II dated 31 January 2005’”, Appeals Chamber, 20 September 2006; *Prosecutor v. Cermak*, IT-06-90-AR65.2, “Decision on Notice of Withdrawal”, Appeals Chamber, 23 January 2008; *Prosecutor v. Karamera*, ICTR-98-44-AR72.7, “Decision on Prosecution Motion to Withdraw Appeal regarding the Pleading of Joint Criminal Enterprise in a count of complicity in Genocide”, Appeals Chamber, 25 August 2006; *Prosecutor v. Sesay*, SCSL 04-15-T, “Decision to Withdraw Motion seeking Disqualification of Justice Robertson from all judicial functions involving the RUF”, Appeals Chamber, 15 October 2004.