



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសជ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

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Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

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FOURTH DECISION ON FITNESS OF THE ACCUSED KHIEU SAMPHAN TO STAND TRIAL

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1. PROCEDURAL HISTORY

1. Pursuant to Internal Rule 32, the Trial Chamber, on its own motion, assigned two experts, Dr. CHAN Kin Ming and Dr. HUOT Lina (“Experts”), to examine the Accused and to report on their present fitness to stand trial.¹ The Experts, after examining the Accused in accordance with this Chamber’s orders, submitted their reports on 31 January 2018. The Trial Chamber circulated courtesy copies of the reports² to the Parties on the same day, inviting the Parties to submit by 2 February 2018 any request to examine in court the Experts on their reports and opinions on the Accused’s fitness to stand trial.³ As no request was received, no hearing was held on this matter.

2. The Trial Chamber has previously ruled on three separate occasions that KHIEU Samphan is fit to stand trial.⁴ For the purposes of the current decision, the Trial Chamber ordered the Experts to report information, based on the criteria described in the *Strugar* case, which would enable the Chamber to determine whether or not each Accused is currently fit to stand trial for the purposes of the delivery of the judgment.⁵

2. THE EXPERT EXAMINATION

3. The Experts examined KHIEU Samphan on 29 January 2018 and reviewed weekly medical reports prepared by physicians at the ECCC detention facility and the Khmer-Soviet Friendship Hospital in Phnom Penh.⁶ In the KHIEU Samphan Report, the Experts state that KHIEU Samphan has a history of several chronic ailments and repeated episodes of hospitalization, but note that he has fully recovered from the most recent episodes and has not been admitted to hospital since 2017.⁷ The Experts find that his heart sounds, pallor,

¹ Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial and Scheduling Assessment (“Order”), E460, 28 December 2017.

² Expert Medical Report: NUON Chea, E460/2, 30 January 2018; Expert Medical Report: KHIEU Samphan, E460/3, 30 January 2018 (“KHIEU Samphan Report”). Both Reports were filed as strictly confidential. The reports were formally filed only on 1 February 2018 as 31 January 2018 was an official ECCC holiday.

³ Emails from Trial Chamber to the Parties dated 31 January 2018.

⁴ Third Decision on Fitness of the Accused KHIEU Samphan to Stand Trial and Order for Quarterly Cognitive Testing, E389/6, 6 September 2016; Second Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E329/8, 18 February 2015 (“Second Decision on Fitness”); Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E301/12, 25 April 2014.

⁵ Order, para. 6, citing *Prosecutor v. Strugar*, ICTY Trial Chamber, IT-01-42-T, Decision Re the Defence Motion To Terminate Proceedings, 26 May 2004, para. 36 and *Prosecutor v. Strugar*, ICTY Appeals Chamber, IT-01-42-A, Judgement, 17 July 2008 (“*Strugar*”), para. 55.

⁶ KHIEU Samphan Report, paras 3, 5, 8, 27.

⁷ KHIEU Samphan Report, paras 6-10.

breathing, and muscle tones were all normal.⁸ His blood pressure and heart rate were slightly elevated, which the experts believe may have been due to the fact that the physical examination was performed after the interview, during which he was quite emotional.⁹

4. During his interview with the Experts, KHIEU Samphan spoke loudly in continuous sentences and listened to questions without much difficulty if spoken to loudly and slowly.¹⁰ He was able to walk without assistance, but tired more easily than before.¹¹ Furthermore, he was able to read with glasses and using a magnifying glass.¹² He recognised the Experts, although he could not remember their names.¹³

5. The Experts report that KHIEU Samphan's treating doctors at Khmer-Soviet Friendship Hospital felt that his health had improved and did not notice any specific health issues.¹⁴ The treating doctors added that KHIEU Samphan still exercises in the evening, can walk without assistance, and can read and prepare documents on his computer.¹⁵ The treating doctors reported no evidence of any problems with KHIEU Samphan's memory, concentration or mood.¹⁶

6. The Experts find that KHIEU Samphan was able to fully concentrate for the duration of their 60-minute interview, appeared alert and responded clearly to all the questions posed.¹⁷ The Experts found clear evidence of KHIEU Samphan's long-term memory preservation and he scored within the range considered as normal on the mental examination they administered.¹⁸ The Experts' opinion is that KHIEU Samphan's mental state is normal and that his short-term memory, concentration and attention are all excellent for his age.¹⁹ The Experts note that regular mental tests in the form of Abbreviated Mental Tests (AMTs) were performed on KHIEU Samphan every three months and that in all tests the results indicated no cognitive impairment.²⁰ The Experts also specifically find that KHIEU Samphan has no

⁸ KHIEU Samphan Report, para. 20.

⁹ KHIEU Samphan Report, para. 20.

¹⁰ KHIEU Samphan Report, paras 18-19.

¹¹ KHIEU Samphan Report, para. 10.

¹² KHIEU Samphan Report, paras 11, 19.

¹³ KHIEU Samphan Report, para. 17, 31.

¹⁴ KHIEU Samphan Report, para. 9.

¹⁵ KHIEU Samphan Report, para. 10-11.

¹⁶ KHIEU Samphan Report, para. 28.

¹⁷ KHIEU Samphan Report, para. 30.

¹⁸ KHIEU Samphan Report, paras 31, 33.

¹⁹ KHIEU Samphan Report, paras 34-35.

²⁰ KHIEU Samphan Report, para. 28.

mental or cognitive problems that would affect his ability to exercise the necessary capacities outlined in the *Strugar* case.²¹

7. The Experts conclude that there are currently no physical health problems that would affect KHIEU Samphan's ability to stand trial. However, they recommend that he is spoken to loudly, clearly and slowly and provided with adequate lighting and a magnifying glass if required to read documents.²² They find that the most recent daily trial schedule of morning and afternoon sessions of two and a half hours separated by a two-hour break is still suitable for KHIEU Samphan.²³

8. The Experts observe that KHIEU Samphan's memory and cognitive function will likely gradually deteriorate with age and recommend regular reviews of his cognitive function, particularly if there is a noticeable decline in his memory or cognition.²⁴ They also recommend that KHIEU Samphan's blood pressure and weight be closely monitored, but note that this should not affect his ability to stand trial.²⁵

3. APPLICABLE LAW

9. To be fit to stand trial, the Accused must be capable of meaningful participation which allows him to exercise his fair trial rights to such a degree that he is able to participate effectively in his trial and has an understanding of the essentials of the proceedings.²⁶

4. FINDINGS

10. In making this assessment, the Chamber considers all pertinent factors, including expert evidence, its own observations, the impact of the Accused's medical conditions, the availability of practical measures to mitigate the effects of any impairment, and that the Accused is represented and advised by competent legal counsel.

11. Having reviewed the KHIEU Samphan Report, the Trial Chamber is satisfied that KHIEU Samphan remains fit to stand trial and does not currently suffer from any mental or physical impairment which would prohibit his continued participation in Case 002/02.

²¹ KHIEU Samphan Report, paras 36-47.

²² KHIEU Samphan Report, para. 4 of Conclusions section.

²³ KHIEU Samphan Report, para. 3 of Conclusions section.

²⁴ KHIEU Samphan Report, para. 48.

²⁵ KHIEU Samphan Report, para. 25.

²⁶ *Strugar*, para. 55.

12. The Chamber notes the recommendation of the Experts to have regular reviews of KHIEU Samphan's cognitive function, and recalls that on 7 July 2017 it ordered the continuation of his quarterly cognitive testing through June 2018, administered by medical professionals contracted to provide services to the ECCC Detention Unit ("Medical Unit").²⁷

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

AFFIRMS that the Accused KHIEU Samphan is fit to stand trial;

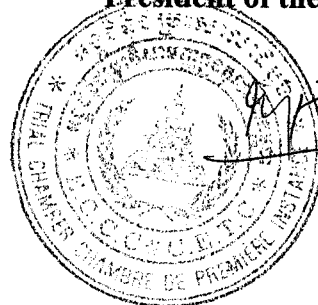
ORDERS, in accordance with the Order for Quarterly Cognitive Testing, that:

1. the Accused KHIEU Samphan's cognitive function continue to be tested at least once every quarter; and
2. the appointed Experts prepare tests to assess the Accused KHIEU Samphan's cognitive function and to work with qualified ECCC Medical Unit staff to administer these tests and report the results to the Trial Chamber;

DIRECTS, in accordance with the Order for Quarterly Cognitive Testing, WESU to coordinate and schedule the remaining tests, the next no later than 15 March 2018.

Phnom Penh, 27 February 2018

President of the Trial Chamber



NiL Nonn
NiL Nonn

²⁷ Order for the Quarterly Cognitive Testing of the Accused and Scheduling the Tests, E389/5/2, 7 July 2017 ("Order for Quarterly Cognitive Testing"), paras. 3-4.