



ព្រះរាជាណាចក្រកម្ពុជា F5/2
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: ០០១/១៨ កក្កដា ២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 001/18-07-2007-ECCC/SC

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Before:

Judge KONG Srim, President

Judge Motoo NOGUCHI

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge SIN Rith

Judge Chandra Nihal JAYASINGHE

Judge YA Narin

Date:

18 October 2010

Classification:

PUBLIC

DECISION ON CO-PROSECUTORS' TWO APPLICATIONS FOR EXTENSION OF PAGE LIMIT FOR THEIR APPEAL BRIEF

Co-Prosecutors

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Andrew CAYLEY

Accused

KAING Guek Eav alias 'DUCH'

Lawyers for the Accused

KAR Savuth

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THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the “Co-Prosecutors’ Application for Extension of Page Limit for their Appeal Brief” (“First Application”)¹ and the “Co-Prosecutors’ Application for a Further Extension of Page Limit to File their Appeal Brief” (“Second Application”).²

I. PROCEDURAL HISTORY

1. On 16 August 2010, the Co-Prosecutors filed the “Co-Prosecutors’ Notice of Appeal Against the Judgement of the Trial Chamber in the Case of KAING Guek Eav *alias* Duch” (“Notice of Appeal”).³ On 7 and 29 September 2010, respectively, the Co-Prosecutors filed the First and Second Applications (“Applications”) pursuant to Article 5.4 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction on Filing”).⁴
2. The Co-Lawyers for the Accused, KAING Guek Eav *alias* Duch, informed the Supreme Court Chamber on 1 October 2010 that they will not file a response to the Second Application. Thus, the Supreme Court Chamber has filed this Decision before the expiration of the time period within which the Co-Lawyers for the Accused may file a response.⁵

II. REASONING

A. Applicable Law

3. The Practice Direction on Filing provides as follows:

A document filed to . . . the Supreme Court Chamber of the ECCC shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC.

...

[T]he relevant Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.⁶

B. Admissibility

4. The Supreme Court Chamber notes that the Applications were filed well in advance of the deadline for the filing of the Co-Prosecutors’ appeal brief.⁷ The Applications explain the

¹ 7 September 2010, F5.

² 29 September 2010, F5/1.

³ E188/2.

⁴ ECCC/01/2007/Rev.4.

⁵ Practice Direction on Filing, Article 8.3.

⁶ Practice Direction on Filing, Articles 5.2, 5.4.

⁷ Internal Rule 107(4) (Rev. 6).



exceptional circumstances that necessitate the oversized filing. The Applications are therefore admissible.

C. Merits

5. The First Application requests an extension of fifteen pages for the length of the Co-Prosecutors' appeal brief in English for the following reasons:

Most of the appeals before the Pre-Trial Chamber, and immediate appeals before the Supreme Court Chamber, typically deal with a single or limited number of issues depending on the nature of the impugned decision. However, appeals against judgements, by their very nature, deal with a number of errors of fact and law that are contained in a usually lengthy judgement that deals with all the factual and legal issues raised during the entire trial.⁸ Appeals against judgement, such as this, are distinguishable from interlocutory appeals and, therefore, warrant higher page limits.

...

The Co-Prosecutors anticipate that Ground I [of appeal as set out in the Notice of Appeal] and its sub-grounds will, in particular, require an exhaustive analysis of the factual and legal findings in the [Trial Chamber] Judgement and the submissions contained in the Co-Prosecutors' Final Trial Submission to establish that the Trial Chamber (a) gave insufficient weight to the gravity of Duch's crimes, his role and willing participation in those crimes, and other aggravating circumstances; (b) gave undue weight to mitigating circumstances; and (c) imposed a sentence outside the range of permissible sentences under the circumstances. Grounds II and III will, similarly, require a detailed survey of applicable jurisprudence.

A treatment of these three principal grounds will require about forty pages. The Co-Prosecutors will require a further five pages for making preliminary and procedural submissions, including a procedural history and submissions on the question of a likely public hearing of the Appeal.⁹

6. The Second Application requests a further extension of twenty pages for the following reasons:

The Co-Prosecutors have now completed the drafting of the Appeal Brief by thoroughly examining the factual and legal findings in the Judgement to support their grounds of appeal. The final draft, however, runs to sixty-five pages in English including the cover page, table of contents and procedural and substantive submissions. After a detailed evaluation of the Appeal Brief, the Co-Prosecutors have concluded that any reduction from this length would undermine the integrity of their argument and would not serve the ends of justice. They, therefore, request that the Supreme Court Chamber extend the page limit to a maximum of sixty-five pages in English. The grounds for this extension are substantially the same as those raised in the First Application and are hereby incorporated *mutatis mutandis* by reference.¹⁰

7. The Supreme Court Chamber agrees with the Co-Prosecutors that international tribunals trying cases of similar magnitude and complexity as the ECCC provide higher page limits for appeals

⁸ Footnote 8 in the First Application states, "The Judgement comprises of factual and legal analyses and dispositions of 246 pages, in addition to a procedural history of 10 pages."

⁹ First Application, paras. 2, 6-7 (footnotes omitted). *See also* First Application, paras. 3-4.

¹⁰ Second Application, para. 2.



against judgements.¹¹ At the International Criminal Court, for example, “[t]he document in support of the appeal shall not exceed 100 pages.”¹²

8. The Supreme Court Chamber finds that the Co-Prosecutors have demonstrated that exceptional circumstances exist in the present case for the Chamber to extend the page limit of their appeal brief in English by a maximum of thirty-five pages. The Supreme Court Chamber therefore grants the Applications. The Co-Prosecutors’ appeal brief in English shall not exceed sixty-five pages. The Supreme Court Chamber also grants the Co-Prosecutors an extension for the necessary length of the corresponding original or translation of their appeal brief in Khmer.

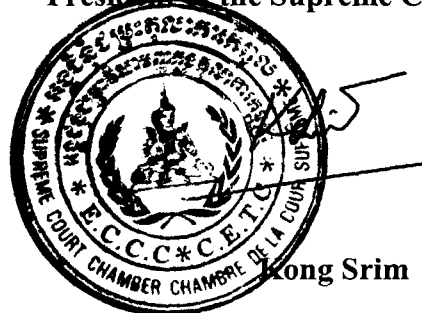
III. DISPOSITION

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER DECIDES:

1. The Applications are admissible.
2. The Applications are granted, in addition to an extension for the necessary length of the corresponding original or translation of the Co-Prosecutors’ appeal brief in Khmer.

Phnom Penh, 18 October 2010

President of the Supreme Court Chamber



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¹¹ First Application, para. 3; Second Application, para. 4.

¹² Regulations of the Court, ICC-BD/01-02-07, 26 May 2004 (as amended), Regulation 58(5).