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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

TRIAL CHAMBER

Date: 18 October 2012

TO: Departmental Disciplinary Committee for the First Judicial Department, Appellate Division, New York State Supreme Court

FROM: President NIL Nonn, Trial Chamber

CC: Executive Director, New York State Bar Association
All Trial Chamber Judges
President and All Supreme Court Chamber Judges
Trial Chamber Senior Legal Officer
All parties, Case 002



SUBJECT: Continuing professional misconduct of lawyer admitted to your Bar Association

Reference is made to the notification of 29 June 2012 from the ECCC Trial Chamber to your bar association, and accompanying decision, which described a consistent pattern of professional misconduct on the part of two defence lawyers appearing before it, one of whom, Mr. Andrew IANUZZI, is a member of the New York State Bar Association. Both documents are attached to this memorandum for ease of reference.¹

The Executive Director of the New York State Bar Association has since clarified that the body correctly seised of this matter is the Departmental Disciplinary Committee for the First Judicial Department, Appellate Division, New York State Supreme Court, rather than the New York State Bar Association, but a response on the substance of the notification remains pending.

The Trial Chamber now wishes to advise the Departmental Disciplinary Committee for the First Judicial Department, Appellate Division, New York State Supreme Court of further misconduct by Mr. IANUZZI in the interim, which the Trial Chamber would be grateful to have considered in tandem with the factual allegations contained in its initial referral of 29 June 2012.

¹ For the purposes of transparency, the Chamber also appends a recent decision of the Supreme Court Chamber where the SCC, *proprio motu*, ruled *obiter dictum* on one feature of the Trial Chamber's 29 June 2012 notification (unrelated to the present complaint) (*see* E176/2/1/4 of 14 September 2012, paragraphs 21-23). No other feature of the Chamber's decision or notification has had appellate scrutiny before the ECCC to date.

During proceedings before the Trial Chamber on 9 October 2012, the following remarks were made by Mr. IANUZZI (Transcript (draft), 9 October 2012, pages 25-30 (excerpts)):²

9 JUDGE CARTWRIGHT:

10 Thank you, President.

11 The Chamber is agreed that a question that is not based on some
12 material or Witness Statement in this Court, that cannot be
13 tested by the Court, is not admissible. Ideas, as you expressed
14 them are insufficient. The Court can operate only on evidence.
15 Consequently, if there is a prior Witness Statement that has been
16 heard and examined in this Court, or a document that has been put
17 before the Chamber, these are all viable basis' for putting a
18 question to a witness.

19

20 Instructions from an accused cannot be given much weight unless
21 the accused chooses not to exercise his right to remain silent
22 and makes himself available for questioning on that topic.
23 Consequently, any other questions are based on, in effect,
24 hypothesis which are unable to be appropriately tested and relied
25 upon in reaching a verdict. So Mr. Ianuzzi, if you wish to found
1 your question on some such material, then it can be put to the
2 witness. Otherwise, please move on.

3 MR. IANUZZI:

4 Thank you, Judge Cartwright.

5

6 I haven't been a lawyer for very long, but that certainly,
7 certainly sounds to me like an absolutely incorrect statement of
8 what's--

9 JUDGE CARTWRIGHT:

10 Mr. Ianuzzi, you have been told before--

11 MR. IANUZZI:

12 This is a live trial.

13 JUDGE CARTWRIGHT:

14 Mr. Ianuzzi--

15 MR. IANUZZI:

16 This is a live trial.

17 JUDGE CARTWRIGHT:

18 You have been told before you do not comment--

19 MR. IANUZZI:

20 We might as well have this trial on paper. We might as well have
21 it on paper. Where on earth, Judge Cartwright, did you find the
22 legal support for the ruling--

[...]

15 MR. IANUZZI:

16 Thank you, Mr. President. That was indeed my last question, and
17 perhaps I could just end by registering my agreement with Mr.
18 Richard Rogers, and I'm referring to the famous musician, not the
19 famous lawyer, "There's nothing like a dame." Thank you, Mr.
20 Witness.

Immediately prior to the lunch adjournment on the same day of proceedings, Mr. IANUZZI continued this theme (Transcript (draft), pages 57-58):

² Appended to this memorandum is the entirety of the relevant pages cited in this memorandum. Draft transcripts are available immediately at the conclusion of each day's proceedings. The draft transcript of hearing from 9 October 2012 is utilized in order to dispatch this complaint as soon as possible. Whilst minor syntactical or technical errors may be corrected in the final version of the transcript, the excerpts provided are nonetheless verbatim records of the proceedings.

19 Two other quick points. One just to clarify I misspoke
20 this morning the correct reference was Oscar Hammerstein not
21 Richard Rogers who panned those words. And of course this is from
22 south pacific 1949. And finally Nuon Chea - there's a pending
23 request that -

24

25 MR. PRESIDENT:

1 I think we have resolved this issue already and we heard your
2 case this morning. It is now time for lunch adjournment. Please
3 tell the Chamber what else would you need to address the Chamber.
4 However, for the time being you are not allowed to make any other
5 application other than the request relevant to your client.

In response to these remarks and at the conclusion of trial proceedings on that day, the Trial Chamber President made the following oral ruling (Transcript (draft), 9 October 2012, pages 110-111):

21 Since it is now appropriate time for the adjournment, the Chamber
22 will adjourn momentarily. Before this, the Chamber will have to
23 rule on the -- the behaviour of counsel Ianuzzi and now address
24 repeated insolent comments criticizing my rulings, those of the
25 Chamber, as well as the personal remarks made this morning by Mr.

1 Ianuzzi; one of Nuon Chea's international lawyers.

2 The personal remarks apparently quoting an American musical by
3 Rodgers and Hammerstein were expanded upon immediately before the
4 lunch adjournment and were personally insulting. Those comments
5 and the persistent questioning of the Chamber's rulings fall well
6 below the professional standards expected of any lawyer in this
7 or any other court. The Chamber has previously warned Mr. Ianuzzi
8 of this unacceptable behaviour. It will forward this complaint to
9 the Bar Association of which he is a member and will invite their
10 association to consider it together with the earlier complaint
11 made against him.

If you have further questions, or require additional information from the Trial Chamber, please address your enquiries to:

Susan Lamb (lamb@un.org)
Senior Legal Officer, Trial Chamber
Extraordinary Chambers in the Courts of Cambodia
PO Box 71
Phnom Penh
Cambodia

Encl.