

Judges dismiss Case 003 requests

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Judges at the Khmer Rouge tribunal have rejected calls for further investigation in the court's controversial third case, bringing it one step closer to what critics say is its long-planned dismissal.

In a decision dated yesterday, co-investigating judges Siegfried Blunk and You Bunleng dismissed the requests from British co-prosecutor Andrew Cayley on a technicality.

The judges announced the conclusion of their Case 003 investigation in April, though during the 20 months that the investigation was open, they failed to examine a number of alleged crime sites or even to question the suspects in the case.

Lacking support from Cambodian co-prosecutor Chea Leang, who has toed the government's line in opposing the court's third and fourth cases, Cayley therefore submitted a series of additional investigative requests last month, as he is permitted to do under court rules. In their ruling yesterday, however, the judges said these requests were invalid because Cayley had not formally registered a disagreement on the issue with Chea Leang ahead of his submission, nor had she formally delegated the task to him to undertake on his own.

"As both the National and the International Co-Prosecutor have confirmed that neither a delegation of power had taken place nor a disagreement had been recorded, the Co-Investigating Judges consequently rejected the requests from the International Co-Prosecutor," the judges said in a statement yesterday.

Observers have alleged over the past few months that the judges have deliberately botched their Case 003 investigation in the face of opposition to the case from Prime Minister Hun Sen and other officials. Cayley declined to comment on these allegations yesterday, though he affirmed that he would appeal the judges' decision.

"I think people are entitled to interpret the actions of the judges. They're entitled to make their own conclusions from the actions of the judges, but they can rest assured that I will fight on in this process," he said. "I have a very firm view on it. We will appeal all of this."

Yesterday's ruling marks the latest turn in the battle between Cayley and the investigating judges over the fate of Case 003. The suspects in the case remain officially confidential, though court documents reveal them as former KR navy commander Meas

Muth and air force commander Sou Met.

In lodging his requests to the judges last month, Cayley said Case 003 had “not been fully investigated”. The judges responded by ordering Cayley to retract his statement, accusing him of breaching the court’s confidentiality rules in what was effectively an attempt to censure him publicly.

Cayley has appealed this retraction order, calling it “an abuse of discretion” and “virtually unprecedented in the jurisprudence of courts dealing with cases of mass crime”.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said that with yesterday’s decision, the judges were “trying to kill [Case 003] on a technicality that they’ve invented for this purpose”.

In arguing that the prosecutors are obliged to formally register disagreements when they differ over a legal action, the judges relied on Rule 71(1) in the court’s internal rules, which reads in part: “In the event of disagreement between the Co-Prosecutors, either or both of them may record the exact nature of their disagreement in a signed, dated document”.

In the absence of such a registered disagreement, or of a decision by one prosecutor to delegate a legal action to the other, there is “no room for a solitary action by one Co-Prosecutor”, the judges said.

However, Heindel noted, parallel wording exists in Rule 71(2), which states that in the event of such a disagreement, prosecutors “may bring the disagreement before the Pre-Trial Chamber”. Despite the same use of the word ‘may’ as in Rule 71(1), the judges said there is “no obligation” for the prosecutors to bring disputes to the Pre-Trial Chamber.

“They’re trying to change the subject by being technical,” Heindel said. “I don’t think the legal reasoning is convincing.”

In addition to the investigative requests he made last month, Cayley also asked that the judges extend the deadline for victims to apply as civil parties in Case 003, particularly in view of the fact that the judges had provided almost no information to the public on the case during their investigation.

Although they rejected Cayley’s requests, the judges said in a statement late yesterday afternoon that they had decided “on their own motion” to recognise any civil party application submitted within three weeks of the original deadline on May 18. This new deadline falls today, however, giving prospective applicants little notice.

“The whole thing with the deadline and the secrecy of the cases – the whole thing is a mess,” said Ou Virak, president of the Cambodian Centre for Human Rights. “It indicates that they’re not paying attention to what’s at stake, and that’s justice for the victims.”