E169/1/2

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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

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

Before: **Judge KONG Srim, President**
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agniezska KLONOWIECKA-MILART
Judge SIN Rith
Judge Chandra Nihal JAYASINGHE
Judge YA Narin

Date: **24 December 2009**

Classification: **PUBLIC**

DECISION ON THE APPEALS FILED BY LAWYERS FOR CIVIL PARTIES (GROUPS 2 AND 3) AGAINST THE TRIAL CHAMBER'S ORAL DECISIONS OF 27 AUGUST 2009

Appellants – Lawyers for Civil Parties (Groups 2 and 3)
KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Annie DELAHAIE
Philippe CANONNE
Elizabeth RABESANDRATANA
Fabienne TRUSSES-NAPROUS
Christine MARTINEAU
KONG Pisey
HONG Kimsuon
YUNG Panith
Silke STUDZINSKY

Lawyers for Civil Parties (Groups 1 and 4)
TY Srinna
Pierre Olivier SUR
Alain WERNER
Brianne McGONIGLE
Karim KHAN

Accused
KAING Guek Eav alias 'DUCH'

Lawyers for the Defence
KAR Savuth
François ROUX
Marie-Paule CANIZARÈS

Co-Prosecutors
CHEA Leang
William SMITH (acting)

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia ("ECCC");

I. PROCEDURAL HISTORY AND PARTIES' SUBMISSIONS

1. The Supreme Court Chamber is seized of two appeals filed by the lawyers for Civil Parties Groups 2 and 3 against the oral decisions of the Trial Chamber in Case File No. 001/18-07-2007-ECCC/TC ("Appeals").

2. The Trial Chamber rendered two oral decisions on 27 August 2009, deciding by majority, Judge Lavergne dissenting, that Civil Parties would be barred both from making submissions relevant to sentencing and from posing questions to witnesses and to KAING Geuk Eav alias 'DUCH' ("Accused") concerning the character of the Accused (respectively, "Sentencing Decision" and "Character Decision").[1]

3. The lawyers for Civil Party Group 3 filed a notice of appeal against the Character Decision on 1 September 2009 with the Trial Chamber.[2] On 2 September 2009, they filed their appeal brief, arguing that the Character Decision impermissibly distinguished between Civil Parties and other parties by barring the former from asking questions related to the character of the Accused.[3]

4. The lawyers for Civil Party Group 2 filed an appeal brief on 16 September 2009 and a supplementary appeal brief on 28 October 2009 with the Trial Chamber, arguing that their appeal was admissible pursuant to Rule 104(4)(e) of the ECCC Internal Rules and that the Character and Sentencing Decisions were erroneous as a matter of law.[4]

5. The arguments of the lawyers for Civil Parties (Group 2 and 3) on the merit of both appeals are not summarized for the reasons stated below.

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[1] T., 27 August 2009, 42, 74.
[2] "CPG 3 – Notice of Appeal", original in French and Khmer filed on 1 September 2009 (Document E162).
[3] "CPG 3 – Appeal Brief against the Trial Chamber Decision of 27 August 2009", original in French and Khmer filed on 2 September 2009 (Document E162/2), attaching as annexes written authorisations from civil parties Lim Mony and Ouk Vasothin to file the Appeal as per Rule 106(4) of the ECCC Internal Rules (Document E162/2.1).
[4] "Appeal of Co-Lawyers for Civil Parties (Group 2) Against Trial Chamber's Decisions to Exclude Civil Party Lawyers from Questionning the Accused, Witnesses and Experts on the Accused's Character and to Exclude Civil Parties from Submissions on Sentencing", original in English and Khmer filed 25 September 2009 (Document E169 with annexes E169.1 through E169.5).

6. The Trial Chamber issued a written decision on 12 October 2009 detailing the basis for both the majority opinion and Judge Lavergne's dissenting opinion of the Sentencing and Character Decisions.[5]

7. The documents relevant to the Appeals were forwarded to the Supreme Court Chamber on 4 September 2009 and 6 October 2009 pursuant to Rule 108(2) of the ECCC Internal Rules.[6]

II. REASONING

8. The Supreme Court Chamber may determine immediate appeals on the basis of written submissions pursuant to Rule 109(1) of the ECCC Internal Rules.

9. The jurisdiction of the Supreme Court Chamber is governed by Rule 104 of the ECCC Internal Rules, subrule (1) of which allows for an immediate appeal against a decision of the Trial Chamber where it is based on "a discernible error in the exercise of the Trial Chamber's discretion which resulted in prejudice to the appellant".

10. Rule 104(4) of the ECCC Internal Rules further limits immediate appeals to the following Trial Chamber decisions:

> a) decisions which have the effect of terminating the proceedings;
> b) decisions on detention and bail under Rule 82;
> c) decisions on protective measures under Rule 29(4)(c);
> d) decisions on interference with the administration of justice under Rule 35(6); and
> e) decisions declaring the application of a civil party inadmissible under Rule 23(4).
> Other decisions may be appealed only at the same time as an appeal against the judgment on the merits. [...]

11. Neither the Sentencing nor the Character Decision can be construed as declaring the application of a civil party inadmissible under Rule 23(4) of the ECCC Internal Rules.

12. The Sentencing and Character Decisions thus clearly fall outside the scope of Rule 104(4) of the ECCC Internal Rules. They can therefore be appealed only at the same time as an appeal against the judgment on the merits.[7]

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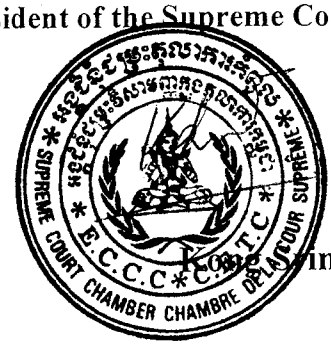
[5] "Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Parties to Make Submissions on Sentencing and Directions Concerning the Questionning of the Accused, Witnesses and Witnesses Testifying on Character", filed 12 October 2009 (Document E72/3).
[6] "Appeal Register (Document E162)", filed 4 September 2009 (Document E162/1); "Appeal Register (Document E169)", filed 6 October 2009 (Document E169/1).
[7] Rule 104(4) of the ECCC Internal Rules.

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER FINDS the Appeals inadmissible pursuant to Rule 104(4) of the ECCC Internal Rules and **REJECTS** them accordingly.

Phnom Penh, 24 December 2009
President of the Supreme Court Chamber



Kong Srim