



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

United Nations Administrative Judge

Case File/Dossier N°. 004/07-09-2009-ECCC/OCIJ

**Before: Judge Chandra Nihal JAYASINGHE**

**Date: 23 May 2013**

**Language(s): English**

**Classification: [REDACTED] PUBLIC REDACTED**

**DECISION ON MOTION REQUESTING ORDER FOR REIMBURSEMENT OF COSTS**

**Co-Lawyer for [REDACTED] E**  
[REDACTED] A

**UNAKRT Coordinator**  
[REDACTED]

**Chief of Defence Support Section**  
[REDACTED] B

1. **I, Judge Chandra Nihal JAYASINGHE**, United Nations Administrative Judge of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“ECCC”) pursuant to Section F, paragraph 12 of the of the Guide to the ECCC Legal Assistance Scheme (“LAS”) and paragraph 11 of the ECCC Legal Services Contract (“LSC”), am seized of the “Motion Requesting Order for Reimbursement of Costs Incurred for Trip to Visit Suspect and for Provision of Funds for Future Visits” filed on 22 March 2013 by the International Co-Lawyer for ██████████ E, Mr. A ██████████ (“Motion”).

### **BACKGROUND**

2. On 8 January 2013, Mr. A ██████████ submitted a Form 27 Memorandum to the Chief of the Defence Support Section (“DSS”), Mr. B ██████████, requesting authorization to travel to ██████████ on 18 and 19 January 2013 (“January Visit”) for the purpose of updating Mr. E ██████████ of developments in his case.<sup>1</sup> The Form 27 Memorandum specified that the estimated cost of the trip, including car rental and daily subsistence allowance (“DSA”) for four members of Mr. E ██████████’s defence team, would amount to \$480.00USD.<sup>2</sup>
3. On 10 January 2013, Mr. B ██████████ indicated that DSS approval is not required for similar travel within Cambodia, as it is already covered by the “monthly expense payments” received by all Co-Lawyers pursuant to Section C, paragraphs 1 and 2 of the LAS.<sup>3</sup> He further indicated that he would be unable to authorize the reimbursement of any costs to be incurred on the planned trip, stating that the “monthly expense payments” precisely cover those types of costs.<sup>4</sup> Mr. B ██████████ also stated that, pursuant to Section H, paragraph 8 of the LAS, “DSS does not pay any DSA”.<sup>5</sup>
4. On the same day, Mr. A ██████████ requested that Mr. B ██████████ reconsider his decision on the grounds that it was in violation of Mr. E ██████████’s right to counsel and inconsistent with two previous decisions on expenses occasioned by two prior visits to Mr. E ██████████.<sup>6</sup> Mr. A ██████████ also informed Mr. B ██████████ of his intention to advance the expenses of the January Visit to form part of his fee claim for January 2013, and to take the matter before an administrative judge should Mr. B ██████████ maintain his position.<sup>7</sup>
5. On 11 January 2013, Mr. B ██████████ formally rejected Mr. A ██████████’s request for reconsideration, explaining that his previous decisions authorizing the reimbursement of expenses incurred by visits to Mr. E ██████████ were based on the fact that those visits were made at

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<sup>1</sup> Attachment 5, Form 27 Memorandum, 8 January 2013 (“Form 27 Memorandum”).

<sup>2</sup> Form 27 Memorandum, para. 8.

<sup>3</sup> Attachment 22, Memorandum from Mr. B ██████████ to the Co-Lawyers for Mr. E ██████████, entitled “Your Request for Travel Authorization”, 10 January 2013 (“10 January 2013 Memorandum”).

<sup>4</sup> 10 January 2013 Memorandum, paras. 2-3.

<sup>5</sup> 10 January 2013 Memorandum, para. 2.

<sup>6</sup> Attachment 27, Electronic mail from Mr. A ██████████ to Mr. B ██████████, entitled “RE: Memo – Travel Request”, sent on 10 January 2013 at 03:54PM (“10 January 2013 Email”).

<sup>7</sup> 10 January 2013 Email.

Mr. B [REDACTED]'s behest or because of "exceptional circumstances".<sup>8</sup> Mr. B [REDACTED] added that he saw no exceptional circumstances in the instant case to justify the reimbursement of the travel costs requested.<sup>9</sup>

6. On 7 February 2013, Mr. A [REDACTED] filed a 'Form 24: Fees Claim' for January 2013, which included a claim for \$562.90USD arising from the January Visit, in addition to his "regular" monthly expense payment of \$500.00USD.<sup>10</sup> On the same day, Mr. A [REDACTED] also filed a 'Form 22: Pre-Trial Preparation Timesheet', in which he confirmed that on 18 January 2013, he spent seven hours preparing to meet his client, and that on 19 January 2013, he spent three hours meeting his client.<sup>11</sup>
7. On 19 February 2013, Mr. B [REDACTED] sent the 'Form 28: Fee Claim Decision' to Mr. A [REDACTED], in which he, *inter alia*, rejected the \$562.90USD claim for the January Visit.<sup>12</sup> On 28 February 2013, Mr. A [REDACTED] requested that Mr. B [REDACTED] review his decision to refuse payment of expenses for the January Visit,<sup>13</sup> a request which Mr. B [REDACTED] denied on 6 March 2013 ("Review Decision").<sup>14</sup>
8. On 13 March 2013, Mr. A [REDACTED] sent a letter to the United Nations Assistance to the Khmer Rouge Trials ("UNAKRT") Coordinator, [REDACTED], requesting the appointment of a United Nations Administrative Judge pursuant to paragraph 11 of the LSC.<sup>15</sup> On 19 March 2013, the UNAKRT Coordinator [REDACTED] nominated and appointed me to hear and decide upon the dispute in accordance with Section F, paragraphs 12 to 20 of the LAS.<sup>16</sup>

### APPLICABLE LAW

9. The LAS provides, in relevant part, as follows:

#### **B FEES FOR CO-LAWYERS**

[...]

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<sup>8</sup> Attachment 26, Electronic mail from Mr. B [REDACTED] to Mr. A [REDACTED], entitled "RE: Memo – Travel Request", sent on 11 January 2013 at 09:25AM ("11 January 2013 Email").

<sup>9</sup> 11 January 2013 Email.

<sup>10</sup> Attachment 3, Form 24: Fees Claim, 7 February 2013.

<sup>11</sup> Attachment 4, Form 22: Pre-Trial Preparation Timesheet, 7 February 2013.

<sup>12</sup> Attachment 2, Form 28: Fee Claim Decision for January 2013, 19 February 2013.

<sup>13</sup> Attachment 20, Letter from Mr. A [REDACTED] to Mr. B [REDACTED], entitled "Notice of Review / January Fee Claim", 28 February 2013.

<sup>14</sup> Attachment 19, Memorandum from the Mr. B [REDACTED] to Mr. A [REDACTED], entitled "RE: Your Request for Review of Your January 2013 Travel Claim", 6 March 2013.

<sup>15</sup> Attachment 18, Letter from Mr. A [REDACTED] to the UNAKRT Coordinator [REDACTED], entitled "Re: Appointment of United Nations Administrative Judge", 13 March 2013.

<sup>16</sup> Attachment 17, Letter from the UNAKRT Coordinator [REDACTED] to Judge JAYASINGHE, Reference: L002/DDOA/19-03-2013, 19 March 2013.

9 *Cost of living.* Daily Subsistence Allowance (DSA) is not paid to staff members or consultants at the ECCC. [...]

[...]

## **C EXPENSES FOR CO-LAWYERS**

1 There are a number of incidental costs that arise in the course of defending a large criminal case. In order to simplify the process a flat rate is paid to each of the Co-Lawyers at the rate of \$250 a month for Cambodian Co-Lawyers and \$500 a month for foreign Co-Lawyers. The fee is paid every month, no matter how much work is done on the case. It will not be possible to pay any other expenses. It is often much easier for the individual lawyers to purchase things using their expenses rather than to utilise the UN procurement procedures, which can take many months for a simple task.

2 This fee includes, but is not limited to, the following expenses:

- Transport in Cambodia, including the cost of a driver, except authorised investigative travels that can be claimed under Section H
- Visa costs
- Departure tax
- Phone calls outside the DSS office (phone calls on the DSS phones are separately budgeted)
- Internet outside the DSS office
- Books
- Investigation costs, except those that can be claimed under Section H

[...]

## **F FEE CLAIMS**

[...]

### **Fee Claim**

6 Co-Lawyers may claim their fees on a monthly basis by completing Form 24: Fees Claim, indicating the total number of hours or days claimed together with the fee claimed. [...]

[...]

8 The DSS will review the claim. [...]

9 The DSS will issue a Fee Claim decision indicating the amount that has been paid and giving reasons where the entire fee claimed was not paid.

[...]

### **Request for Review**

11 If a Co-Lawyer is not satisfied with the Fee Claim Decision then they may request a review by the Head of the DSS. The Co-Lawyer should write to the Head of the

DSS with a full explanation and sufficient documents to support the request for review. The Head of the DSS will issue a written response to the request.

### **Appeal**

12 Where a Co-Lawyer is dissatisfied with the Review Decision of the Head of the Defence Support Section there is an appeal to the UN Administrative Judge.

13 The appeal must be filed with the Judge within 14 days of the receipt of the DSS Review Decision. The appeal must be in writing and must specify separately each item appealed against, showing (where appropriate) the amount originally claimed, the amount determined by the DSS and the grounds of objection to the determination.

## **SUBMISSIONS**

### ***A. Admissibility***

10. Mr. A [REDACTED] submits that the Request is admissible pursuant to Section F, paragraph 13 of the LAS as an appeal against the Review Decision, or in the alternative, as a “non-fees dispute” under paragraph 11.1 of the LSC,<sup>17</sup> which provides as follows:

**Non-Fees Disputes.** Except for disputes relating to the payment of fees claimed under Paragraph 9 of this Contract, any dispute, controversy or claim between the Parties relating to the terms and conditions of this Contract shall be resolved amicably between the Contracting Co-Lawyer and the Head of the DSS. In the event that the Parties are unable to settle such dispute, controversy or claim amicably within 60 days, each Party may refer such dispute, controversy or claim to the international judge nominated by the Coordinator of UNAKRT as the UN Administrative Judge.

11. Mr. B [REDACTED] makes no submissions as regards the admissibility of the Motion.<sup>18</sup>

### ***B. Merits***

12. Mr. A [REDACTED] submits that the fixed monthly expense payment rate is insufficient to meet the additional costs which arise from making regular visits to clients, as well as other incidental costs.<sup>19</sup> He contends that the provisions of the LAS do not adequately take into account the situation of a suspect who is at liberty and does not reside in close proximity to the seat of the ECCC, a distance which in Mr. E [REDACTED]'s case is in excess of [REDACTED] kilometers.<sup>20</sup>

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<sup>17</sup> Motion, paras. 14-15.

<sup>18</sup> I note, however, that in an email to Mr. A [REDACTED] dated 7 March 2013, Mr. B [REDACTED] expressed the view that “the instant case does not involve a fee dispute” but rather an “expense claim” because he does not dispute that he was paid his legal fees in full for the month of January 2013. Mr. B [REDACTED] further expressed that expense claims can only be reimbursed “if they received prior approval from DSS”, which he reiterated that, in the present case, they did not. See Attachment 24, Electronic mail sent from Mr. B [REDACTED] to Mr. A [REDACTED], entitled “Antw: fee decision review”, sent on 7 March 2013 at 03:08PM.

<sup>19</sup> Motion, paras. 21-23.

<sup>20</sup> Motion, paras. 22-23, 28.

Mr. A ██████ argues that Mr. B ██████'s failure to apply the provisions of the LAS with flexibility thereby compromises Mr. E ██████'s right to legal assistance.<sup>21</sup>

13. In addition, Mr. A ██████ submits that Mr. B ██████'s previous decisions as regards the reimbursement of expenses appear to be arbitrary, "without any basis in law [and] [...] without any heed paid to the rights of the Suspect or the guiding principles of the LAS".<sup>22</sup> Mr. A ██████ further contends that financial difficulties at the ECCC ought not to be used as a justification for decisions which compromise the right to a fair trial.<sup>23</sup>
14. Mr. A ██████ accordingly requests that I order Mr. B ██████ to reimburse him for the January Visit, and to apply the LAS with sufficient flexibility in the future so as to allow monthly visits to Mr. E ██████.<sup>24</sup>
15. Mr. B ██████ makes no written submissions as to the merits of the Motion.

## DISCUSSION

### *A. Admissibility*

16. The dispute in question is whether the costs incurred for the January Trip may be included as part of Mr. A ██████'s legal fees for January 2013. Upon Mr. B ██████'s issuance of the Fee Claim Decision denying reimbursement of such costs as part of his fee claim, Mr. A ██████ requested a review thereof, which was denied in the Review Decision. The Motion's admissibility therefore clearly arises pursuant to Section F, paragraph 12 of the LAS and paragraph 11.3 of the LSC, which provide for Mr. A ██████'s right to appeal the Review Decision, with which he is dissatisfied, to a United Nations Administrative Judge. Accordingly, Mr. A ██████'s submission that, in the alternative, his Request is admissible as a "non-fees dispute" pursuant to paragraph 11.1 of the LSC will not be addressed.

### *B. Merits*

17. According to Section F, paragraph 19 of the LAS,<sup>25</sup> I am not required to provide reasons for this decision, the dispute involving less than \$1000.00USD. However, I have decided to provide reasons if and to the extent necessary to address Mr. A ██████'s arguments.
18. Pursuant to Section C, paragraph 1 of the LAS, Mr. A ██████ receives a fixed monthly payment of \$500.00USD for incidental costs that arise in the course of defending a large criminal case. Section C, paragraph 1 of the LAS is clear that no "other expenses" will be paid. In signing the LSC, Mr. A ██████ agreed to be bound by this and other provisions of

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<sup>21</sup> Motion, paras. 17-9, 22-24.

<sup>22</sup> Motion, para. 25.

<sup>23</sup> Motion, para. 26.

<sup>24</sup> Motion, para. 30.

<sup>25</sup> Section F, paragraph 19 of the LAS provides that "[t]he [United Nations Administrative] Judge is only required to provide reasons for the decision in disputes involving amounts of over \$1,000."

the LAS, as well as all other DSS administrative regulations.<sup>26</sup> Mr. A [REDACTED] nevertheless now seeks payment of “other expenses”.

19. However, I am not persuaded by Mr. A [REDACTED]’s submission that the fact that Mr. E [REDACTED] does not have a phone or a computer with internet connection means that a visit on the ground is the only way of being in touch with him and of taking his instructions.<sup>27</sup> In my opinion, the monthly expense payments of \$500.00USD and \$250.00USD to International and National Co-Lawyers, respectively, are to be appropriated in a manner they deem fit.<sup>28</sup> Denial of this Motion does not in any way infringe Mr. E [REDACTED]’s right to counsel. These fees are paid every month, “no matter how much work is done on the case”.<sup>29</sup> In any event, the reimbursement of the expenses incurred during these trips has not been authorized by the Head of the DSS.
20. As such, I am of the view that Mr. B [REDACTED]’s application of the provisions of the LAS, and his decision to refuse reimbursement for the expenses accrued from the January Visit in addition to the monthly expense payment Mr. A [REDACTED] regularly receives, were not unreasonable. Mr. A [REDACTED]’s requests for reimbursement and an order for a more flexible future application of the LAS by Mr. B [REDACTED] are accordingly denied.

#### **DISPOSITION**

21. For the foregoing reasons, I **ADMIT** the Motion and **DENY** it on the merits.

Phnom Penh, 23 May 2013  
United Nations Administrative Judge



Judge Chandra Nihal JAYASINGHE

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<sup>26</sup> See paragraph 9.1 of the LSC.

<sup>27</sup> Motion, para. 21.

<sup>28</sup> See Section C, paragraphs 1 and 2 of the LAS.

<sup>29</sup> Section C, paragraph 1 of the LAS.