

**UNITED NATIONS ADMINISTRATIVE JUDGE**

**Case File:** 004/07-09-2009-ECCC/OCIJ  
**Before:** Judge Chandra Nihal JAYASINGHE  
**Greffier:** Sheila PAYLAN  
**Date:** 4 February 2014  
**Language:** English  
**Classification:** PUBLIC

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**PUBLIC REDACTED VERSION**

**DECISION RELATING TO WITHDRAWAL OF ADMINISTRATIVE APPEAL**

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

**UNAKRT Coordinator**  
[REDACTED]

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

**I, Chandra Nihal JAYASINGHE**, Judge of the Supreme Court Chamber 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”);

**NOMINATED** by the Coordinator of the United Nations Assistance to the Khmer Rouge Trials (“UNAKRT Coordinator”) on 29 November 2013 as the United Nations Administrative Judge (“UNAJ”) pursuant to a request made under Section F, paragraph 12 of the of the Guide to the ECCC Legal Assistance Scheme and paragraph 11 of the ECCC Legal Services Contract by [REDACTED], the International Co-Lawyer for [REDACTED], a Suspect in Case 004 (“Request for UNAJ Appointment” and “Co-Lawyer”, respectively),<sup>1</sup> “to hear an appeal against a decision of the Chief of [the] Defen[c]e Support Section dated 24 October”;<sup>2</sup>

**NOTING** that the Request for UNAJ Appointment is based on the Co-Lawyer’s desire to appeal a decision of the Chief of the Defence Support Section (“DSS”) refusing to pay for the costs of a flight by the Co-Lawyer to Cambodia from 24 April to 10 May 2013;<sup>3</sup>

**NOTING** that, on 15 December 2013, the Co-Lawyer decided to withdraw his “appeal” related to his April/May flight to the ECCC;<sup>4</sup>

**NOTING** that the Chief of DSS accepts and adopts the Co-Lawyer’s chronology of events leading up to the Request for UNAJ Appointment,<sup>5</sup> and requests that “should [I] be minded to grant [the Co-Lawyer]’s request for the withdrawal of his appeal, [I] may consider issuing a reasoned, written Decision on the matter”;<sup>6</sup>

**NOTING** further that, in response, the Co-Lawyer “object[s] to a decision-making process after the withdrawal of the appeal”;<sup>7</sup>

**RECALLING** the observation of the Pre-Trial Chamber that:

[T]he Internal Rules do not address the issue of the withdrawal of an appeal or discontinuation of proceedings by a party. The Cambodian Code of Criminal Procedure similarly does not provide direct guidance on the issue. However, the Pre-Trial Chamber notes that in practice, Cambodian Courts accept that an appellant has the right to withdraw his/her appeal before the closing of the debate between the parties. This

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<sup>1</sup> Letter from the Co-Lawyer to the UNAKRT Coordinator entitled “Re: Request for Appointment of United Nations Administrative Judge”, dated 24 October 2013.

<sup>2</sup> Letter from the UNAKRT Coordinator to Judge JAYASINGHE, dated 29 November 2013.

<sup>3</sup> Request for UNAJ Appointment, para. 1.

<sup>4</sup> Electronic mail sent from the Co-Lawyer to Judge JAYASINGHE entitled “withdrawal appeal”, sent on 15 December 2013 at 04:07AM.

<sup>5</sup> Memorandum from the Chief of DSS to the UNAKRT Coordinator entitled “Re: Response to the Request for the Appointment of a United Nations Administrative Judge”, dated 28 October 2013, para. 3.

<sup>6</sup> Electronic mail sent from the Chief of DSS to Judge JAYASINGHE entitled “Re: withdrawal appeal”, sent on 18 December 2013 at 10:11AM.

<sup>7</sup> Electronic mail sent from the Co-Lawyer to Judge JAYASINGHE entitled “Re: withdrawal appeal”, sent on 18 December 2013 at 10:44AM.

also appears to be the practice followed by international and internationalized tribunals.<sup>8</sup>

**CONCURRING** with the conclusion of the Pre-Trial Chamber that “a party has a right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties”;<sup>9</sup>

**CONSIDERING** that, without a formal appeal filed before me, the debate between the parties had not yet commenced at the time that the Co-Lawyer withdrew his “appeal”;

**FINDING** that, in the absence of any further controversy in this matter, I lack jurisdiction to rule on the merits of this case;

**DISMISS** the matter as moot.

**Phnom Penh, 4 February 2014**  
**United Nations Administrative Judge**



**Judge Chandra Nihal JAYASINGHE**

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<sup>8</sup> Decision relating to Notice of Withdrawal of Appeal, 16 October 2008, C26/I/31 (“Pre-Trial Chamber Decision”), para. 10, *and references cited therein*.

<sup>9</sup> Pre-Trial Chamber Decision, para. 11.