

អុខ្ពស់ខ្ពស់ខ្មែរ និសាធញ្ញាតួខត្តសាភារកម្ពស

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

್ಟರೀಬರುಯಾದ ಚಿಜ್ಜನ್ನು ಮ ಮುತ್ತು ಬಾಳಾಬಳಿಗೆ ಬಿಜ್ಜನ್ನು ಬಿಜ್ಜನ್ನು

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

United Nations Administrative Judge

Case File/Dossier No. 004/07-09-2009-ECCC/OCIJ

Before: Judge Chandra Nihal JAYASINGHE

Date: 23 May 2013

Language(s): English
Classification: PUBLIC REDACTED

DECISION ON MOTION REQUESTING ORDER FOR REIMBURSEMENT OF COSTS

Co-Lawyer for E

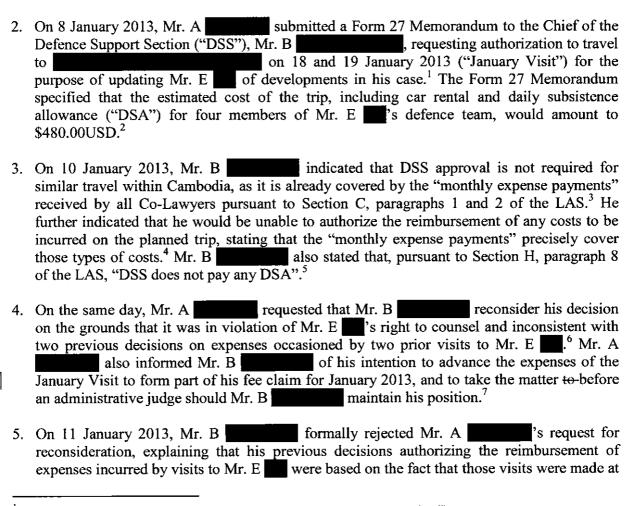
UNAKRT Coordinator

Chief of Defence Support Section

В

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

BACKGROUND



¹ Attachment 5, Form 27 Memorandum, 8 January 2013 ("Form 27 Memorandum").

² Form 27 Memorandum, para. 8.

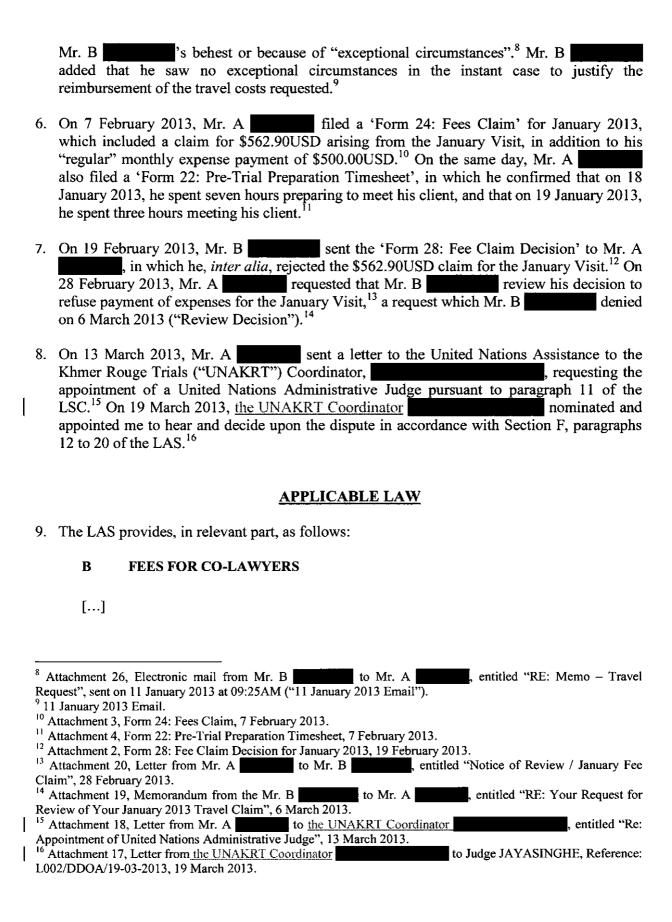
³ Attachment 22, Memorandum from Mr. B to the Co-Lawyers for Mr. E , entitled "Your Request for Travel Authorization", 10 January 2013 ("10 January 2013 Memorandum").

⁴ 10 January 2013 Memorandum, paras. 2-3.

⁵ 10 January 2013 Memorandum, para. 2.

⁶ 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").

⁷ 10 January 2013 Email.



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

[...]

C EXPENSES FOR CO-LAWYERS

- 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.
- 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 <u>Form 24:</u> <u>Fees Claim</u>, 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

- 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.
- 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 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, ¹⁷ 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 makes no submissions as regards the admissibility of the Motion. 18

B. Merits

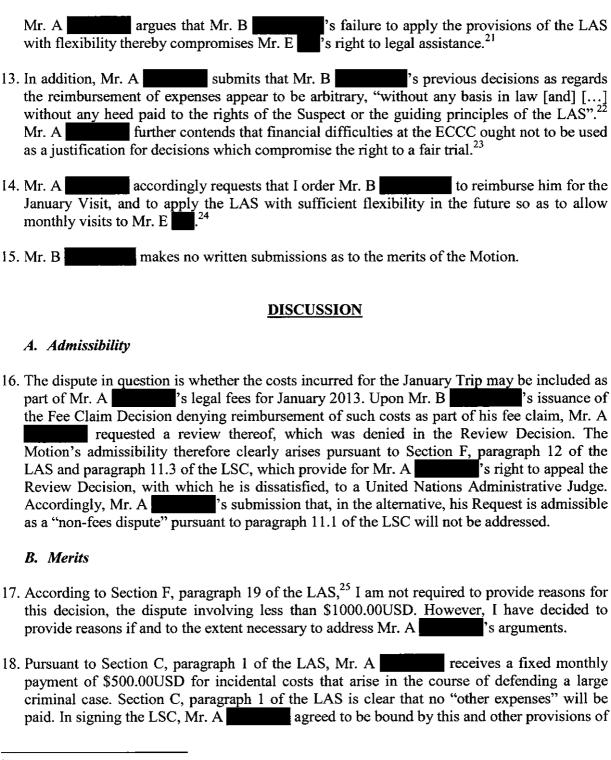
12. Mr. A submits that the fixed monthly expense payment rate is insufficient to meet the additional costs which arise from making regular visits to clients, as well as other incidental costs. ¹⁹ He contends that the provisions of the LAS do not adequately take into account the situation of a suspect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

¹⁷ Motion, paras. 14-15.

Inote, however, that in an email to Mr. A dated 7 March 2013, Mr. B 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 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 to Mr. A service, entitled "Antw: fee decision review", sent on 7 March 2013 at 03:08PM.

¹⁹ Motion, paras. 21-23.

²⁰ Motion, paras. 22-23, 28.



²¹ Motion, paras. 17-9, 22-24.

²² Motion, para. 25.

²³ Motion, para. 26.

²⁴ Motion, para. 30.

²⁵ 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.²⁶ Mr. A nevertheless now seeks payment of "other expenses". 19. However, I am not persuaded by Mr. A submission that the fact that Mr. E 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.²⁷ 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.²⁸ Denial of this Motion does not in any way infringe Mr. E ** 's right to counsel. These fees are paid every month, "no matter how much work is done on the case". 29 In any event, the reimbursement of the expenses incurred during these trips has not been authorized by the Head of the DSS. 's application of the provisions of the LAS, 20. As such, I am of the view that Mr. B and his decision to refuse reimbursement for the expenses accrued from the January Visit in regularly receives, were not addition to the monthly expense payment Mr. A 's requests for reimbursement and an order for a more flexible unreasonable. Mr. A unreasonable. Mr. A ______'s reques future application of the LAS by Mr. B 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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²⁶ See paragraph 9.1 of the LSC.

²⁷ Motion, para. 21.

²⁸ See Section C, paragraphs 1 and 2 of the LAS.

²⁹ Section C, paragraph 1 of the LAS.