

Civil party ruling sets "worrying precedent"

Written by

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* First, on July 1st, the Judges of the Pre-Trial Chamber issued a decision that civil parties represented by counsel may not speak in person during pre-trial appeals and only through their legal representatives.□ Second, on July 2nd, the very same Judges eroded the right of victims to participate directly further still by ruling that unrepresented parties may not make oral submissions during pre-trial appeals.□ For victims' rights advocates, this week's decisions have come as a surprise.

* Undoubtedly, the civil party raised an important issue with respect to the ability of civil parties to participate directly.□ Rule 23(7) lays down a clear general principle that civil parties may participate without a legal representative.□ In refusing her request, the Judges relied on Rule 77(10), which provides that, in pre-trial appeals, "the Co-Prosecutors and the lawyers for the parties may present brief observations."□ This provision, however, clearly contradicts the general principle in Rule 23(7) and constitutes, most likely, a failure by the drafters to anticipate the participation of unrepresented civil parties.□ Thus, the refusal of the unrepresented civil party's right to speak for herself was not in accordance with the Rules.□

* Inevitably, the scheme for civil party participation will remain chaotic unless the Judges take the initiative to streamline it.□ As pointed out in the Co-Lawyers' Joint Submissions of February 22nd, the expediency of proceedings may be compromised if the number of civil parties increases.□ In its Decision of March 20th, the Pre-Trial Chamber refused to provide guidance in the event of such, as it "cannot speculate on facts that may or may not be presented to it in the future..." (para. 48).□ As the number of civil parties has increased and additional groups of lawyers are expected to join the proceedings, the Rules and Procedure Committee should adopt a practice direction providing precise guidelines on participation.

* The ramifications of these decisions will extend not only to future proceedings before the ECCC, but may affect the models adopted for victim participation in future internationalized tribunals.□ As the civil party procedure remains in its nascent stage, the parties and Chambers alike should give greater consideration to the impact of their decisions to ensure maximum civil party participation and the expediency of proceedings.