

Duch trial won't start before December

Written by

Saturday, 04 October 2008 01:43



The trial of "Comrade Duch," which was initially expected to begin in late September, will not start before a recently-scheduled Dec. 5 appeal hearing.

On that date, the court will hand down its decision on the Co-Prosecutors' appeal of the indictment that will send Duch to trial. The prosecutors appealed the indictment, which was filed in August, because they say it limits the modes of the Duch's liability.

Perhaps most controversially, they want the former Tuol Sleng chief held accountable under the theory of Joint Criminal Enterprise (which exists when two or more people participate in a common criminal endeavor, sharing a common criminal purpose.) The prosecutors and Duch's attorneys had requested the issue be decided based on written submissions alone out of concern the appeal would significantly delay the start of Duch's trial.

But lawyers for Ieng Sary recently requested the issue be [hashed out in a oral hearing](#) given its complexity.

The court appears to have created a compromise of sorts. While judges will decide the issue without an oral hearing, they have requested extensive legal opinions from several international criminal law experts.

Professor Antonio Cassese, editor-in-chief of the *Journal of International Criminal Justice*; German professor Kai Ambos and the McGill University Center for Human Rights and Legal Pluralism have until Oct. 27 to submit their briefs, according to court spokeswoman Helen

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Jarvis.

"It's a complex issue and clearly sensible minds can come to different opinions," Jarvis said, referring to the disagreement between the Co-Prosecutors' wishes and the Co-Investigating Judges' indictment. "If it didn't come up now, it would come up with the next case."

Dec. 5 may seem like a ways in the future, but Jarvis explained the experts will first have to craft their opinions, which will be translated and then studied by the judges. Once the judges muddle through the issues and render an opinion -- or opinions -- that complicated work will also have to be translated.

While it is certainly a disappointment that Duch's trial will not be starting sooner, once I began looking more into the issue of JCE, I suspected the court may need more time to address the issue. It is a controversial and multi-faceted charge.

Jarvis said the Trial Chamber will make an announcement early next week about when it plans to open sessions. Hopefully the judges can craft their schedule to begin as soon as possible after the Dec. 5 decision.

* *Pictured: Comrade Duch. Photo courtesy of Radio Australia.*