

KINGDOM OF CAMBODIA
Nation Religion King

The Constitutional Council

CASE

N° 085/008/2004

Of September 17, 2004

Decision

N° 063/005/2004 CC.D

Of October 06, 2004

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia of 1993;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 on the Organization and the Functioning of the Constitutional Council;
- Seen the letter of September 17, 2004 from the 13 deputies requesting the Constitutional Council to examine the constitutionality of the Article 63 of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period”;

Having heard the rapporteur,

Having deliberated in compliance with the law,

- Whereas the letter of September 17, 2004 from the 13 deputies to the President of the Constitutional Council, requesting the Constitutional Council to review the constitutionality of the Article 63 of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period,” which was received by the Secretariat General of the Constitutional Council at 14:20 on the same day; that the number of 13 deputies is sufficient to fulfill the conditions of the Article 141N of the Constitution; that, the Constitutional Council can therefore examine this request in accordance with the Articles 136N and 141N of the Constitution and the Articles 15 and 18 of the law on the Organization and the Functioning of the Constitutional Council promulgated by Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998;
- Whereas the request of the 13 deputies raised the question on the defamation and libel stipulated in the Article 63 of “the provision on judiciary criminal law and procedure applicable in Cambodia during the transitional period” adopted by the Supreme National Council of Cambodia (SNC) since September 10, 1992; that the 1993 new Constitution adopted by the Constituent Assembly grants the

parliamentary immunity to the members of the National Assembly as stipulated in the Article 80 “*The deputies shall enjoy the parliamentary immunity. No assembly member shall be prosecuted, arrested kept in custody or detained because of opinions expressed during the exercise of his (her) duties...*”; that this is the reason why the 13 deputies requested the Constitutional Council to examine the constitutionality of the Article 63 of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period” in relation with the Article 80 of the Constitution of the Kingdom of Cambodia on the parliamentary immunity;

- Whereas all deputies shall enjoy parliamentary immunity which preserve them from their concern of the Executive or Judicial Powers’ abuse; however, this immunity shall have its limits;
- Whereas any deputy cannot exercise their parliamentary immunity to undermine the rights of others (the Article 31 of the Constitution) or to commit criminal offences;
- Whereas according to the Articles 31, 38, 39, and 41 of the Constitution and the Article 63 on the defamation and libel of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period” consisting of 5 paragraphs does not contain any point contrary to the Constitution;
- Whereas the Article 158N (article 139 Old) of the Constitution stipulated that “*All Laws and all other normative acts in Cambodia that safeguard State properties, rights, freedom and legal private properties and in conformity with the national interests, shall continue to be enforced until amended or abrogated by new texts, except the provisions that are contrary to the spirit of this Constitution.*”; that therefore, based on the substance of the Article 158N (the Article 139 Old) of the Constitution, the Article 63 on defamation and libel of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period” consisting of 5 paragraphs remains enforced given that there has been no new legal texts amending or abrogating the provision of this article;

Decides:

Article 1: The Article 63 (containing 5 paragraphs) of “the provision relating to the judiciary criminal law and procedure applicable in Cambodia during the transitional period” on defamation and libel is declared in compliance with the Constitution.

Article 2: The decision made in the plenary session of the Constitutional Council in Phnom Penh on October 06, 2004 shall be final without recourse, shall have

authority over all the instituted powers as stipulated in the Constitution and shall be published in the “Journal Officiel”.

Phnom Penh, October 06,2004

For the Constitutional Council

The President

Signed and Sealed

BIN CHHIN