

**KINGDOM OF CAMBODIA**  
**Nation Religion King**

**The Constitutional Council**

**CASE**

N°:118/018/2006

Of November 24, 2006

**Decision**

N°: 089/016/2006 CC.D

Of December 13, 2006

**The Constitutional Council**

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 on the Organization and Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/1006/025 of October 21, 2006 on the promulgation of the Law on the Status of the Members of the National Assembly;
- Seen the letter N° សន្តិ/កិរិយ/06/99 of November 24, 2006 of the 14 Members of the National Assembly requesting the Constitutional Council to review the constitutionality of the Article 4 of the Law on the Status of the Members of the National assembly so that it be declared unconstitutional, letter received by the Secretariat General of the Constitutional Council on November 24, 2006 at 09:30 A.M;

**Having heard the rapporteur,**

**Having deliberated in compliance with the law,**

- Whereas the subject of the letter from the 14 Members of the National Assembly implies in substance an order because of its wording: “...*review the Article 4 of the Law on the Status of Members of the National Assembly so that it be declared unconstitutional*”;
- Whereas the reference of the Article 140 (N) in the letter N° សន្តិ/កិរិយ/06/99 of November 24, 2006 of the 14 Members of the National Assembly is not relevant because the Law on the Status of Members of the National Assembly has already been promulgated by Preah Reach Kram N° NS/RKM/1006/025 of October 21, 2006;
- Whereas the substance of the letter N° សន្តិ/កិរិយ/06/99 dated November 24, 2006 of the 14 Members of the National Assembly reads “ ... *we have already seen the response of the Constitutional Council on November 10, 2006 concerning the Article 5 of the law by affirming that the Article is not unconstitutional. We regret that the Constitutional Council has not also reviewed the Article 4 which shows that it is irrefutably unconstitutional, as it is much easier to understand.*” In principle and according to its own jurisprudence since 1998, the Constitutional Council cannot review any problem by its own initiative, unless there is a request

from officials stipulated in the Article 140 (N) paragraph 1 of the Constitution or from the people provided for in the Article 141 (N) paragraph 2 of the Constitution;

- Whereas the Constitutional Council can, despite some problems, examine the request of the 14 Members of the National Assembly within the framework of the Article 141 (N) of the Constitution and the Article 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 parliamentary immunity is not the immunity of Members of the National Assembly, but a guarantee granted to the National Assembly in order to proceed with efficiency and without obstacle. With this immunity granted to the National Assembly, each Member of the National Assembly shall not be prosecuted, arrested, or detained because of his/her opinion or vote while performing his/ her duty at the National Assembly. However, this exemption from endorsing the responsibility shall have its restrictions, that is to say: all inappropriate actions or word of a Member of the National Assembly shall incur the disciplinary sanction as stipulated by the Rules of Procedures of the National Assembly;
- Whereas apart from his/her duty at the National Assembly, all Members of the National Assembly can be accused, arrested, or detained only with permission of the National Assembly or by the Standing Committee of the National Assembly between sessions, except in case of flagrante delicto. In that case competent authority shall immediately report to the National Assembly or to Standing Committee for decision. The decision made by the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session for approval.
- Whereas the decision to suspend or to return over the Parliamentary immunity belongs to the National Assembly.
- Whereas the provisions in point 1 and 2 of the Article 4 of the Law on the Status of Members of the National Assembly stipulate the immunity of the Deputies, which is in fact the immunity of the National Assembly;

**Decides:**

**Article 1** : Based on the above-mentioned motive, the Article 4 of the Law on the Status of Members of the National Assembly promulgated by Preah Reach Kram N° NS/RKM/1006/025 of October 21, 2006 is constitutional.

**Article 2** : This decision made in the plenary session of the Constitutional Council in Phnom Penh on December 13, 2006 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, December 13, 2006

**For the Constitutional Council  
The President**

**Signed and Sealed**

**BIN CHHIN**