

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

**The Constitutional Council**

**CASE**

N° 086/009/2004

Of October 11, 2004

**Decision**

N°065/007/2004 CC.D

Of October 22, 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 8, 1998 on the Organization and the Functioning of the Constitutional Council;
- Seen the letter N° 253 NA of October 8, 2004 of Samdech Krom Preah **NORODOM RANARIDDH**, President of the National Assembly, requesting the Constitutional Council to review the constitutionality of the amendment of the Articles 2, 3, 9, 10, 11, 14, 17, 18, 20, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46, and 47

of the Law on

the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of

the Crimes committed during the period of Democratic Kampuchea, which was received by

the Secretariat General of the Constitutional Council on October 11, 2004 at 07:48 AM;

- Seen the decision N° 040/002/2001 CC.D of February 12, 2001 of the Constitutional Council

which ruled that “Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea” is constitutional, except the provision which stipulates that “... shall be sentenced to the third degree felony,” which is the capital punishment provided for in the Articles 209, 500, 506 and 507 of the 1956 Penal Code and which is also mentioned in the Article 3 of this Law;

- Seen the decision N° 043/005/2001 CC.D of August 7, 2001 of the Constitutional Council ruled that the Article 3 of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea, adopted for the regularization by the National Assembly on July 11, 2001 in its sixth plenary session of the second legislature and entirely

reviewed by the Senate on July 23, 2001 in its fifth plenary session of the first legislature, is constitutional;

**Having heard the rapporteur,**

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

- Whereas the request for the review of the constitutionality of the above-mentioned law by the President of the National Assembly is in conformity with the Constitution (sentence 1, paragraph 2 of the Article 140N of the Constitution);
- Whereas the decision on the constitutionality of the above-mentioned law is within the competence of the Constitutional Council (sentence 2, paragraph 2 of the Article 140 N of the Constitution);
- Whereas the amended points are as follows:
  - 1- The modification on the prescription (the Article 3N). The prescription on the prosecution in the 1956 Penal Code shall be extended to 30 years (whereas in the Article 3 Old, this prescription was extended only to 20 years);
  - 2- The modification of the Extraordinary Chambers' structure (the Article 3N) is, namely, the restructuring from the three-tiered Extraordinary Chambers to two-tiered: the First Instance Chamber and the Supreme Court Chamber (the Supreme Court Chamber shall serve as both appellate chamber and final instance );
  - 3- The modification of the composition of the Supreme Court Chamber consisting of four Cambodian judges with one of them as the president, and three international judges. This Supreme Court Chamber shall make final decision without recourse (the Article 9N.);
  - 4- The modification of the rights of the accused and the immunity of judicial officials and lawyers based on the 1966 International Covenant on Civil and Political Rights ( the Article 42N.);
  - 5- The additional modification of the procedures to make them much clearer: "If the existing procedures did not stipulate on a special case or if there is uncertainty regarding the interpretation or the implementation of the procedures, or if there is a question regarding the consistency of the procedures with international standards, guidance shall be sought in procedural rules established at the international level (the Articles 20N and 23N);
  - 6- The additional provision for the scope of amnesty and pardon granted before the adoption of this law is a matter to be decided by the Extraordinary Chambers (article 40N);
  - 7- The additional provision deals with the conditions of the judges to be appointed and to work in the Extraordinary Chambers. The judges shall

- have experiences in International Humanitarian Law and Human Rights law (the Article 10N);
- 8- International co-prosecutors shall have the rights to appoint deputy international co-prosecutors (the Article 22N);
  - 9- The additional provision for the inviolability of the archives of the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-trial Chamber and the Office of Administration, and in general all documents and materials made available, belonging to them or used by whomever during the proceedings (the Article 42N);
  - 10- The official working languages are reduced to three languages: Khmer, English, and French (the Article 45N);
  - 11- The modification by deleting the following provisions:
    - Deleting the word “trust funds” in the point 2 of the Article 44 old.
    - deleting point 3 of the Article 44 old.
- The above 11 points of modification and other modifications are constitutional;
- Whereas the amendment of the Articles 2, 3, 9, 10, 11, 14, 17, 18, 20, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46, and 47 of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of the Crimes committed during the period of Democratic Kampuchea is not contrary to the Constitution.

**Decides:**

- Article 1.** The law on the amendment of the Articles 2, 3, 9, 10, 11, 14, 17, 18, 20, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46, and 47 of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of the Crimes committed during the period of Democratic Kampuchea is declared constitutional.
- Article 2.** This decision made in the plenary session of the Constitutional Council in Phnom Penh on October 22, 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 22, 2004  
**For the Constitutional Council**  
**The President**  
**Signed and Sealed**

**BIN CHHIN**