

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 131/003/2007

Of June 26, 2007

Decision

N° 092 /003/2007 CC.D

Of July 10, 2007

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 promulgating the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0107/005 of January 31, 2007 promulgating the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen the June 20, 2007 Royal Message of His Majesty Preah Bath Samdech Preah Boromneath Norodom Sihamoni, King of Cambodia, requesting the Constitutional Council to review the constitutionality of the Article 8 of the Law on the Aggravating Circumstances of Felonies, the Royal Message received by the Secretariat General of Constitutional Council on June 26, 2007 at 02:30pm.

Having heard the rapporteur,

Having deliberated in compliance with the law,

- Whereas the June 20, 2007 Royal Message of His Majesty Preah Bath Samdech Preah Boromneath Norodom Sihamoni, King of Cambodia, was made in accordance with the Article 141 (new) of the Constitution and the Article 18 (new) of the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council;
- Whereas the Article 8 of the Law on the Aggravating Circumstances of Felonies stated that: "For the felonies and felonies [punished] with forced labour, the judge must not at all consider the attenuating circumstances for punishment, or reduce it to below the minimum or suspend it. For misdemeanours which do not seriously affect public orders, the punishment may be suspended entirely or partly. In this case, the perpetrator shall not serve out the whole of his/her sentence, unless he/she commits any other offense as

provided for in the previous Articles, within the period of 5 years after being sentenced”;

- Whereas the Article 8 modifying only the Article 70 of the provisions relating to the Judiciary, the Criminal Law and the Criminal Procedure to be implemented in Cambodia during the transitional period, does not affect the children’s rights and interests. The provisions of the Article 8 of the aforementioned Law on the Aggravating Circumstances of Felonies are not unconstitutional.
- Whereas in principle, during the trial the judge does not only rely on the Article 8 of the Law on the Aggravating Circumstances of Felonies to convict the criminal, but also on the laws. The term "Laws" as above referred to means the national laws, including the Constitution which is the supreme law, all the laws that remain in force, and the international laws already recognized by the Kingdom of Cambodia, in particular the Convention on the Children’s Rights.

Decides:

Article 1: The Article 8 of the Law on the Aggravating Circumstances of Felonies promulgated by Preah Reach Kram No NS/RKM/0102/004 of January 07, 2002 is declared to be consistent with the Constitution;

Article 2: This decision made in the Plenary Session of the Constitutional Council in Phnom Penh on July 10, 2007, shall be final, without recourse, shall have authority over all the instituted powers as stipulated in the Constitution, and shall be published in the Royal Gazette.

Phnom Penh, July 10, 2007

**On behalf of the Constitutional Council
The President,**

Signed and Sealed: EK SAM OL