

KINGDOM OF CAMBODIA  
Nation Religion King

**The Constitutional Council**

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**CASE**

N° 069/013/2003

Of July 14, 2003

**Decision**

N° 054/005/2003 CC.D

Of July 22, 2003

**The Constitutional Council**

- Seen the Constitution of the Kingdom of Cambodia
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 8, 1998 on the Organization and the functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/1297/06 of December 26, 1997 on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0902/017 of September 17, 2002 on the Amendment of the law on the Elections of the Members of the National Assembly;
- Seen the letter of the Constitutional Council N° 09/03 CC.I of May 28, 2003;
- Seen the July 14, 2003 letter of the 18 deputies, requesting the Constitutional Council to interpret the paragraph 1 of the article 76 and the article 95 of chapter 7 of the Constitution and to clarify if, in this situation, the ordinary or extraordinary plenary session of the National Assembly which could be held until the new Assembly enters into function, are constitutional or not;

**Having heard the reporting member,**

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

- Whereas 18 deputies, number superior to one-tenth (13 deputies) of Members of the National Assembly, by the July 14, 2003 letter to the president of the Constitutional Council requested to interpret the paragraph 1 of the article 76 and the article 95 of chapter 7 of the Constitution, which was received by the Secretariat General on July 14, 2003 at 10:00 AM; that the number of 18 deputies satisfies the provision of article 141 N of the Constitution; that therefore, the Constitutional Council can examine this request in accordance with article 136 N of the Constitution, and 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 8, 1998;

- Whereas the letter of deputies requesting to interpret the paragraph 1 of the article 76 and the article 95 of the Constitution, in the context of a question whether facing this situation, the ordinary or extra-ordinary plenary session of the National Assembly which could be held until the new Assembly enters into function are constitutional or not;
- Whereas regarding this question, it is a problem concerning only the case when the election to replace the deputy who passed away, resigned or lost his/her quality as member of the National Assembly could not take place; and that the total number of the remaining parliamentarians would be reduced to less than 120. In this context, the Constitutional Council would interpret as follows:

1. The paragraph 1 of the article 76 of the Constitution

The paragraph 1 of the article 76 of the Constitution stipulates: “The National Assembly is composed of at least 120 deputies”. This means that there shall be at least 120 deputies to be able to form the National Assembly at every legislature. Electoral law cannot limit the number of parliamentarians to less than 120. This paragraph 1 is a necessary condition for the formation of a National Assembly but not for its functioning.

At the end of the election, the final result must give 120 deputies or more according to the number fixed by the Electoral law in order to be able to form a National Assembly of a new legislature in respect to the procedures provided in the article 82 of the Constitution and article 3 of the Internal Regulations of the National Assembly. The National Assembly resulting from the election shall officially take function at the inaugural session convened by the King and after the validity of parliamentarians proclaimed, whose names are publicly posted at the National Assembly office. Since then, the National Assembly shall have its validity until the end of its term except in special case of the dissolution of the National Assembly as a result of the Royal Government being voted out of office twice within a period of 12 months, as stipulated in article 78 of the Constitution. Thus, article 78 of the Constitution states: “The National Assembly shall not be dissolved before the end of its term...” The above mentioned analysis shows that the change of parliamentarian number during its term does not affect the validity of the entire Assembly. Thus, Even though the parliamentarian numbers are less than 120, but not inferior to the 7/10 quorum of the National Assembly, the latter will be still able to function normally, especially, in its ordinary or extra-ordinary plenary session until the new National Assembly enters into function without contravening the Constitution.

2. Article 95 of the Constitution

Article 95 states: “In case of decease, resignation, or loss his/her quality as member of the National Assembly at least 6 months before the end of the mandate, the election of a replacement shall be done in accordance with the Internal Regulations of the National Assembly and the Electoral law”.

In the context of the question raised by 18 parliamentarians, the interpretation

of article 95 focuses only on the issue of the replacement and the time limit of 6 months before the end of the term. Other points of article 95 shall not be examined in this interpretation.

**Two cases deserve to be analyzed:**

**Case 1:** If the remaining term of the legislature is longer than or equal to 6 months, the replacement of member shall proceed in accordance with the procedures as stipulated in the Electoral law, which in the current case relates to the article 120 of the law on the Elections of the Members of the National Assembly. According to this article 120, the concerned political party can propose designation of substitute who will be chosen among candidates following the numerical order in the candidacy list of the constituency, without holding a new election. The concerned political party has to propose a designation of substitute in accordance with article 95 of the Constitution.

**Case 2:** If the remaining term of the legislature is less than 6 months, even though the article 95 of the Constitution and the law on the Elections of the Members of the National Assembly have not specified, but according to the spirit of the text, the replacement must not occur.

- Whereas in any cases, except when the parliamentary number is inferior to the quorum of 7/10, the plenary session of the National Assembly, ordinary or extra-ordinary, shall be conducted normally until the new National Assembly convenes without conflicting with the Constitution.

**Decides**

**Article 1:** The paragraph 1 of the article 76 and the article 95 of the Constitution and the validity of the plenary session of the National Assembly, ordinary and extra-ordinary, are interpreted in compliance with the above-mentioned motives.

**Article 2:** This decision made in the plenary session of the Constitutional Council in Phnom Penh on July 22, 2003 shall be final without recourse, shall have authority over all instituted powers stipulated in the Constitution and shall be published in the “Journal Officiel”

Phnom Penh, July 22, 2003  
**For the Constitutional Council  
The President**

**Signed and Sealed**

**BIN CHHIN**