

KINGDOM OF CAMBODIA  
Nation Religion King

**The Constitutional Council**

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**CASE**

N° 070/014/2003

Of August 8, 2003

**Decision**

N° 055/006/2003 CC.D

Of August 25, 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 N° 682 FCP/PS of August 6, 2003 of Samdech Krom Preah NORODOM RANARIDDH, the President of FUNCINPEC Party, in which Sdech Krom Khun NORODOM SIRIVUDDH, Secretary General of FUNCINPEC Party, was acting as proxy in lodging the complaint N° 657 FCP/SR of August 7, 2003 against the National Electoral Committee (NEC);
- Seen the complaint N° 657 FCP/SR of August 7, 2003 of Sdech Krom Khun NORODOM SIRIVUDD, Secretary General of FUNCINPEC Party, against NEC for partiality, incompetence, negligence and irresponsibility leading to election result contrary to the will of the people, which Secretariat of the Constitutional Council received at 11:30 A.M on August 8, 2003;
- Seen the letter N° 667 FCP.SN of August 11, 2003 of FUNCINPEC Party, mandating Mr. SON ARUN, chief of the lawyer office; and Mr. MEY CHANVEASNA, chief of section of the lawyer administration of FUNCINPEC Party to lodge a complaint and to contact the Constitutional Council;
- Seen the minutes of August 15, 2003 containing additional precision on the complaint of the FUNCINPEC Party;

- Seen the minutes of August 15, 2003 containing the precision given by the NEC representatives;
- Seen the letter of power of attorney N° 678 FCP.SN of August 20, 2003 of Sdech Krom Khun NORODOM SIRIVUDDH, Secretary General of FUNCINPEC Party, appointing 6 lawyers to be his representatives to the hearing of the Constitutional Council;
- Seen the letter N° 08.1686/03 NEC of August 20, 2003 of Mr. IM SUOSDEY, President of NEC, appointing NEC representatives to attend the hearing of the Hearing Council (formation of judgment of the Constitutional Council) and another letter N° 08.1690/03/NEC of August 22, 2003 to add 3 more members of NEC to attend the hearing;

**Having heard the reporting members,  
Having heard the parties,  
Having deliberated in compliance with the law,**

- Whereas complaint N° 657 FCP/SR of August 7, 2003, by Sdech Krom Khun NORODOM SIRIVUDDH, Secretary General of FUNCINPEC Party, was lodged with the Constitutional Council, was admissible pursuant to article 136 N of the Constitution and the article 25 of the law on the Organization and the Functioning of the Constitutional Council;
- Whereas the complaint had been duly submitted within 72 hours after NEC provisional result pronouncement;
- Whereas the FUNCINPEC Party had lodged the complaint against NEC for partiality, incompetence, negligence and irresponsibility leading to the election result contrary to the will of the people; and that this complaint demands the punishment of NEC according to the existing law;
- Whereas at first, Mr. SON ARUN has clarified he is not a representative of the plaintiff, but he is a lawyer with other 5 lawyers. After the precision asked by the President on the presence of plaintiff, Mr. SON ARUN replies that he is a lawyer representing the plaintiff, that thereafter, the President allows him to speak on behalf of the plaintiff, Mr. SON ARUN, then takes the floor and accuses NEC of partiality, incompetence, negligence and irresponsibility which lead to the election result contrary to the will of the people;
- Whereas Mr. MEAN SATIK, NEC representative, replies for his defense before the Constitutional Council that NEC has organized the election in compliance with the law on the Elections of the Members of the National Assembly, and its regulations and procedures;
- Whereas the President asks Mr. SON ARUN whether he has witnesses or not, Mr. SON ARUN replies he has 176 witnesses but only 99 of them are present; that the President asks Mr. SON ARUN to show a witness from any province

and any case to give evidence of NEC partiality; that instead, Mr. SON ARUN asks for the power of attorney appointing the NEC lawyers and representatives; that the President asks Mr. MEAN SATIK, NEC representative (defendant) to show witnesses; that the latter replies he does not have witnesses but documents and electoral officials at all levels;

- Whereas Mr. SON ARUN after raising his hand, stands up and requests the President about the hearing procedure of Constitutional Council; that the President replies there is one;
- Whereas Mr. SON ARUN accuses the Constitutional Council of concealing the procedure from the parties; and that the President of the Hearing Council responds to Mr. SON ARUN that the procedure had been elaborated and released since 1998; that at that moment one of the 6 lawyer representing the plaintiff, after raising his hand, stands up and clarifies that among them there is no leader;
- Whereas the 6 lawyers of the plaintiff stand up and walk out from the hearing hall at 8:32 AM;
- Whereas at the same time, the President of the Hearing Council proceeds on by requesting the members of the Hearing Council to question the plaintiff and defendant; that Mr. PRAK SOK, member of the Hearing Council, asks the clerk of the hearing to read out the precision given by Mr. SON ARUN on page 4 of August 15, 2003 minutes; that the clerk reads out the minutes of Mr. SON ARUN's answer "The FUNCINPEC Party does not contest the result of the election but complains against the partiality of NEC including its behavior and its way of implementing the law ";
- Whereas despite the withdrawal of the lawyers representing the plaintiff, the Hearing Council is still valid to continue the procedures;
- Whereas the complaint does not contest the election result but purely the behavior of NEC in organizing the election;
- Whereas according to article 126 N and paragraph 3 of article 15 N of September 17, 2002 of the law on the Amendment of the law on Elections of the Members of the National Assembly, it is not the competence of the Constitutional Council to place sanction (penal or administrative) against NEC;
- whereas there is no text allowing the Constitutional Council to judge the complaint by the political parties on NEC behavior and activities; that therefore, the Constitutional Council cannot validly satisfy the request of FUNCINPEC Party;

### **Decides**

#### **In the presence of the parties**

**Article 1:** Is admissible the complaint N° 657 FCP.SR of August 7, 2003 of Sdech Krom

Khun NORODOM SIRIVUDDH, Secretary General of FUNCINPEC Party, for its legal form but is rejected because it is out of the competence of the Constitutional Council.

**Article 2:** This decision pronounced in public hearing in Phnom Penh on August 25, 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, August 25, 2003  
**For the Constitutional Council**  
**The President**  
**Signed and Sealed**

**BIN CHHIN**

( Non-official translation )