

KINGDOM OF CAMBODIA  
Nation Religion King

**The Constitutional Council**

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**CASE**

N° 072/016/2003

Of August 11, 2003

**Decision**

N° 056/007/2003 CC.D

Of August 26, 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° 681 FCP/PS of August 6, 2003 of Sdech Krom Preah NORODOM RANARIDDH, President of FUNCINPEC Party delegating his power to Mr. NHIEK BUNCHHAY, Deputy Secretary General of FUNCINPEC Party, to be his representative in lodging the complaint N° 665 of August 11, 2003 against the National Electoral Committee (NEC);
- Seen the complaint N° 665 of August 11, 2003 by Mr. NHIEK BUNCHHAY; Deputy Secretary General of FUNCINPEC Party, against NEC for not fulfilling its duties in organizing the election in accordance with the regulations, the procedures, the code of conduct and the law on the Elections, which was received by the Secretariat general of the Constitutional Council at 8:35 AM on August 11, 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° 679 FCP.SN of August 20,2003 of Mr. NHIEK BUNCHHAY, Deputy Secretary General of FUNCINPEC Party, appointing 6 lawyers to be his representatives to the hearing of the Constitutional Council;  
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 member,  
Having heard the parties,  
Having deliberated in compliance with the law,**

- Whereas Mr. NHIEK BUNCHHAY, FUNCINPEC representative, has lodged a complaint with the Constitutional Council. The complaint is admissible pursuant to the article 136 N of the Constitution and the article 25 of the law on the Organization and the Functioning of the Constitutional Council of April 8, 1998;
- Whereas the complaint had been duly submitted within 72 hours after NEC provisional result pronouncement;
- Whereas the accusation of the FUNCINPEC Party against NEC for not fulfilling its duties in organizing the election in accordance with the regulations, the procedures, the code of conduct and the law on the Elections, contains 5 points to be separately examined;
- Whereas there is no law banning political parties from distributing gifts to the people before the electoral campaign, and that during the electoral campaign until July 26, 2003, there were cases of the distribution of gifts to buy votes, but some of these cases have been resolved by the political parties in agreement with the Electoral Commission at all levels; that for the remaining cases there is no sufficient evidence to prove, and that during the hearing no concrete evidence was presented;
- Whereas the complaint against the presence of local authorities such as chief of district, chief of commune, chief of village at some polling stations of violating the joint directives of the Ministry of Interior and of the National Electoral Committee have been locally resolved by political parties in agreement with the Electoral Commission at all levels;
- Whereas some failures observed in the electoral lists in certain polling stations are either involuntary or technical but that no serious irregularity was observed nationwide;

- Whereas the complaint against the transfer of polling stations and against the posting of information on their transfer in violation of article 86 of the Election Law and the allegation concerning the posting of the electoral list in some polling stations less than 24 hours prior the Election Day are groundless; despite of some rare cases of the transfer of the polling stations to their nearest location in order to comply with the law, the real situation, the case of force majeure (inundation), in agreement with the political parties especially the 3 main ones; that those who failed to check their names before the Election Day had some difficulties but were not prevented from voting; that these cases do not constitute the serious irregularities which affect the countrywide election result;
- Whereas according to the claim of FUNCINPEC Party only ¼ of its complains was until now examined by the Commune and Provincial Electoral Commission officials; that the other remaining ¾ are not; that all these complaints from the FUNCINPEC Party were already examined as above mentioned; that in some places, there are some minor irregularities which do not influence the result of the election; that according to the replies of NEC during the hearing session, a part of these complaints was resolved at the level of Commune Electoral Commission and some other at the level of provincial electoral commission; that it remains only very few cases which are brought before the National Electoral Committee and have been resolved by the latter, and that the allegation concerning the ¾ of the non-resolved complaints is groundless;

### **Decides**

**In the presence of the defendant, in the absence of the plaintiff, but considered as present**

**Article 1:** Is rejected the complaint N° 665 of August 11, 2003 from Mr. NHIEK BUNCHHAY, FUNCINPEC representative, lodged against NEC for not fulfilling its duties in organizing the Election in accordance with the regulations, the procedures, the code of conduct and the law on the Elections;

**Article 2:** Is rejected the complaint of Mr. NHIEK BUNCHHAY requesting the Constitutional Council to nullify the result of the Elections of the Members of the National Assembly on July 27, 2003.

**Article 3:** This decision pronounced in public hearing in Phnom Penh on August 26, 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 26, 2003  
**For the Constitutional Council**  
**The President**  
**Signed and Sealed**

**BIN CHHIN**

( Non-official translation )