

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 164/002/2009

Of February 19, 2009

Decision

N° 105/001/2009 CC.D

Of February 25, 2009

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 Preah Reach Kram N° NS/RKM/0508/018 of May 24, 2008 promulgating the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils;
- Seen the February 19, 2009 Letter N° 168 LS of Samdech Akka Moha Senapadei Techo **HunSen**, Prime Minister of Cambodia, requesting the Constitutional Council to interpret the Article 17 and 18 of the Law on the Elections of Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils, letter received by the Secretariat General of the Constitutional Council on February 19, 2009 at 04:50 pm;

Having heard the rapporteur,

Having deliberated in compliance with the law,

- Whereas in accordance with Article 136 (New) and Article 141 (New) of the Constitution and Article 15 (New) and Article 18 (New) of the Law on the Organization and the Functioning of the Constitutional Council, the February 19, 2009 letter N° 168 LS of Samdech Akka Moha Senapadei Techo **Hun Sen**, Prime Minister of Cambodia, requesting the Constitutional Council for interpretation is admissible;
- Whereas the Provisions of Article 17 of the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils shall be interpreted that all civil servants and armed forces official in active function have no rights to stand as candidates for the Council Elections. It also means that the civil servants and armed forces official, while fulfill their function cannot at the same time stand as candidates for the Council Elections. The term “**Civil Servant**” encompasses the Civil Servants of the Legislative, Executive and Judiciary Cadre and special those other Cadre;
- Whereas in accordance with the terms of Article 34 (New) of the Constitution, Khmer citizens of either sex shall enjoy the rights to stand as candidates for the Elections. Provisions limiting the rights to stand as candidates for the Elections shall be stipulated in the Law on the Elections;
- Whereas the Law on the Election of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils has not resolutely prevented any one to stand as candidates for the elections. If the Civil Servants and the Armed Forces official wish to stand as candidates for the Council Elections, they must abide fulfill the conditions stipulated in the Provisions of Article 18 of this Law;
- Whereas the Provisions of Article 18, comprising 3 Paragraphs, shall be interpreted as followed:
 - a/- The Provisions of Paragraph 1 mean that either Civil Servants or Armed Forces official who wish to stand as the candidates for the Council Elections shall submit an application for a special leave of absence at least seven (7) days before the start of electoral campaign until the day of the official announcement of the poll result. The sentence “application for a special leave of absence at least seven (7) days before the start of the electoral campaigns until the day of the official announcement of the poll result” only means that it is an application for a leave of absence from their work but not an application for resignation from their functions or their positions. The other meaning of these Provisions require the Civil Servants and Armed Forces official who wish to stand as candidates for the Council Elections, to apply for a leave of absence from their work in the aforementioned time frame”.

b/- The Provisions of Paragraph 2 mean that the elected candidate shall apply to the Ministry or Institution to be released from their duties, for the duration of his/her mandate of the Council. Further more during his/her mandate, he/she shall retain his/her rights to promote and also to preserve his/her seniority of function for retirement.

If the elected candidate does not wish to serve as the Council Member, he/she shall apply to the National Election Committee to be withdrawn from the Council Electoral name lists. In this case, the concerned person can resume his/her previous position.

c/- The Provisions of Paragraph 3 mean that at the end of his/her mandate as Member of the Council, the concerned person may resume his/her service at the Ministry or Institution of origin, but he/she will be able to integrate his/her previous function or position will depend on the decision of the Ministry or Institution: It is not automatic;

Decides:

Article 1 : The Provisions of Articles 17 and 18 of the Law on the Election of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils which is promulgated by Preah Reach Kram N° NS/RKM/0508/018 dated May 24, 2008 are interpreted as in the aforementioned motive.

Article 3 : The present decision made in the Plenary Session of the Constitution Council in Phnom Penh, on February 25, 2009 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, February 25, 2009
For the Constitutional Council
The President,

Signed and sealed: EK SAM OL