

KINGDOM OF CAMBODIA
Nation Religion King

4



The Constitutional Council

CASE

N° 176/007/2010

Of July 16, 2010

Decision

N° 111/004/2010 CC.D

Of August 04, 2010

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen the letter N° 478 N.A of July 09, 2010 of H.E SAO RANY, Member of the National Assembly of Prey Veng constituency, and Representative of Nationalist Party through **Samdech Akka Moha Ponhea Chakrei HENG SAMRIN**, President of the National Assembly, written on July 15, 2010 to H.E President of the Constitutional Council, requesting for the interpretation of Article 36 of the Law on Political Parties, letter received by the Secretariat General of the Constitutional Council on July 16, 2010 at 10:30.

Having heard the rapporteur,
Having deliberated in compliance with the law,

- Whereas a member of the National Assembly submitted a letter of July 09, 2010 to the President of the Constitutional Council, requesting the Constitutional Council for the interpretation of Article 36 of the Law on Political Parties promulgated by Preah Reach Kram N° CS/RKM/1197/07 of November 18, 1997, made in accordance with Article 136 (New) Paragraph 1, Article 141 (New) Paragraph 2 of the Constitution and Article 15 (New), Article 18 (New) Paragraph 2 of the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council and with the Jurisprudence of the Constitutional Council; therefore, the request of a member of the National Assembly through the President of the National Assembly is admissible;

- Whereas the letter of H.E. SAO RANY, Member of the National Assembly of Prey Veng constituency, and Representative of the Nationalist Party, requesting for the interpretation of Article 36 of the Law on Political Parties, stipulated that a political party may declare to merge itself with another political party in the context of the question that: *“Has such declaration of merger affected the seats or the results of the universal and non-universal election?”*
- Whereas Article 36 of the Law on Political Parties:
 - Paragraph 1 states that *“A political party may declare its merger with another political party as determined in its statutes (By-laws). In case if this was not stated the statutes, then the political party shall comply with decision of its General Assembly.”*

Paragraph 1 of Article 36 means that the Law allows the political party to merge with another party in accordance with its statutes or the decision of its General Assembly.

- **Paragraph 2** states that *“The Ministry of Interior shall eliminate a political party which declared of having merged itself (with another political party) from the political party register, after receiving a notification of such merger.”*

Paragraph 2 of Article 36 requires a merged political party to notify the Ministry of Interior of its merger. After receiving the notification of such merger, the Ministry of Interior **shall eliminate that political party from the political party register.**

Even though the aforementioned Article 36 of the Law on Political Parties isn't stipulated about any effects on the seat or on the result of the universal and non-universal election after the declaration of its merger, the problem will occur as stated in Article 118 (New) point “e” of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly *“In case a political party had received one seat or more in the National Assembly but this party declared abandoning their seats **or had been deleted from the list of the political party in accordance with the law on the political parties, the list of candidates of a political party which had been declared elected is no longer valid and candidates of that political party is disqualified.**”*

In such a case, the National Election Committee shall allocate this/these vacant seat(s) within seven (7) days to other political parties that had gained seats in the same province /municipality, regardless of the one which abandoned its seat, through the following steps...”

Therefore, according to Article 118 (New) point (e) of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly, after having received the notification from the Ministry of Interior on the elimination of the political party which declared its merger with another political party from the political party list, the National Election Committee also has the duties to examine and implement in compliance with some provisions as follows:

- Article 95 of the Constitution of the Kingdom of Cambodia stipulates that *“In case of decease, resignation of a National Assembly’s Member or loss of his/her membership which would take place at least six months before the end of the legislature, his/her replacement must proceed **in the conditions set by the National Assembly’s Rules of Procedure and by the Electoral Law.**”*

- Article 115 (New) of the Constitution of the Kingdom of Cambodia stipulates that *“In case of decease, resignation of a Senator or loss of his/her membership which would take place at least six months before the end of the legislature, his/her replacement must proceed in the conditions set by the Senate’s Rules of Procedure and by the law pertaining to the appointment and the elections of the Senators.”*

- Article 31 of chapter 9 of the Law on the Elections of the Senators, Paragraph 2 of Article 10 (New), and Article 11 (New) of the Rules of Procedure of the Senate;

- Article 37 (New) Paragraph 2 of Chapter 4, Article 120 (New) of Chapter 9 of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly and Article 83 (New) of Chapter 17 of the Rules of Procedure of the National Assembly;

- Article 22 of the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans.

- Article 13 point “e”, Article 16 and Article 22 Paragraph 3 and Paragraph 4 of the Law on the Elections of the Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils.

- Article 26 of the Law on Khum/Sangkat Administrative Management;

- Article 27, Article 50 (New) (former Article 99) and Article 52 (New-former amended Article 101) of the Law on the Amendment of the Law on the Elections of Khum/Sangkat Councils.

- Whereas the electoral system in the Kingdom of Cambodia is Proportional Representation which stipulated in:
 - Article 8 Chapter 2 of the Law on the Elections of the Senators states that *“The election shall be implemented through a proportional representation....”*
 - Article 5 Paragraph 2 Chapter 2 of the Law on the Elections of Members of the National Assembly states that *“The electoral system shall be proportional representation, with provincial /municipal constituencies.”*
 - Article 13 Section 2 Chapter 2 of the Law on the Elections of the Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils states that *“a. The election of councils shall be carried out in accordance with a proportional election system...”*
 - Article 5 Chapter 1 of the Law on the Elections of Khum/Sangkat Councils states that *“ The Khum/Sangkat councils are elected in accordance with a system of proportional representation ...”*
- Whereas in order to register as a candidate for the election, individuals shall have their names on the candidate list of a political party which legally registered with the Ministry of Interior as stipulated in:
 - Article 16 of the Law on the Elections of the Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils states that *“Every person who wishes to stand for the council elections shall register his/her name on the candidate list of a political party.*

Each candidate list shall be prepared by political parties that have been properly registered in accordance with the conditions described in the Law on Political Parties.”
 - Article 50 (New-former Article 99) of the Law on the Amendment of the Law on the Elections of Khum/Sangkat Councils states that *“Each candidate shall have his/her name in only one list of candidates of the political party.”*
 - Article 52 (New-former amended Article 101) of the Law on the Amendment of the Law on Elections of Khum/Sangkat Councils states that *“ A letter of application for registration on the lists of candidates shall be enclosed with:*
 - *A copy of the certificate of the party registration from the Ministry of Interior...”*

- Whereas according to the aforementioned provisions show that candidates of each political party shall have their names in the candidate list of a political party that has been legally registered with the Ministry of Interior. Therefore, should a political party is eliminated from the political party list in accordance with the Law on the Political Parties, Member of the National Assembly and Senator having his/her position in that political party shall lose his/her membership from his/her political party as provided in Article 120 (New) of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly, Article 83 (New) of the Rules of Procedure of the National Assembly, Article 31 of the Law on the Elections of the Senators and Article 10 (New) Paragraph 2 of the Rules of Procedure of the Senate.
- Whereas due to the previous universal and non-universal elections carried out in accordance with a proportional representation system as stated in the aforementioned provisions, when a political party that has the seats declares its merger with another political party, the following consequences will occur:

First case:

- In case that the political party A and the political party B declare their mergers into one political party by choosing the name of the political party A as the name of the merged political party.

In this case, the political party B shall be eliminated from the political party list by the Ministry of Interior. Consequently, the political party B shall lose its seats in the National Assembly, in the Senate, and also in the Sub-National Councils.

Second case:

- In contrast, the political party A and the political party B declare their mergers into one political party by choosing the name of the political party B as the name of the merged political party.

In this case, the political party A shall be eliminated from the political party list by the Ministry of Interior. Consequently, the political party A shall lose its seats in the National Assembly, in the Senate, and also in the Sub-National Councils.

Third case:

- The political party A and the political party B declare their mergers into one political party by establishing a new political party named C.

In this case, the political party A and B shall be eliminated from the political party list by the Ministry of Interior. Consequently, both political

parties, A and B, shall lose their seats in the National Assembly, in the Senate, and also in the Sub-National Councils.

- Whereas in any case, a political party gaining one or more seats and its name was eliminated from the political party list by the Ministry of Interior in accordance with the Law on the Political Parties, the list of candidates of a political party which had been declared elected is no longer valid and candidates of that political party are disqualified.

Decides:

Article 1: Article 36 of the Law on Political Parties shall be interpreted as the above-mentioned motives.

Article 2: This decision made in the plenary session of the Constitutional Council in Phnom Penh on August 04, 2010 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, August 04, 2010

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

Signed and Sealed: EK SAM OL