

KINGDOM OF CAMBODIA
Nation Religion King

The Constitutional Council

CASE

N° 082/005/2004

Of August 09, 2004

Decision

N° 060/002/2004 CC.D

Of September 02, 2004

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 the letter of August 09, 2004 from the 21 members of the Parliament “requesting the examination of the constitutionality of the Additional Constitutional Law to guarantee the regular functioning of the National Institutions,” which was received by the Secretariat General of the Constitutional Council at 15:40 on August 09, 2004;

Having heard the rapporteur,

Having deliberated in compliance with the law,

- Whereas the paragraph 1 of the Article 136N of the Constitution stated that “*the Constitutional Council shall have the duty to safeguard the respect of the Constitution, interpret the Constitution and the laws adopted by the National Assembly and entirely reviewed by the Senate*”. This paragraph does not stipulate the competence of the Constitutional Council in examining the constitutionality of the Additional Constitutional Law;
- Whereas Preah Reach Kram N° CS/RKM/0498/06 of April 8, 1998 on the Organization and the Functioning of the Constitutional Council stipulated in its section 2 the competence of the Constitutional Council concerning the constitutionality of the laws, especially at the Article 15 which provided that “*the Constitutional Council shall have the duty to safeguard the respect of the Constitution, interpret the Constitution and the laws adopted by the National Assembly in the framework of the control of the constitutionality of the laws*”. This article did not provide for the competence of the Constitutional Council to examine the constitutionality of the Additional Constitutional Law;

- Whereas the request of the 21 MPs on August 09, 2004 “for examining the constitutionality of the Additional Constitutional Law to guarantee the regular functioning of the National Institutions” is not within the framework of the Article 136 N of the Constitution and does not come under the competence of the Constitutional Council, provided for in the Article 15 of the law on the Organization and the Functioning of the Constitutional Council;
- Whereas the Constitutional Council has examined the constitutionality of many laws, but has never examined the constitutionality of a law having the quality of a constitution such as this Additional Constitutional Law. Furthermore, the Additional Constitutional Law is a supreme law stipulating the objectives of the law containing separate articles, and having a hierarchy equal to that of the 1993 Constitution; therefore, this Additional Constitutional Law is the Constitution of which the constitutionality cannot be examined;

Decides:

Article 1: According to the above mentioned motives, the Constitutional Council declares that the review of the constitutionality of “the Additional Constitutional Law to guarantee the regular functioning of the National Institutions” does not come under the competence of the Constitutional Council.

Article 2: The decision made in the plenary session of the Constitutional Council in Phnom Penh on September 02, 2004 shall be final without recourse, shall have authority over all the instituted powers as stipulated in the Constitution and shall be published in the “Journal officiel”.

Phnom Penh, September 02, 2004
For the Constitutional Council
The President
Signed and Sealed

BIN CHHIN