

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 167/005/2009

Of February 26, 2009

Decision

N° 106/002/2009 CC.D

Of March 16, 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/0301/05 of March 19, 2001 promulgating the Law on the Commune/Sangkat Administrative Management, declared by the Constitutional Council to be consistent with the Constitution in its February 28, 2001 decision N° 041/003/2001 CC.D;
- 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, declared by the Constitutional Council to be consistent with the Constitution in its May 12, 2008 decision N° 097/002/2008 CC.D;
- Seen the February 26, 2009 Letter (without reference number) of 15 members of Parliament requesting the Constitutional Council to interpret the Article 29 of the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils, and to examine its constitutionality, as well as to interpret the Article 16 of the Law on the Commune/Sangkat

Administrative Management, letter received by the Secretariat General of the Constitutional Council on February 26, 2009 at 04:50 pm.

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

- Whereas the February 26, 2009 request from 15 members of Parliament that the Constitutional Council interpret the Article 29 of the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils and to examine its constitutionality, as well as to interpret the Article 16 of the Law on the Commune/Sangkat Administrative Management made 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, is admissible;
- Whereas the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils, Article 29 included, is declared by the Constitutional Council to be consistent with the Constitution in its May 12, 2008 decision N° 097/002/2008 CC.D. Therefore, this afore-mentioned request is considered as a request for the interpretation of the Law;
- Whereas Article 34 (New) of the Constitution, Paragraph 1 states that “Khmer citizens of both genders shall enjoy the rights to vote and to stand as candidates in the elections.” and Paragraph 5 states that “Provisions restricting the rights to vote and the rights to stand as candidates in the elections shall be determined by Electoral Law.”;
- Whereas the Provisions of Article 29 of the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils, deal only with the Electoral lists which are those of voters who are active Members of Commune/Sangkat Councils. This Article comprised 3 Paragraphs to be interpreted as followed:

a/- The paragraph 1 states that “**The NEC (National Election Committee) shall validate the voter lists at least thirty five (35) days prior the date of the Election.**”

The Provisions of this Paragraph mean that NEC cannot validate the voter lists after that period of thirty-five (35) days before the Election Day.

b/- The paragraph 2 states that “**The validated voter list is an official voter list that cannot be changed, except in the event that a voter on the list passes away.**”

The Provisions of this Paragraph mean that once the electoral lists validated, they become official and cannot be changed, except in the case of death of a voter whose name is on an official list.

c/- The Paragraph 3 states that “In the event that any Commune/ Sangkat Councilor whose name appears on the voter list passes away, the Ministry of Interior shall process the replacement of their Commune/Sangkat councilor not later than seven (07) days prior to the date of the Election so that the NEC replaces him/her in the voter list.”

The Provisions of this Paragraph mean that in case of death of a Commune/ Sangkat Council member registered on the official list, the Ministry of Interior shall fulfill the procedure to replace him/her and submit that form to NEC at least seven (07) days before the Election Day so that NEC can replace the name on the official vote list.

For other cases, this Article 29 does not allow any change of name on the official list at all.

- Whereas the Provisions of Article 16 of the Law on the Commune/ Sangkat Administrative Management comprised 2 Paragraphs to be interpreted as followed:

a/- The Paragraph 1 states that “The Commune/Sangkat Council membership shall be abrogated for the following cases:

- o Demise;
- o Loss of professional aptitude as certified by the concerned ministry or institution;
- o Written resignation from the membership of the Commune/ Sangkat Council ;
- o Court’s Sentence to imprisonment for felony or misdemeanor;
- o Expulsion for breach of the internal rules of the Commune/ Sangkat Council as stipulated in Article 84 of this law;
- o Dissolution of the Commune/Sangkat Council;
- o Loss of political party membership”.

The Provisions of this Paragraph mean that the mandated member of Commune/Sangkat Council shall lose his/her membership in one of the aforementioned seven cases.

b/- The Paragraph 2 states that “When a Commune/Sangkat Council member loses his/her membership, the next person on the candidate list shall be selected to replace him/her without resorting to new elections”.

The Provisions of this Paragraph mean that the candidate whose name is next to the top of the candidate list shall be selected to replace the Commune/Sangkat Council member, who lost his/her membership without resorting to new election.

Decides:

Article 1: The Provisions of Article 29 of the Law on the Elections of the Capital Council, Provincial Councils, Municipality Councils, District Councils and Khan Councils, promulgated by Preah Reach Kram N° NS/RKM/0508/018 dated May 24, 2008 and of Article 16 of the Law on the Commune/Sangkat Administrative Management, promulgated by Preah Reach Kram N° NS/RKM/ 0301/05 dated March 19, 2001 shall be interpreted as the above-mentioned motives.

Article 2 : The present decision pronounced in the Plenary Session of the Constitutional Council in Phnom Penh on March 16, 2009 shall be final, without recourse and shall have authority over all the instituted powers as stipulated in the Constitution and shall be published in the Royal Gazette.

Phnom Penh, March 16, 2009

**For the Constitutional Council
The President,**

Signed and Sealed: EK SAM OL