

International Conference
«Protection of Rights and Constitutional Supervision»

26 June 2024, Saint Petersburg

**Session I «Initiating Constitutional Review with the Aim to Ensure
Constitutional Rights and Freedoms»**

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Excellencies, Honored Representatives,

First of all, I would like to express my great appreciation to His Excellency President of the Constitutional Court of the Russian Federation for your invitation to this important International Conference which is held in the beautiful cultural capital of Russia. On this occasion, I have the pleasure and the honor to relate how a model of western constitutional court has been transplanted to the Kingdom of Cambodia. Indeed, the Cambodian Constitution of 1993, currently in force, is a historic achievement adopted by the Constituent Assembly on September 21, 1993 and promulgated on September 24 of the same year. The 1993 Constitution devotes a chapter to the Constitutional Council, but in actual fact, due to the lack of legal and technical conditions, the Constitutional Council was not established until 1998. In the framework of its competence in guaranteeing the respect of the Constitution, the Constitutional Council's main mission is to interpret the Constitution and laws in the framework of the constitutional review. Moreover, the Constitutional Council also has the right to examine and rule on disputes related to the Elections of Members of the National Assembly and the Elections of Members of the Senate. Overall, in terms of general competence, the Constitutional Council of Cambodia was inspired by the model of the French Constitutional Council. But separately,

regarding the a posteriori control of the constitutionality of the provisions of laws or the decisions of certain institutions, Cambodia has opted for the model of the German Federal Constitutional Court (due to the fact that in 1998 the French Constitutional Council did not yet have this function). This procedure allows any person party to a trial before a court to raise that a legislative provision infringes upon the rights and freedoms guaranteed by the Constitution, but the applicant is not authorized to refer directly to the Cambodian Constitutional Council as it has been done at the German Federal Court because the applicant must instead raise the question of unconstitutionality through the courts. It is then up to the courts to transmit the request to the Constitutional Council if they consider that the contested legislative provision is well-founded.

This is briefly the structure and functioning of our Constitutional Council. Subsequently, please allow me to present three concrete cases of our constitutionality controls which relate remarkably to the protection of rights and freedoms:

Case 1. This concerns the protection of Khmer citizens from being extradited to a foreign country

In 1999, at the request of 41 members of the National Assembly, the Constitutional Council had to interpret Article 33 of the Constitution, which was relevant to the hearing of the former Khmer Rouge leader (named Ta Mok). For some, he should be extradited to a foreign country and judged by the international court, while others believed he should be brought to justice in the country. Faced with this dilemma, the Constitutional Council considered that *“This Article 33 has the sacred purpose for the protection of the rights and the benefits of every citizen, especially from being deprived of their Khmer nationality, exiled, or arrested and extradited to a foreign country.”* Thus, the Constitutional Council interpreted the above article as follows: *“The arrest of every citizen to be sentenced or/and to serve their sentences in a foreign country cannot be done unless there is a mutual agreement.”*

Case 2. This concerns the Protection and the Promoting of Gender Equality

In 1999, the Constitutional Council was asked to review the constitutionality of the Law on the Establishment of the Ministry of Women's Affairs and Veterans. A regulation of that Law stipulated that "*The Ministry of Women's Affairs and Veterans shall be led by a female minister.*"

For that controversy, the Constitutional Council declared that this provision was not in conformity with the Constitution because Article 31 of the Constitution stipulates that "*Khmer citizens are equal before the law, enjoying the same rights, liberties, and duties regardless of race, color, sex [...]*" and Article 45 stipulates that "*Men and women have equal rights in all fields [...]*."

Case 3. This concerns the Protection of the Right to Life

In 2001, the Constitutional Council was asked to review the constitutionality of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the prosecution of the crimes committed during the period of Democratic Kampuchea. The desired review focused on a provision stipulating that "*[...] the third level of the sentence is the death penalty.*"

Confronted with this issue, the Constitutional Council declared that the said provision was not in conformity with Article 32 of the Constitution which stipulates that "*Death penalty shall not exist in any way.*"

Finally, please let me say thank you for your attention. Thank you!