

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

Case N° 194/003/2012

Of November 10, 2012

Decision N° 124/005/2012 CC.D

Of November 17, 2012

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- ...
- Seen the November 05, 2012 decision N° 001/12 N.E.C.D, the November 05, 2012 decision N° 002/12 N.E.C.D, and the November 05, 2012 decision N° 003/12 NEC.D of the National Election Committee;
- Seen the November 09, 2012 petition of Mr. Tol Prasath, Representative of SAM RAINSY Party, against the November 05, 2012 decision N° 001/12 NEC.D, the November 05, 2012 decision N° 002/12 N.E.C.D, and the November 05, 2012 decision N° 003/12 N.E.C.D of the National Election Committee.

Having heard the rapporteur,

Having heard the parties and witnesses,

Having deliberated in compliance with the laws,

- Whereas the National Election Committee issued the decision:
N° 001/12 N.E.C.D of November 5, 2012:
 - (1) To recognize the power of attorney dated October 30, 2012 of Mr. Pao Sreng given to Mr. Tol Prasath as a representative to file a petition at the National Election Committee is admissible for its legal form;
 - (2) To receive the October 30, 2012 petition of Mr. Tol Prasath that is admissible for its legal form but is rejected for being unfounded;
 - (3) To uphold the October 26, 2012 decision N° 001/12.D of the Commune Council of Leuk Dek by only modifying points 1 and 3 of the decision to:
 - Point 1 to receive the October 23, 2012 petitions N° 001, 002 and 003 of Mr. Pao Sreng that are admissible for their legal forms and

substances for the names of 62 voters, besides those names are rejected for being unfounded, and

- Point 3 to maintain the names of 40 voters in the voter lists of the concerned polling stations as attached in the annexes;
- (4) This decision was made and pronounced in the public hearing on November 05, 2012 before the parties and can be appealed in accordance with the law.

Nº 002/12 N.E.C.D of November 05, 2012:

- (1) To recognize the power of attorney dated November 01, 2012 of Mr. Smean Touch given to Mr. Tol Prasath as a representative to file a petition at the National Election Committee is admissible for its legal form;
- (2) To receive the November 01, 2012 petition of Mr. Tol Prasath that is admissible for its legal form but is rejected for being unfounded;
- (3) To uphold the October 28, 2012 decision Nº 012/12 of the Commune Council of Porthiban;
- (4) This decision was made and pronounced in the public hearing on November 05, 2012 before the parties and can be appealed in accordance with the law.

Nº 003/12 N.E.C.D of November 5, 2012:

- (1) To recognize that the power of attorney dated November 01, 2012 of Mr. Ngy Sam Ol delegated to Mr. Tol Prasath as a representative is admissible for its legal form;
- (2) To receive the November 1, 2012 petition of Mr. Tol Prasath that is admissible for its legal form and substance for the names of 11 voters, besides those names shall be rejected for being unfounded;
- (3) To uphold the October 28, 2012 letter Nº 060/12.N of Prek Thmey Commune Council but to reject to maintain the names of 29 voters in the preliminary voter lists of Prek Thmey Commune;
- (4) To strike the names of 11 voters off the preliminary voter lists of Prek Thmey Commune as attached in the annexes;
- (5) To maintain the names of 18 voters in the voter lists;
- (6) This decision was made and pronounced in the public hearing on November 5, 2012 before the parties and can be appealed in accordance with the law.

Mr. Tol Prasath, a representative of Sam Raingsy Party, on November 09, 2012, filed the petition against the November 5, 2012 decision Nº 001/12 N.E.C.D, the November 5, 2012 decision Nº 002/12 N.E.C.D, and the November 5, 2012 decision Nº 003/12 N.E.C.D of the National Election Committee. The Secretariat

General of the Constitutional Council received this petition on November 10, 2012 at 10:45.

This aforementioned petition of Mr. Tol Prasath, filed within the time limit provided in Article 65 (New-two), paragraph 6 of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly and in point 3, Article 26 of the Law on the Organization and the Functioning of the Constitutional Council, is therefore admissible;

- Whereas in the public hearing as well as in his clarification given before Group II of the Constitutional Council, Mr. Tol Prasath clarified that:

"The November 09, 2012 petition is really mine. Most of whom I filed against casted the 2012 Khum/Sangkat Council ballots. I have never petitioned them before, but another representative of Sam Rainsy Party did it. I would like to add to my petition that the petition against this NEC decision is made because they are not Khmer citizens; they are not eligible to vote for Khmer leaders. I accuse them of Vietnamese based on the ground that they live in group, have not permanent residence, listen and watch Vietnamese television channel, and speak Vietnamese. I also clarify it in my complaint at the National Election Committee. I would like to request the Constitutional Council to consider suspending the names of 91 voters from voting by waiting for the judge decision.";

- Whereas in the public hearing and the clarification before group II of the Constitutional Council, H.E. Mao Sophearith, a representative of the National Election Committee, clarified that:

"The National Election Committee has upheld the decision N° 001/12.D of Leuk Dek Commune Council on the ground that: First, the National Election Committee rejected the October 30, 2012 petition of Mr. Tol Prasath for being unfounded because the petition of Mr. Tol Prasath, asking to strike off the names of 40 voters, claimed to be Vietnamese, is just confirmed orally and based on unclear witnesses and has no sufficient evidences certifying those are Vietnamese. Second, the National Election Committee has upheld the October 26, 2012 decision N° 001/12.D of Leuk Dek Commune Council by rectifying points 1 and 3 of the decision because the names of 40 voters have permanent residences and live in Leuk Dek Commune. Their names are not in the immigration list, but are in the final electoral lists in accordance with Article 54 (New-two) point A, paragraph 3, and point C dash 5. The National Election Committee has rectified points 1 and 3 of the October 26, 2012 decision N°

001/12.D of the Leuk Dek Commune Council in order to comply with point 2 of this decision.

In the case of Porthibann Commune, the National Election Committee has rejected the November 01, 2012 petition of Mr. Tol Prasath because his petition which demands the names of 33 voters, claimed to be Vietnamese, to be stroked off, doesn't have any document certifying Khmer nationality. His affirmation is made orally without clear witnesses, legal ground, certifying those are Vietnamese.

The National Election Committee has upheld the October 28, 2012 decision N° 012/12 of Porthibann Commune Council on the ground that the names of 33 voters have permanent residences in Porthibann Commune, their names are not in the immigration lists, all of them are over 18 years old, their names are found in the final electoral lists and are not the new register in 2012. Therefore, the National Election Committee decided to uphold the Porthibann Commune decision according to Article 54 (New-two), point C dash 5. In the case of Prek Thmey Commune, I would like to emphasize the fact that the posting of the 2012 preliminary voter lists lasts 10 days from October 19, 2012 onward. On October 25, 2012, Mr. Ngy Sam Ol filed the petition to strike the names of 31 voters off the voter lists of Prek Thmey Commune by accusing them of foreigners. On October 28, 2012, the Prek Thmey Commune Council decided to strike off the names of 2 voters and to maintain the names of 29 voters in the voter lists. Mr. Ngy Sam Ol didn't satisfy with the decision of the Prek Thmey Commune Council and he gave the right to Mr. Tol Prasath to file a petition against the decision of the Prek Thmey Commune Council to the National Election Committee on November 01, 2012. The National Election Committee assigned its officials of the Department of Legal Service and Litigation to investigate the case at Prek Thmey Commune as a result, they found out that among the names of 29 voters, whose names are claimed to be struck off the voter lists, 2 deceased, 9 moved out and 18 have been living in Prek Thmey Commune. Their names were not in the immigration list, but were found in the final voter lists and were not just registered in 2012; therefore, the National Election Committee decided to uphold the October 28, 2012 letter N° 060/12.N of the Prek Thmey Commune Council but to reject the point of maintaining the names of 29 voters in the Prek Thmey Commune preliminary voter lists on the ground that the deletion of the names of 2 deceased voters based on legal ground but the maintaining of the names of 29 voters in voter lists is incorrect because the National Election Committee found that among the names of 29 voters, 2 of whom deceased and 9 moved. Therefore, 11 voters were struck off the voter list and 18 voters were maintained. To accuse

the National Election Committee of fully upholding the decision of the Commune Council was not reasonable because the National Election Committee had really assigned its officials to investigate the case and to make reports in each commune. Finally, I would like to propose to uphold the November 05, 2012 decision N° 001/12 N.E.C.D, N° 002/12 N.E.C.D and N° 003/12 N.E.C.D of the National Election Committee.”;

- Whereas in his clarification given before the Group II of the Constitutional Council, Mr. Tol Prasath affirmed that there are 6 witnesses: Mr. Meas Thorn, Mr. Poth San, Mr. Chhun Sarom, Mr. Duong Rorn, Mr. Tang Srin and Mr. Svay Seap but during the public hearing Mr. Meas Thorn and Mr. Poth San were absent;
- Whereas in the public hearing, Mr. Chhun Sarom, a witness from Porthibann Commune clarified that: *" The concerned names in the voter list of the polling station N° 0406 of Porthibann Commune, are really Vietnamese; however, I fail to bring any evidence along with me to prove.”;*
- Whereas in the public hearing, Mr. Duong Rorn, a witness from Porthibann Commune clarified that: *"I propose to strike the names of Vietnamese in the polling stations N° 0460 and 0411 off the voter lists because I have remembered, there were no Vietnamese during the Khmer Rouge regime. I affirm that they are Vietnamese because of their accent and dress.”;*
- Whereas in the public hearing, Mr. Tang Srin, a witness from Prek Thmey Commune affirmed that: *"I have seen Vietnamese people who live in group along the river side go to vote in the polling station N° 059 at HUN SEN High School. In the voter list, there are Vietnamese writing names like Nguyeng. I see the name Nguyeng Thi Theang in the preliminary voter list. Therefore, I think that they are Vietnamese.”;*
- Whereas in the public hearing, Mr. Svay Seap, a witness from Prek Thmey Commune affirmed that: *"I would like the Constitutional Council to strike all the names of foreigners off the voter lists. I confirm that they speak Vietnamese, dress differently from Khmer styles and watch Vietnamese TV channels. The written evidence is that these names are in the voter list. 33 names in Porthibann commune, 40 names in Leuk Dek commune, and 18 names in Prek Thmey commune are not yet struck off the voter lists.”;*
- Whereas according to the investigation of skilled officials of the Constitutional Council at Leuk Dek, Porthibann, and Prek Thmey communes, Koh Thom district, Kandal province, the names of 91 citizens whom Mr. Tol Prasath filed a petition to strike off the voter lists are really in the final voter lists in accordance with Article 54 (New-two) of the Law on Elections of the Members of the National Assembly;

- Whereas the November 05, 2012 decision N° 001/12 N.E.C.D, the November 05, 2012 decision N° 002/12 N.E.C.D, and the November 05, 2012 decision N° 003/12 N.E.C.D of the National Election Committee have legal ground;
- Whereas Mr. Tol Prasath, who filed a petition to the Constitutional Council on November 10, 2012, had no documents or written evidences to have the Constitutional Council reject the National Election Committee decisions;
- Whereas the authentication of identity is not within the competence of the Constitutional Council.

Decides:

- Article 1:** The November 09, 2012 petition of Mr. Tol Prasath is admissible for its legal form, but is rejected for being unfounded;
- Article 2:** Is upheld the November 05, 2012 decision N° 001/12 N.E.C.D, the November 05, 2012 decision N° 002/12 N.E.C.D, and the November 05, 2012 decision N° 003/12 N.E.C.D of the National Election Committee;
- Article 3:** This decision pronounced in the public hearing in Phnom Penh on November 17, 2012 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, November 17, 2012

On behalf of the Constitutional Council
Sitting as the Jurisdictional Council
The President,

Signed and Sealed: EK SAM OL

Glossary

CC.D	Decision of the Constitutional Council
N.E.C.D	Decision of the National Election Committee