

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

Nº 143/006/2008

Of July 19, 2008

Decision

Nº 099/004/2008 CC.D

Of July 24, 2008

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram Nº 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 Nº 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 Nº NS/RKM/1297/06 of December 26, 1997 promulgating the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram Nº NS/RKM/0902/017 of September 17, 2002 promulgating the Law on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram Nº NS/RKM/0606/019 of June 27, 2006 promulgating the Law on the Amendment of Article 13 (New) of the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram Nº NS/RKM/0107/006 of January 31, 2007 promulgating the Law on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen the July 16, 2008 decision of the National Election Committee (NEC), rejecting Mrs. THAI NARY's petition Nº 064 K.T.D.B. of July 07, 2008 ;
- Seen Mrs. THAI NARY's power of attorney of July 19, 2008, giving the right to Mr. HUL THOL as her representative to file an appeal against the July 16, 2008 NEC decision and to attend the Public Hearing of the Constitutional Council;
- Seen the July 19, 2008 petition (without number) by Mr. HUL THOL, second reserved candidate of SAM RAINSY Party Phnom Penh constituency, representing Mrs. THAI NARY, against the July 16, 2008

decision of NEC Trial Jury chairman, petition received by the Secretariat General of the Constitutional Council on July 19, 2008 at 11:25 am;

- Seen the July 21, 2008 minutes of the Constitutional Council Group III inquiring Mr. HUL THOL, as plaintiff;
- Seen the July 21, 2008 minutes of the Constitutional Council Group III inquiring NEC Representatives, as defendants;
- Seen the July 21, 2008 minutes of the Constitutional Council Group III inquiring the suspect SOM SOPHAT;
- Seen the July 22, 2008 letter № 853/ 08 NEC of H.E. IM SUOSDEY, NEC chairman, appointing H.E.Mr. MEAN SATIK, H.E.Mrs. KOY VETH, NEC members and Mr. KE RITH, deputy head of Legal Affairs and Litigation Department, as NEC Representatives in the Public Hearing of the Constitutional Council on July 24, 2008 at 08:00 am;

Having heard the rapporteur,

Having heard the parties and witnesses,

Having deliberated in compliance with the law,

- Whereas Mr. HUL THOL's petition, filed within the period of national election campaign, is in accordance with Article 73 (New) of the Law on the Elections of the Members of the National Assembly;
- Whereas Mr. HUL THOL's petition filed within the time limit provided by Article 8 (New-2) of the Internal Regulations on the procedure applicable before the Constitutional Council, is admissible;
- Whereas in his response given to the group III of the Constitutional Council, as well as during the Public Hearing, Mr. HUL THOL confirmed that he has requested the July 16, 2008 NEC decision to be rejected, due to the information of the two ladies witnesses KHOEM MONTCHA and PICH SOKNA;
- Whereas to the question asked by the Member of the Constitutional Council: "according to the rule, if your witnesses are next of kin to the petitioner, it would be acceptable." Mr. HUL THOL responded: "I am well aware of that too, but without any witness my petition will be rejected". Furthermore, Mr. HUL THOL added that according to the house owner declaration, the latter tore off this poster after 10:00 am, while according to his own statement, the poster had been torn off at 9:45 am; It is therefore impossible that this poster was torn off again after 10:00 am" I recognized that there is no witness to back it up. I only wish justice to be done. I file the petition in order to only get the truth; if SOM SO PHAT just says that: "Uncle I'm itching to tear off the poster" I would be willing to withdraw the petition";
- Whereas at the Public Hearing, Mrs. KHOEM MONTCHA informed that: "I'm a SAM RAINSY Party member and on the day of Saturday 28, the 4 of us were sticking the posters behind the mosque when suddenly, an elderly lady sitting in front of her house told us: "stick it here instead, because when it rains, the poster could be torn off." As I have no more posters to hand over, I made my way back, hardly had I walked about 5m, I saw someone tearing off the posters. I then shouted and rushed for a camera, but the person in question rushed into the guesthouse to hide himself";

- Whereas at the Public Hearing, Mrs. PICH SOKNA confirmed that: “I’m a Sangkat SRAS CHORK’s council’ and a SAM RAINSY Party member. The day I went sticking the posters on Saturday 28th at 9:45 am, a young man tore off the poster in front of me. Previously to sticking the posters, I have asked the permission from an elderly lady of that house, but not to stick on her house, rather on the mosque wall’s; the lady told me not to stick it there for fear that the rain would wash it out, but rather under the shelter of her house;
- Whereas SOM SOPHAT, before the Constitutional Council group III on July 21, 2008, answered that : “I don’t know anything about any poster being torn off, because I went out fishing and I had no clue of what happened ”....“I was accused not on the day when the incident took place; I remember it was on Saturday 28th, and on that day when I was accused, no one hunted me down straight away”;
- Whereas TOUCH SAMONN, the owner of the house, answered before the NEC that: “On June 28, 2008 about 9:45 am, the active member of the SAM RAINSY Party has brought the poster and stick it on the wall in front of my house without my permission . At that time, I was not at home, but my wife was present, unaware of someone sticking the poster on the wall in front of the house. When I came back, I saw the poster and I asked my wife whether the SAM RAINSY Party has asked the permission to stick the poster in front of the house or not ? My wife replied that she did not know anything. I therefore decided to tear the poster off the wall in front of my house”;
- Whereas H.E.MEAN SATIK, NEC Representative, before the Constitutional Council Group III, answered that: “NEC has designated the Legal Affairs Department to go down on the site of the incident; As a result, there is no evidence accusing Mr. SOM SOPHAT of tearing off the poster. Mr. TOUCH SAMONN affirmed that as the owner of the house, he tore off the poster because it was stuck without his permission. At the Public Hearing (of NEC), Mrs. THAI NARY has allowed Mr. HUL THOL to represent her by clarifying that she did not file petition against the owner of the house but against Mr. SOM SOPHAT.”;
- Whereas at the Public Hearing, H.E. MEAN SATIK clarified that the following main points are the basis for NEC rejection:

First point: the plaintiff has not produced any evidence.

Second point: the plaintiff’s witnesses are persons of his own group and the important witness whom the NEC wants to inquire for authoring the posting is the woman that the plaintiff party declared not to know and who would be the house owner’s aunt; yet the house owner replied that he has neither elderly person nor an aunt in his house.

Third point: the plaintiff and the defendant agree that the incident has happened between 9:30 am and 10:00 am. The plaintiff accuses, the defendant refuse. In order to clarify the case, the Commune Election Committee, the Provincial Elections Committee and NEC proceeded for their respective investigation. After the investigation, the habitants living nearby affirmed that nothing has happened between 9:30 am and 10:00 am.

Fourth point: the house owner, who is the main actor in this case, acknowledged and recognized that he is **the author of the torn poster**. Therefore by these about clearly-expressed motives, it can be concluded that SOM SOPHAT has not torn off the poster, but the house owner. Consequently, NEC decided to reject the plaintiff's petition and to acquit SOM SOPHAT according to stipulation of the law;

- Whereas in according with the legal principle, the accused shall have the benefit of any reasonable doubt (in *dubio pro reo*);

Decides:

Article 1: The July 19, 2008 petition of Mr. HUL THOL is admissible for its legal form, but is rejected for being unfounded.

Article 2: Is upheld the July 16, 2008 decision of the National Election Committee;

Article 3: This decision pronounced in the Public Hearing of the Constitutional Council in Phnom Penh on July 24, 2008 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, July 24, 2008

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

Signed and Sealed: EK SAM OL