

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 155/018/2008

Of August 16, 2008

Decision

N° 104/009/2008 CC.D

Of August 28, 2008

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/1297/06 of December 26, 1997 promulgating the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° 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 N° 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 N° 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 August 12, 2008 National Election Committee (NEC) decision N° 591/08 N. E.C/D;
- Seen the August 16, 2008 petition of Mr. NHEK VANNARA, Representative of the Human Rights Party, contesting the preliminary results of the Elections of the Members of the National Assembly for the 4th legislature, and charging NEC with inflating the name lists by duplicating several names on the voter lists at each polling station;
- Seen the August 14, 2008 power of attorney N° 2116/08 HRP of H.E. KEM SOKHA, President of the Human Rights Party, giving the right to

Mr. NHEK VANNARA to represent him and to lodge an appeal to the Constitutional Council in accordance with the legal procedure;

- Seen the August 22, 2008 NEC introduction letter N° 1003/08 N.E.C;
- Seen the August 20, 2008 minutes recording the clarifications given by Mr. NHEK VANNARA;
- Seen the August 21, 2008 minutes recording the clarifications given by NEC representatives ;

Having heard the rapporteur,

Having heard the parties,

Having deliberated in compliance with the law,

- Whereas the August 16, 2008 appeal of Mr. NHEK VANNARA, Representative of the Human Rights Party, submitted to the Constitutional Council and received by the Secretariat General of the Constitutional Council on August 16, 2008 at 09:25 am, was filed within the period of 72 hours after the party received the August 12, 2008 NEC decision N° 591/08 N.E.C/D, and is admissible in conformity with Article 115 (New) and Article 117 (New) of the Law on the Elections of the Members of the National Assembly and Item 2 of Article 27 (New) of the Law on the Organization and the Functioning of the Constitutional Council;
- Whereas in the subject of his August 16, 2008 appeal, Mr. NHEK VANNARA, Representative of the Human Rights Party, contested the preliminary results of the Elections of the Members of the National Assembly for the 4th legislature and charged NEC with inflating the name lists by duplicate several names on the voter lists of each polling station;
- Whereas Mr. NHEK VANNARA stated in his aforementioned appeal that on August 11, 2008, he “file 3 petitions to NEC, requesting it to reorganize the elections throughout the country. On the contrary , NEC turned the plaintiff down for failing to produce any evidence to clearly show the irregularities, as stipulated in Article 114 of the Law on the Elections of the Members of the National Assembly and the Law on the amendment of this Law for NEC consideration”;
- Whereas in his clarifications giving before the Constitutional Council Group III, Mr. NHEK VANNARA stated that “there are countless irregularities but at this time I would like to appeal about the voter lists. Concerning to the other cases, I would like to treat them separately in order to avoid any confusion. In my appeal, I have clearly indicated that the voter lists are inflated by NEC and there are several duplicated names in each polling station. I am only filing a petition against the irregularities in the voter lists”;
- Whereas at the Public Hearing, Mr. NHEK VANNARA stated that he had nothing to add to the petition, but he requested some arrangement be made to the voter lists in order to make them comfort regular standard. This petition is not to found out who is right who is wrong, but only to prevent reoccurrence of such cases in the future;
- Whereas in his clarifications giving before the Constitutional Council Group III, **H.E. EM SOPHAT**, NEC Representative, stated that “Mr.

NHEK VANNARA files a petition against the preliminary results of the Elections of the Members of the National Assembly for the 4th legislature which he only show the voter lists, should have contested during the period of posting as preliminary voter lists. NEC has examined this petition and decided that: If Mr. NHEK VANNARA files a petition against the preliminary result or a part of the preliminary result of the polls; he has 72 hours to give the irregularities as prescribed in Article 114 of the Law on the Elections of the Members of the National Assembly. It is only for his failing to produce evidences on the irregularities, on the voting process, on the ballot counts and on the total results of ballot counts, that NEC realized on Article 115 (New) of the Law on the Elections of the Members of the National Assembly, for its decision to reject his petition for lack of clear evidences to support his motive. Furthermore, H.E. EM SOPHAT stated that “before validating the voter lists, there were very few complaints about the duplication of names or their name deletion, and those complaints were already handled by NEC and the Constitutional Council. The lists, which Mr. NHEK VANNARA brought forth as evidences, are the official lists already validated by NEC on February 29, 2008”;

- Whereas at the Public Hearing, H.E. EM SOPHAT has made almost similar statement and substance as he did before the Constitutional Council Group III;
- Whereas the August 12, 2008 NEC decision N° 591/08 N.E.C/D provided with sound motive was made in conformity with the legal form and substance;

**Decides:
in the present of the parties**

Article 1 : The appeal of Mr. NHEK VANNARA is admissible for its legal form, but is rejected for being unfounded.

Article 2 : Is upheld the August 12, 2008 NEC decision N° 591/08 N.E.C/D.

Article 3 : The present decision pronounced at the Public Hearing of the Constitutional Council in Phnom Penh, on August 28, 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, August 28, 2008

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

Signed and sealed: EK SAM OL