

**KINGDOM OF CAMBODIA**  
**Nation Religion King**



**The Constitutional Council**

**CASE**

N° 191/014/2011

Of December 26, 2011

**Decision**

N° 120/001/2012 CC.D

Of January 05, 2012

**The Constitutional Council**

- Seen the Constitution of the Kingdom of Cambodia;
- ...
- Seen the December 21, 2011 National Election Committee decision N° 006/11 N.E.C.D made to uphold the December 15, 2011 Mondulkiri Provincial Election Commission decision N° 12.185/11 PEC/M.K;
- Seen the December 22, 2011 petition N°167 S.R.P of Mr. HING YOEUN, Representative of Mr. ORN SAMNANG, Representative of SAM RAINSY Party, against the December 21, 2011 National Election Committee decision N° 006/11 N.E.C.D.

**Having heard the rapporteur,**

**Having heard the parties,**

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

- Whereas the National Election Committee issued the Decision N° 006/11 N.E.C.D of December 21, 2011 to receive the petition of Mr. HING YOEUN of December 20, 2011 and that is admissible for its legal form, but is rejected for being unfounded, to uphold the December 15, 2011 Mondulkiri Provincial Election Commission decision N° 12.185/11 PEC/M.K. Mr. HING YOEUN, Representative of Mr. ORN SAMNANG, filed the petition N° 167 S.R.P of December 22, 2011 against the December 21, 2011 National Election Committee decision N° 006/11 N.E.C.D. The Secretariat General of the Constitutional Council received this petition on December 26, 2011 at 15:45. The aforementioned petition of Mr. HING YOEUN was made within the time limit as stated 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 Article 26 Point 2 of the Law on the Organization and the Functioning of the Constitutional Council, is therefore admissible;

- Whereas during the Public Hearing and at the inquiry of Group I of the Constitutional Council, Mr. HING YOEUEN clarified that: *“The petition of December 22, 2011 shown to me is really mine. I would like to add more memoirs of January 05, 2012. I request you to insert the name of Mr. TES TUNG in the preliminary voter list of DAK DAM Commune Council of SAM RAINSY Party because the election is upcoming. If the name of one more candidate is not inserted, the composition of commune council will not be sufficient as stated in the law that requires at least 5 members, and SAM RAINSY Party will lose one member for joining the election;*

*I would like to submit more documents—the letter of refusal to be a second deputy chief (second chumtop) of DAK DAM commune, Mondulkiri province from SAM RAINSY Party, the note of SAM RAINSY Party to the chief of DAK DAM Commune Council, and the request for replacing Mr. KRAIT ANN, the second deputy chief (second chumtop) of DAK DAM commune. I don’t submit all these documents to the National Election Committee. However, I have sufficient documents. The reason that I don’t submit these documents to N.E.C because during the Public Hearing, the Jurisdictional Council requires me to show these documents immediately; if I know in advance, I will prepare the documents for them.*

*I would like to inform you that the Mondulkiri Provincial Election Commission deletes the name from Commune Council without Prakas of the Ministry of Interior, but when appointing into position, Prakas of the Ministry of Interior is needed. According to the Law, losing the membership is just to report to the Commune Council and other administrative work is the duty of Khum/Sangkat Councils as the Law determines within 14 days. Therefore, I finally would like to request the Constitutional Council to replace Mr. KRAIT ANN by Mr. TES TUNG.”;*

- Whereas at the Public Hearing and at the inquiry of Group I of the Constitutional Council, Mr. MEAN SATIK, Representative of the National Election Committee replied that:

*“I would like to inform you that the National Election Committee decision, contested by Mr. HING YOEUEN, is made in accordance with Article 11 of the Law on the Elections of the Senators stating that: “The voters and electoral colleges are members of the National Assembly and all members of Khum/Sangkat councils who are in position within framework of each region.” I would like to inform you more that after the election, N.E.C proclaims the elected candidates as the members of Khum/Sangkat Councils and the Ministry of Interior declares the validity of those candidates to be the members of Khum/Sangkat Council. Referring to Article 167 (New) (former Article 219) of the Law on the Elections of Khum/Sangkat Councils, any*

*elected candidate will become a Khum/Sangkat Council member from the date of taking office. Article 19 of the Law on the Khum/Sangkat Administrative Management determines that the Ministry of Interior shall declare the validity within 14 days. Therefore, in order to become a Khum/Sangkat Council member, an elected candidate shall receive Prakas from the Ministry of Interior. On the other hand, the replacement of an elected candidate as Khum/Sangkat Council member is the duty of the political parties and the Ministry of Interior. Concerning to the petition of Mr. HING YOEUEN, I would like to inform you that N.E.C decided not to replace Mr. KRET ANN by Mr. TES TUNG because there is no Prakas of Ministry of Interior to recognize his validity as member of Khum DAK DAM Commune Council. I would like to inform you that the basis of Law implemented by the N.E.C to reject the request of Mr. HING YOEUEN referred to Articles 16, 19, and 38 of the Law on Khum/Sangkat Administrative Management and Article 167 (New) (former Article 219) of the Law on the Elections of Khum/Sangkat Councils. Finally, I would like to suggest the Constitutional Council to uphold the December 21, 2011 National Election Committee decision N° 006/11 N.E.C.D;*

- Whereas the December 21, 2011 National Election Committee decision N° 006/11 N.E.C.D has legal ground because the request of the insertion of the name of Mr. TES TUNG into the preliminary voter list for the election of the members of the Senate in its 3<sup>rd</sup> legislature without any documents from the Ministry of Interior as evidences to recognize Mr. TES TUNG as the Council member and the second deputy chief (second chomtop) of DAK DAM Commune, is incorrect in accordance with Article 11 of the Law on the Elections of the Senators;
- Whereas the aforementioned petition of Mr. HING YOEUEN is related to the modality and procedure of the replacement of the member of Khum/Sangkat Council, and is within the competence of the Ministry of Interior, but is not within the competence of the National Election Committee and the Constitutional Council.

### **Decides:**

- Article 1:** The December 22, 2011 petition N° 167 S.R.P of Mr. HING YOEUEN is admissible for its legal form, but is rejected for being unfounded;
- Article 2:** Is upheld the decision of Jurisdictional Council of the National Election Committee N° 006/11 N.E.C.D of December 21, 2011;
- Article 3:** This decision pronounced in the Public Hearing in Phnom Penh on January 05, 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, January 05, 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
N.E.C	National Election Committee
S.R.P	SAM RAINSY Party
PEC/M.K	The Mondulkiri Provincial Election Commission
Khum	Commune
Sangkat	Quarter
Prakas	Ministerial decision