

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

Case N° 196/005/2012

Of November 10, 2012

Decision N° 125/006/2012 CC.D

Of November 19, 2012

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- ...
- Seen the November 06, 2012 decision N° 008/12 N.E.C.D of the National Election Committee (NEC) points 3 and 4 striking the name of Sam Rainsy off the voter list of Sangkat Boeung Raing;
- Seen the November 08, 2012 petition of Mr. Choung Chou Ngy, a lawyer representing Mr. Sam Rainsy, the president of the National Rescue Party, against the November 06, 2012 decision N° 008/12 N.E.C.D of the National Election Committee;

Having heard the rapporteur;

Having heard the parties;

Having deliberated in compliance with the law;

- Whereas the National Election Committee issued the decision N° 008/12 N.E.C.D of November 6, 2012 to uphold decision N° 077/12 dated October 27, 2012 of Sangkat Boeung Raing Council by only rectifying point 2 to: striking the name of Sam Rainsy off the voter list of Sangkat Boeung Raing. Therefore, Mr. Choung Chou Ngy, a lawyer representing Mr. Sam Rainsy, the president of the National Rescue Party, filed the petition of November 8, 2012 against the decision N° 008/12 N.E.C.D dated November 06, 2012 of the National Election Committee. The petition received by the Secretariat General of the Constitutional Council on November 10, 2012 at 15:10.

This aforementioned petition of Mr. Choung Chou Ngy, filed within the time limit provided in paragraph 6 of Article 65 (New-two) of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly and point 3 of 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 I of the Constitutional Council, Mr. Choung Chou Ngy, a lawyer representing Mr. Sam Rainsy, filed the petition against the points 3 and 4 of the decision N° 008/12 N.E.C.D dated November 06, 2012 of the National Election Committee by affirming that:

- "1- Up to now, the appeal judgment N° 32 dated March 01, 2011 of the Supreme Court has not been implemented yet. On the contrary, Sangkat Boeung Raing Council implemented the appeal judgment by itself;*
- 2- Article 50 (New) of the Law on the Elections of the Members of the National Assembly does not provide the procedure of striking the name off voter list;*
- 3- According to the joint directive on the enforcement of the examination of the name of the voter list and the electoral registration N° 027.D dated September 3, 2010 of NEC, a person who has been deprived the right to vote shall have the letter of affirmation from the institutional authority, but Sangkat Boeung Raing Council doesn't have it;*
- 4- H.E. Sam Rainsy filed the recourse to the Supreme Court to demand his case concerning his punishment to be retried. The Supreme Court is preceding that case;*
- 5- Depriving of the right to vote based on the appeal judgment of the Supreme Court is the implementation of the penal punishments which are the jurisdiction of the prosecution but not the authority of Sangkat Boeung Raing Council;*
- 6- According to Article 449 of the Code of Criminal Procedure, the Supreme Court may suspend the execution of the sentence.*

Based on these aforementioned 6 important points, I would like to ask the Constitutional Council to reject the decision of NEC and maintain the name of H.E. Sam Rainsy in the voter list of Sangkat Boeung Raing."

- Whereas in the public hearing as well as in his clarification given before Group I of the Constitutional Council on November 14, 2012, H.E. Em Sophat, a representative of the National Election Committee, clarified that:

"According to article 53 (New) of the Law on the Elections of the Members of the National Assembly, the National Election Committee shall delegate its power to Commune/Sangkat Council to perform functions on its behalf in order to revise the voter lists, the voter registration, and the register of voters for each commune/ sangkat. Therefore, Commune/Sangkat Council has an obligation to accomplish this task of registering new voters and updating the final voter lists by striking off the names of whom deceased, moved out, had his names, and whom is in the situation of serving prison term. Based on the final judgment of the Supreme Court N° 32 dated March 1, 2011, Mr. Sam Rainsy is the one being in the situation of serving prison term. Sangkat Boeung Raing Council has, based on Article 50 (New) of the Law on the Elections of the Members of the National Assembly, decided to strike the name of Sam Rainsy off the voter list. The National Election Committee considers that the decision of Sangkat Boeung Raing Council is based on legal ground; therefore, NEC decides to uphold the decision N° 077/12 dated October 27, 2012 of Sangkat Boeung Raing Council by just rectifying point 2 to: striking the name of Sam Rainsy off the voter list of Sangkat Boeung Raing. All of the details of the case and detailed consideration of the National Election Committee were almost in the decision N° 008/12 N.E.C.D dated November 6, 2012 of the National Election Committee. I would like to submit a copy of the decision to the Constitutional Council."
- Whereas:
 - 1- According to the final judgment N° 32 dated March 01, 2011, the Supreme Court decided to uphold the penal judgment N° 59 "E" dated October 13, 2010 of Appellate Court, upholding the penal judgment N° 01 "A" dated January 27, 2010 of Svay Rieng Provincial Court that sentenced Mr. Sam Rainsy to 2 years in prison for intentional damage of the Vietnamese-Cambodian border landmark N° 185 and for incitement to racial discrimination;
 - 2- According to the final judgment N° 84 .CIIID dated September 20, 2011, the Appellate Court sentenced Mr. Sam Rainsy to 7 years in prison for forgery of public document and incitement to commit the crime;
- Whereas Article 50 (New) of the Law on the Elections of the Members of the National Assembly, raised by the parties, states that:

"To have his/her name in voter lists, every citizen must meet the following conditions:

 - Be a Khmer national;

- Be eighteen (18) years old or over counting up to the polling day;
- Have a residence in the commune/sangkat where he/she is going to cast his/her vote;
- Not be in a situation of serving prison term;
- Not be insane or under guardianship as certified by a competent ministry or institution.”

and Article 449 of the Penal Code states that:

“The Criminal Chamber of the Supreme Court which received the motion for review may suspend the execution of the sentence if there are specific reasons.”

- Whereas Mr. Choung Chou Ngy, a lawyer representing Mr. Sam Rainsy, did not provide written evidences to certify the suspension of the execution of the sentence issued by the Criminal Chamber of the Supreme Court, which received motion for review, in accordance with Article 449 of the criminal procedure code;
- Whereas the decision N° 008/12 N.E.C.D dated November 6, 2012 of the National Election Committee is well founded.

Decides:

Article 1: The petition dated November 8, 2012 of Mr. Choung Chou Ngy, a lawyer representing Mr. Sam Rainsy, President of the National Rescue Party, is admissible for its legal form, but is rejected for being unfounded.

Article 2: Is upheld the decision N° 008/12 N.E.C.D dated November 6, 2012 of the National Election Committee.

Article 3: This decision pronounced in the public hearing in Phnom Penh on November 19, 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 19, 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
Sangkat	Commune
N° 027.D	Directive number 027
N° 84 .CIIID	The final judgment of the Appellate Court number 84 made by 3 th Council, Group D