

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N°135/007/2007

Of November 13, 2007

Decision

N° 095/006/2007 CC.D

Of November 22, 2007

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 November 08, 2007 decision of the National Election Committee (NEC), rejecting the November 03, 2007 decision of the Council of the Kilometer 6 Sangkat and deleting the names of 3,244 voters from the preliminary voter lists of the Kilometer 6 Sangkat;
- Seen the November 13, 2007 petition of Mr. LY SOVICHEA , demanding to maintain the names of 3,244 Cambodians in the preliminary voter lists of the Kilometer 6 Sangkat (Khan Russey Keo), which the Secretariat General of the Constitutional Council received on November 13, 2007 at 04:35pm;

- Seen the power of attorney dated November 13, 2007 given to Mr. LY SOVICHEA by 14 persons, who claim to be the representatives of the 3,244 persons whose names were deleted by NEC;
- Seen the letter N° 839/07 NEC of November 19, 2007 , appointing the representatives of NEC to attend the Public Hearing of the Constitutional Council;
- Seen the November 16, 2007 minutes of investigating at Kilometer 6 Sangkat, (Khan Russey Keo, Phnom Penh);
- Seen the November 19, 2007 minutes recording the clarifications given by Mr. LY SOVICHEA ;
- Seen the November 19, 2007 minutes recording the clarifications given by representatives of NEC ;

Having heard the rapporteur,

Having heard the parties, the witnesses and the concerned persons,

Having deliberated in compliance with the law,

- Whereas the petition of Mr. LY SOVICHEA made within the period of the public posting of the preliminary voter lists is admissible for its legal form. According to Article 64 (New) of the Law on the Elections of the Members of the National Assembly and the Item 3 of Article 26 of the Law on the Organization and the Functioning of the Constitutional Council;
- Whereas in his petition and in his clarification given during the inquiry, Mr. LY SOVICHEA pointed out that :
 - 1- The decision of NEC was not based on any concrete evidences, i.e. decided only according to the name lists made by the village chief, and to the affirmation of the administrative police station chief;
 - 2- The registration made by the village chief and the affirmation of the administrative police station chief contradict the NEC instructions, which delegates the power to the Khum/ Sangkat Council, but not to the village chief or to the administrative police station chief, to update the name lists and registrations;
- Whereas during the Public Hearing, Mr. LY SOVICHEA demanded the names of the 3,244 persons to be maintained on the voter lists;
- Whereas in the inquiry, Mr. LY SOVICHEA can not determine whether the 3,244 persons would really have permanent residences at the Kilometer 6 Sangkat, or among them how many persons have or have not permanent residences. He emphasized that only the local authorities can pronounce on this case;
- Whereas the group II of the Constitutional Council proposed Mr. LY SOVICHEA to accompany the representatives of the Constitutional Council and to go down to the 3 villages in the Kilometer 6 Sangkat in order to check some of the 3,244 persons chosen at random by the representatives of the Constitutional Council; yet Mr. LY SOVICHEA claimed that he can take the latter to only meet the 14 persons whom he represented as well as the additional 36 persons;
- Whereas during the Public Hearing, Mr. SOK SAMBAT, the Kilometer 6 Sangkat Chief, who is also the witness of Mr. LY SOVICHEA, assured

that “I can only provide concrete evidences as contain in the November 01, 2007 attached name list, but due to time constrained I could not investigate further because in my Sangkat there are not only these names but much more than those ”;

- Whereas during the Public Hearing, Mr. SOK KHIM, deputy Chief of Kilometer 6 Sangkat, who is also the witness of Mr. LY SOVICHEA, assured that “My presence here as witness is to defend the names of 3,244 persons be maintained on the voter lists”;
- Whereas in their response during the inquiry and the Public Hearing, H.E.Mr. EM SOPHAT, H.E.Mr. KLOK BUDDHI and Mr.KEO PHALLA, NEC representatives, asserted that:
 - 1- The NEC decision is well founded because the question of the people residence fall within the competence of the local administrative police, and according to the latter’s affirmation, those persons did not live in Kilometer 6 Sangkat. Furthermore, during the NEC public hearing, the Kilometer 6 Sangkat chief did not provide any evidence to the NEC Trial Jury; He only claimed that the names on the final voter lists, according to the procedure, cannot be deleted. To the questions by the NEC Trial Jury as to whether he had proceeded in investigating the case, he negatively responded. The investigation conducted by the working group about the 20 person’s names by Random Check, is to insure that the report of the local administrative police is correct or not. The result showed that indeed these 20 persons have no residences at the Kilometer 6 Sangkat;
 - 2- The names recorded by the village chief on the voter lists, barring his signature as well those of his deputy and the local administrative police chief of Kilometer 6 Sangkat, are the evidences which the plaintiff presented to NEC in compliance with Article 64 (New) of the Law on the Elections of the Members of the National Assembly. Concerning the question of delegating of powers, the NEC recognized to have granted them to the Khum/ Sangkat Council in order to update the voter lists which become thereafter the preliminary voter lists that the Khum/ Sangkat Council must to post to allow the concerned persons to contest or to oppose. According to Article 64 (New) of the Law on the Elections of the Members of the National Assembly, the chief of the administrative police station of the Kilometer 6 Sangkat, in charge of the residence books, is better informed than anyone else concerning the people’s domiciles in his Kilometer 6 Sangkat;
- Whereas during the Public Hearing, Mr. MANG SIM ENG, the Spean Kpous village chief who is dealing with the electoral process, emphasized that the Sangkat chief had ordered the village chief to prepare for updating the voter lists which had been established and submitted to the Sangkat chief, who did not approve them;
- Whereas during the Public Hearing, Mr. OUNG BORITH, the Kilometer 6 Sangkat administrative police station chief who is dealing with the electoral process, emphasized that the chiefs of the villages, in charge of the preparing the updating of the 3,244 persons name list, are implementing according to the NEC instructions, by requesting the administrative police station chief to cooperate for the control“ I therefore

- have named police officers to check the residence books A1 and they found out that those persons do not reside in those areas”;
- Whereas during the Public Hearing, Mr. THOUK SAN, Boeung Chouk village chief, who is dealing with the electoral process, emphasized that in the process of updating the name lists, the village chief and the 50 houses chief, jointly recorded the names of the persons who do not stay in the area, but still have their names on the lists. These lists were sent to the Sangkat council for approval, but the Sangkat chief did not affix them, leading to the absence of contestant;
 - Whereas the arguments presented by Mr. LY SOVICHEA to the Constitutional Council, have no clear legal ground to justify the names of the 3,244 persons to be maintained on the preliminary voter lists;
 - Whereas the arguments presented by the NEC representatives, have legal ground.

Decides:

- Article 1** : Mr. LY SOVICHEA petition of November 13, 2007 is admissible for its legal form but is rejected for being unfounded.
- Article 2** : Is upheld the NEC Trial Jury decision of November 08, 2007, rejecting the November 03, 2007 Kilometer 6 Sangkat Council decision and by deleting the names of 3,244 voters from the preliminary voter lists of the Kilometer 6 Sangkat.
- Article 3** : This decision pronounced in Public Hearing of the Constitutional Council in Phnom Penh on November 22, 2007, 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 22, 2007

On behalf of the Constitutional Council

Sitting as **the Jurisdictional Council**

The President,

Signed and Sealed: EK SAM OL