



KINGDOM OF CAMBODIA
Nation Religion King

The Constitutional Council

CASE N° 226/030/2013

Of August 17, 2013

Decision N° 130/005/2013 CC.D

Of August 31, 2013

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- ...
- Seen the August 15, 2013 decision N° 019/13 NEC.D of the National Election Committee;
- Seen the August 17, 2013 petition of Mr. **Keo Phirum**, Representative of the National Rescue Party, filed against the provisional results of the 2013 Elections of the Members of the National Assembly for the 5th legislature in Kratie province constituency;
- Seen the August 16, 2013 power of attorney of H.E. **Sam Rainsy**, President of the National Rescue Party, given to Mr. **Keo Phirum** as Representative of National Rescue Party to file a petition to the Constitutional Council in accordance with the legal procedure;
- Seen the introduction letter N° 854/13 NEC dated August 20, 2013 of the National Election Committee;
- Seen the August 21, 2013 minutes recording the clarification given by Mr. **Keo Phirum**;
- Seen the August 22, 2013 minutes recording the clarification given by H.E. **Mao Sophearith**, Representative of the National Election Committee;
- Seen the decision N° 28/2013 CC.D dated August 23, 2013 of the Constitutional Council;
- Seen the letter N° 043/2013 CC.D dated August 23, 2013, appointing the members of Group II of the Constitutional Council to take part in the investigation on the opening of the safety packages "A" at the headquarters of the National Election Committee;

- Seen the August 25, 2013 minutes recording the verification of some safety packages "A" in Svay Chras commune, Kratie province constituency;
- Seen the introduction letter N° 895/13 NEC dated August 29, 2013 of the National Election Committee;
- Seen the August 29, 2013 power of attorney letters of Mr. **Keo Phirum** to lawyers **Choung Choungy** and **Ket Khy** for defending the legal rights and legal interests of the National Rescue Party concerning the Case N° 226/030/2013 dated August 17, 2013 before the Constitutional Council;
- Seen the power of attorney letter of lawyer **Choung Choungy** dated August 30, 2013 and lawyer **Ket Khy** dated August 29, 2013;

**Having heard the rapporteur,
Having heard the parties,
Having deliberated in compliance with the law,**

- Whereas according to Article 115 (New) and Article 117 (New) of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly and Point 2 of Article 27 (New) of the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council, the August 17, 2013 petition of Mr. **Keo Phirum**, Representative of the National Rescue Party, submitted to the Constitutional Council, which the Secretariat-General of the Constitutional Council received on August 17, 2013 at 10:30, was filed within the timeframe of 72 hours after the party had received the August 15, 2013 decision N° 019/13 NEC.D of the National Election Committee, is therefore admissible;
- Whereas in his petition submitted to the Constitutional Council as well as the August 21, 2013 clarification before Group II of the Constitutional Council, Mr. **Keo Phirum** confirmed that there were a lot of citizens lost their names from the 2012 voter lists without reasons, rectified the figures of the invalid ballots. There were 94 invalid ballots in Khum Damrei Phong, 111 invalid ballots in Khum Kampong Damrey, and in Khum Vatanak, the chief of the polling station gave the wrong seal to stamp on the ballots by using the polling station seal, which violated the regulations and the procedures of the election. Mr. **Keo Phirum** requested the National Election Committee to open the safety packages "A" in order to verify the ballot counting;
- Whereas during the public hearing, lawyer Mr. **Keth Khy** and lawyer Mr. **Choung Choungy**, representatives of Mr. **Keo Phirum**, as well as Mr.

Keo Phirum clarified that the object of this petition as follows: 1- Contesting the provisional results of the 2013 Elections of the Members of the National Assembly for the 5th legislature in the Kratie province constituency, 2- Rejecting the N^o 019/13 NEC.D dated August 15, 2013 of the National Election Committee. The plaintiff and both lawyers mentioned the reasons of the petition as follows:

- 1- A overwhelming number of citizens lost their name from the 2012 voter lists;
- 2- In Khum Svay Chras, there were falsifications of the figure in the Form 1104 in 13 polling stations—0295, 0368, 0276, 0260, 0277, 0424, 0261, 0278, 0262, 0374, 0263, 0345, 0407. The figure in the Form 1104 received by the National Rescue Party on July 28, 2013 was different from the figure in the Form 1104 received by MEC/PEC on July 30, 2013;
- 3- In Khum Damrey Phong, the 94 invalid ballots were suspected in the polling station N^o 0011;
- 4- In Khum Kampong Damrey, the 111 invalid ballots were suspected in the polling station N^o 0024;
- 5- In Khum Vatanak, all ballots in the polling station N^o 0292 were sealed wrong because the chief of the polling station had given the seal of polling station to stamp on the ballots. It was not in conformity with the procedures of using the seal given by the National Election Committee.

In this case, Mr. **Keo Phirum** requested as follows:

- 1- To demand the National Election Committee to prove the reasons why so many people had lost their names from the 2012 voter list;
 - 2- To demand the ballots to be recounted in all 13 polling stations in Khum Svay Chras;
 - 3- To demand the ballots to be recounted in the polling station N^o 0011 of Khum Damrey Phong;
 - 4- To demand the ballots to be recounted in the polling station N^o 0024 of Khum Kampong Damrey;
 - 5- To demand the ballots to be recounted in the polling station N^o 0292 of Khum Vatanak.
- Whereas during the clarification before Group II of the Constitutional Council as well as during the public hearing, H.E. **Mao Sophearith**, Representative of the National Election Committee, confirmed that the petition against the loss of the names from voter lists shall be made in the period of the annual voter lists examination and annual voter registration from the October 01 to December 31. In the year that has general election as in 2013, the examination of the voter lists and voter

registration shall be conducted from September 01, 2012 a month ahead as stipulated in the schedule of the National Election Committee dated July 04, 2012 in accordance with Article 49 (New-three) of the Law on the Elections of the Members of the National Assembly and the Law on Amendment of this Law. The petition or objection against the loss of the names, the removal of the names and voter registration was over the timeframe since December 2012. The plaintiff didn't have concrete evidences to prove clearly the 94 invalid ballots in the polling station N° 0011 in Khum Damrey Phong, and 111 invalid ballots in the polling station N° 0024 in Khum Kampong Damrey. The plaintiff did not clarify the irregularities of the commissions or its members who made the mistakes, the dates and places of wrongdoing, the names and addresses of the witnesses as well as documents or other evidences as stipulated in Article 114 of the Law on Elections of the Members of the National Assembly. All minutes of the ballot counting of Forms 1102 & 1108 and the large sheet of papers marking the votes in polling station and ballot counting station were signed to recognize by the representatives of political parties;

- Whereas when opening the safety package "A" of 13 polling stations in Khum Svay Chras in accordance with the decision of the Constitutional Council, 8 safety packages "A" found unlocked with safety glues were irregularities, but all safety packages "A" keeping in packages "B" tied up and fastened with a numbered seal before the representatives of the political parties and observers, then the packages were sent to CEC, next CEC cut a seal before the representatives of political parties and observers, and tied up, next the package "B" was taken to put into the package "C" by writing a note outside using an indelible marker of a Khum, Sangkat code and polling station code, tied up and fastened with a numbered seal before the representatives of the political parties and observers. Next, the package "C" was sent to PEC, after that PEC put the packages "C" into the package "D", tied up and fastened with a numbered seal as well as writing a note of a numbered seal before the representatives of political parties and observers;
- Whereas for not tearing the transparent plastic out, it was a mistake of the members of the polling station and ballot counting officials of all 8 polling stations, making the safety packages "A" opened. Those officials working at the 8 polling stations shall be punished according to the law. Particularly, the National Election Committee who is a guardian is also responsible for the moral about its mismanagement. After the verification of the votes in the safety packages "A" in all 13 polling stations in Khum Svay Chras, the votes of the National Rescue Party and Cambodian

People's Party in the Forms 1102 & 1108 and the large sheet of papers marking the votes (vote recording table) were steady. Please read the annex on the minutes of the opening of the safety packages "A" of 13 polling stations in Khum Svay Chras;

- Whereas finally, Mr. **Keo Phirum** and both lawyers requested four points:
 - 1-To reject of the decision N° 019/13 NEC.D dated August 15, 2013 of the National Election Committee;
 - 2-To order the National Election Committee to recount the valid ballots and to verify the invalid ballots throughout the Kratie province;
 - 3-To re-investigate whether all above wrongdoings had been ordered by what level; a level of the members of the Commission of the polling station or a level of the members of the provincial, municipal, commune/ Sangkat Election Commissions or a level of the members of the National Election Committee?
 - 4-To punish the offenders in accordance with Article 125 (New) of the Law on the Elections of the Members of the National Assembly and the Law on the Amendment of this Law;
- Whereas during the public hearing, H.E. **Mao Sophearith** clarified more that the National Election Committee paid close attention in fulfilling its competence in accordance with the Law and Procedures and Regulations. After getting the result of the opening of the safety packages "A" of 13 polling stations in Khum Svay Chras, the National Election Committee had assigned its staff of legal service to do the examination. The result of the examination was read entirely by Mr. **Keo Phalla** to the public hearing. Finally, H.E. **Mao Sophearith** asked to uphold the decision N° 019/13 NEC.D dated August 15, 2013;
- Whereas the mistakes of the polling station and ballot counting officials of all 8 polling stations in Khum Svay Chras shall be punished in accordance with the Law;
- Whereas the decision N° 019/13 NEC.D dated August 15, 2013 of the National Election Committee had legal ground and made in accordance with the legal form and substance, except the polling station and ballot counting officials of all 8 polling stations in Khum Svay Chras that the National Election Committee did not mention;
- Whereas the election in Kratie province constituency had neither violence nor chaos. Citizens had secretly and freely casted their ballots. The turnout of voters was 68.63%;

Decides:
In the presence of the parties

- Article 1:** The August 17, 2013 petition of Mr. **Keo Phirum** is admissible for its legal form and substance.
- Article 2:** Is upheld the August 15, 2013 decision N° 019/13 NEC.D of the National Election Committee, but the decision was not prescribed the measure taken to impose on the polling station and ballot counting officials who are wrongdoing of all 8 polling stations in Khum Svay Chras.
- Article 3:** To assign the duties to the National Election Committee in taking measure to punish the officials who committed wrongdoings as stipulated in Article 2.
- Article 4:** This decision pronounced in the public hearing in Phnom Penh on August 31, 2013 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 31, 2013
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
- Khum Commune
- MEC/PEC Municipal/Provincial Election Commission
- CEC/SEC Commune/Sangkat Election Commission