

Summary of Constitutional Court Ruling

No. 6/2562 (2019)

Dated 8th May B.E. 2562 (2019)*

Re: The Ombudsman referred a matter to the Constitutional Court for a ruling under section 231(1) of the Constitution on whether or not section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was inconsistent with section 91 of the Constitution.

1. Summary of background and facts

The Ombudsman (applicant) requested for a Constitutional Court ruling under section 231(1) of the Constitution. The facts stated in the application and supporting documents could be summarised as follows.

Mr. Ruangkrai Leekijwattana and Mr. Wirat Kalayasiri requested that the applicant refer a matter together with an opinion to the Constitutional Court, stating that section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was inconsistent with section 91 of the Constitution. The reasons stated were as follows. Section 91 paragraph one (4) of the Constitution provided that the term political party aforementioned referred only to a political party with elected constituency Members of the House of Representatives in a number which was equal to or greater than the seats of Members of the House of Representatives attainable by such political party pursuant to section 91 paragraph one (1) and (2) of the Constitution. This did not include political parties which did not have any elected constituency Member of the House of Representatives and had not yet received allocation of seats for party-list Members of the House of Representatives. However, section 128 paragraph one (2) and (4) of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) made further provision in addition to the constitutional rules. Section 128 paragraph one (2) provided that “... the number of seats received shall be deemed as the preliminary quota of Members of the House of Representatives for such political party...” Moreover, section 128 paragraph one (4) provided that “...a political party having the highest remainder from the calculation shall be distributed one additional seat for party-list Member of the House of Representatives...” without regard to whether or not such political party had already obtained more Members of the House of Representatives than the quota.

The applicant was of the opinion that section 128 paragraph one of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) provided

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additional rules for the calculation of seats for party-list Members of the House of Representatives in (2), (3), (4), (6) and (7), resulting in the distribution of seats of party-list Members of the House of Representatives not being in accordance with the rules under section 91 of the Constitution. The applicant therefore submitted an application together with an opinion to the Constitutional Court for a ruling under section 231(1) of the Constitution that section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was inconsistent with section 91 of the Constitution.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court had the competence to accept the application for a ruling under section 231(1) of the Constitution.

After deliberation, the Constitutional Court found that the applicant had requested for a Constitutional Court ruling that section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was inconsistent with section 91 of the Constitution. The case was in accordance with the Constitutional Court's competence under section 231(1) of the Constitution and section 7(1) of the Organic Act on Constitutional Court Procedures B.E. 2561 (2018). The Constitutional Court therefore ordered the acceptance of this application for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was inconsistent with section 91 of the Constitution.

After deliberation, the Constitutional Court found as follows. Section 91 of the Constitution provided the principle for calculating the number of allocated seats for party-list Members of the House of Representatives under paragraphs one (1) to (5). Rules and procedures for calculation, as well as the rules and procedures for determining the proportion allocated to each political party in order to attain a total of one hundred and fifty party-list Members of the House of Representatives under section 91 paragraph three, including the allocation to each political party to attain the total number of Members of the House of Representatives as provided by the Constitution, would be prescribed by the Organic Act on Election of Members of the House of Representatives.

As for section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018), upon a consideration of the provisions in paragraph one (1) to (8), it was found that the said provisions stipulated details on rules and

procedures for calculation, including the allocation of party-list Members of the House of Representatives seats to each political party. The principles under section 91 of the Constitution and section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) related to the prescription of rules and procedures for calculating and determining the allocation of party-list Members of the House of Representatives seats in order to attain one hundred and fifty party-list Members of the House of Representatives as provided under section 83 paragraph one (2) of the Constitution. Even though section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) provided details in addition to section 91 of the Constitution, those provisions were merely details on rules and procedures of calculation and determination of allocations to attain the complete number of party-list Members of the House of Representatives as provided by the Constitution. The provisions stipulated calculation methods in the event that an allocation could not attain the requisite one hundred and fifty, as provided under section 128 paragraph one (2), (3), (4), (5), (6) and (7) of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018). This was consistent with the principles and spirit of section 91 paragraph one and paragraph three of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 128 of the Organic Act on Election of Members of the House of Representatives B.E. 2561 (2018) was neither contrary to nor inconsistent with section 91 of the Constitution. Hence there was no constitutionality problem.
