

Summary of the Constitutional Court Ruling No. 7/2542

Dated 27th April B.E. 2542 (1999)*

Re : The Election Commission requested for a Constitutional Court ruling regarding the voting rights of an eligible voter.

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1. Background and summarized facts

The Election Commission submitted an application dated 22nd March B.E. 2542 (1999) requesting the Constitutional Court to rule on the voting rights of an eligible voter under section 68 and section 105 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was submitted that section 80 and section 81 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) did not prescribe the rules, conditions and procedures relating to the voting rights with sufficient clarity and there could be an inconsistency with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Election Commission considered that this was a problem on the powers and duties of organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore requested the Constitutional Court to make a ruling on the following issues:

(1) In which constituency, election unit and polling station did an eligible voter located outside the constituency or whose name was listed in the house register in the constituency for a period of less than ninety days to the date of the election under section 105 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) have the right to vote for a candidate? In a general election, did such a person always have the right to cast a vote in the constituency basis election and party list basis election? Another question raised was whether or not and to what extent was the Election Commission able to issue a Notification to prescribe rules and procedures that the eligible voter located outside a constituency could only cast votes for a candidate in the party list basis election but could not cast votes for candidates in the constituency basis election. On this issue, section 80 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) provided for two types of voting rights of eligible voters, namely:

For the first type, persons under section 80 paragraph one of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) should have the right to cast votes for a candidate in a constituency basis election and party list basis election in the constituency which his or her name was last listed in the house register

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for a period of not less than ninety days. The Election Commission considered that such rules, procedures and conditions were consistent with the provisions in section 103 and section 104 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

For the second type, in the case of persons under section 80 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), it was provided that the Election Commission had the power to issue a Notification to prescribe the rules, procedures and conditions for the provision of facilities to safeguard the exercise of voting rights of an eligible voter who was located outside the constituency in which his or her name was listed in the list of eligible voters or in the house register for a period of less than ninety days to the election date. On this issue, section 68 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that "...the provision of facilities for attendance thereat shall be in accordance with the provisions of the law." However, as section 80 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) provided that the Election Commission had the power to issue a Notification to prescribe the rules, procedures and conditions for providing facilities for this type eligible voters without requiring the enactment of a law, the Election Commission was of the opinion that it did not have the power to prescribe rules, procedures and conditions for providing facilities to safeguard the exercise of voting rights of eligible voters located outside the constituency in which his or her name appeared in the list of eligible voters or where his or her name appeared in the house register for a period of less than ninety days to the election date. The Election Commission was also of the opinion that it did not have the power to prescribe rules for the eligible voter to cast votes for only candidates in the party list basis election because the enactment of a law was required to recognise the provision in section 68 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which must also clearly provide for the facilitation of the exercise of voting rights by this type of persons.

(2) To what extent did an eligible voter who, by an official order, had to perform duties outside his or her constituency where he or she was entitled to vote or who was traveling outside the constituency in which he or she was under a duty to vote had the right to cast a vote in a constituency outside the constituency where his or her name was listed in the house register? Another question raised was whether or not and in what way did the Election Commission have the power to issue a Notification to prescribe the rules and procedures for voting in an election by eligible voters as well as to prescribe the place of voting and the polling date in advance of the election date.

The Election Commission was of the opinion that section 81 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was not in any manner contrary to or inconsistent with section 105 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Additionally, it was also of the opinion that the right to cast votes of an eligible voter under this provision probably referred to two categories of eligible voters, namely:

The first category consisted of eligible voters who received official orders to perform duties outside the constituency in which they were entitled to vote.

The second category consisted of eligible voters who were traveling outside the constituency in which they were under a duty to vote.

If a person in either of the two categories intended to exercise the rights to vote in an election, he or she should notify such an intention to exercise voting rights to the Election Commission of the constituency where he or she was entitled to cast a vote prior to the election date. In this connection, the Election Commission for the constituency would prescribe a “central polling station” for such eligible voters to exercise voting rights under section 81 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). The “central polling station” prescribed by the Election Commission of the constituency had to be within the area of the constituency which such eligible voter had the right to vote in the same manner as the general rules for prescribing polling stations, i.e. a polling station had to be within the election unit under section 10 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). For the reasons above, a “central polling station” essentially had to be located within the constituency. A “central polling station” could not be located outside the constituency which the eligible voter had the right to vote. The Election Commission also considered that, pursuant to section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), it had the direct power to adjudicate on problems arising from the “central polling station” under Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).

The Election Commission therefore requested for a discussion with the Constitutional Court in order to reach a ruling on voting rights as regards the correctness of the Election Commission’s opinions in the first and second issues and any additional opinion which the Constitutional Court might have.

2. The issue considered by the Constitutional Court

The issue considered was whether or not the voting rights of eligible voters stated above which the Election Commission considered as problems relating to the powers and duties of organs under the Constitution were in accordance with section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

According to the Election Commission’s application, a request was made for a Constitutional Court ruling on the above issue was a request for a ruling on the correctness of the Election Commission’s opinion in prescribing rules, procedures and conditions pertaining to voting rights under section 68 paragraph three and section 105 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 10, section 80 and

section 81 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). This was not a case of a problem on the powers and duties of organs under the Constitution where an opinion could be submitted to the Constitutional Court for a ruling under section 266. On the contrary, it was a discussion of an opinion on the Election Commission's performance of duties which was not within the powers of the Constitutional Court to consider.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court dismissed the application.
