

Summary of the Constitutional Court Ruling No. 8/2542

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

Re : The Election Commission requested the Constitutional Court to make a ruling on the application of section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Election Commission submitted an application dated 23rd March B.E. 2542 (1999) requesting the Constitutional Court to make a ruling on the application of section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was submitted that the transitory provisions in section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) recognised the status of the House of Representatives and the Senate and the members of the House of Representatives and senators who were in office at the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application of certain provisions, section 107 (3), section 118 (7), section 121, section 125 (2), section 125 (3), section 126 (2), section 126 (3), section 127, section 130 and section 134 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were exempted for members of the House of Representatives under section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and for senators under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such exceptions were capable of creating differences in opinions as a result of a general election under this Constitution during the application of the transitory provisions or as a result of subsequent elections as regards whether the provisions in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), when applied to existing members of the House of Representatives and senators wishing to become a candidate in elections, were interminably applied to such members personally or such protections were only temporarily available for a certain period of time during the transition period.

The Election Commission had considered the provisions in section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and held that, in order to clarify certain obscurities and establish an acceptable practice norm, the following issues should be submitted to the Constitutional Court for a ruling:

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1. The first issue was whether the provision in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which exempted the application of general provisions in certain sections of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the current members of the House of Representatives and senators was temporarily applicable for a certain period of time or was interminably applicable to the relevant persons personally or was there a limit to the scope of persons or time to a certain extent.

2. The second issue was related to the first general election of senators which would be held within sixty days prior to the expiration of the term of four years under section 315 paragraph five subparagraph (1):

2.1 In the case where current members of the House of Representatives wished to apply for candidacy in the election of senators, such members should have which of the following qualifications and should not have which of the following prohibited characteristics:

2.1.1 the general provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997); or

2.1.2 the general provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in conjunction with the exceptions in section 315 paragraph four of the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997); or

2.1.3 the general provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in conjunction with the exception of some sections provided in section 315 paragraph four of the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in which case it was further questioned as to which sections exempted in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) were applicable;

2.1.4 the membership to the House of Representatives should have terminated or should not have terminated on the date of application for candidacy.

2.2 In the case where a current senator wished to apply for candidacy in the election of senators, such a senator should have which of the following qualifications and should not have which of the following prohibited characteristics:

2.2.1 the general provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997); or

2.2.2 the general provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in conjunction with the exceptions in section 315 paragraph four of the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997); or

2.2.3 the general provisions of the Constitution of the Kingdom of Thailand,

B.E. 2540 (1997) in conjunction with the exception of some sections provided in section 315 paragraph four of the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in which case it was further questioned as to which sections exempted in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) were applicable;

2.2.4 the membership to the Senate should have terminated or the membership should not have terminated at the date of application for candidacy.

2.3 If it was ruled that the qualifications or prohibited characteristics of a member of the House of Representatives or senator who wished to become a candidate in the election of senators were in accordance with paragraphs 2.1.2 or 2.1.3 and 2.2.2 or 2.2.3, as the case may be, would such qualifications and prohibitions be applicable to the first general election after the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) pursuant to section 315 paragraph five subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or would they apply to the member or former member of the House of Representative or former senator interminably?

2. The issue considered by the Constitutional Court

The issue considered was whether or not the above mentioned application made by the Election Commission to the Constitutional Court in request of a consideration of section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was a problem on the powers and duties of organs under the Constitution under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

The Election Commission's application mentioned above was a request for the Constitutional Court to consider the opposing opinions held within the Election Commission on the application of section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This was not a problem on the powers and duties of an organ under the Constitution for which an opinion could be submitted to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

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