

Summary of the Constitutional Court Ruling No. 53/2542

Dated 9th December B.E. 2542 (1999) *

Re: The Senate requested for a Constitutional Court ruling on the qualifications of an eligible applicant for candidacy in the election of senators under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Senate submitted a matter on the qualifications of an eligible applicant for candidacy in the election of senators under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling pursuant to the debate of Senator Mr. Asis Benhawan.

According to the documents submitted by the Senate, the following facts could be stated. The Election Commission had made a ruling that existing senators were entitled to apply for candidacy in the first election of senators which would be held between 20th January B.E. 2543 (2000) to 20th March B.E. 2543 (2000) but their qualifications had to be in accordance with section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. being a Thai national, having attained not less than forty years of age at the election date and having at least a bachelors degree or its equivalent. The reason given by the Election Commission was that the transitory provisions in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) recognised the Senate as an organ under the Constitution of the Kingdom of Thailand, B.E. 2534 (1991) which had to perform the various duties of the Senate under the new Constitution until the expiration of its four year term under the Constitution of the Kingdom of Thailand, B.E. 2534 (1991). Therefore, the transitory provisions in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) only provided for certain exceptions regarding qualifications in order to enable the transition of persons performing duties under the previous Constitution to performing duties for the organ under the new Constitution.

After the ruling was made by the Election Commission, senators who were affected by such a ruling submitted a letter objecting to the ruling of the Election Commission. It was objected that the transitory provisions in section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that senators in office at the date of

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promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) remained in office as senators under such a Constitution and the transitory provisions in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the provisions in section 125 (2) and section 125 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) would not apply to the senators under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, the age requirement of not less than forty years of age and academic qualification of at least a bachelors degree or its equivalent did not apply to senators whose statuses were recognised under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In other words, such senators were able to apply for candidacy in the election of senators and were able to take office as senators if thereafter elected. Such a ruling by the Election Commission should therefore be inconsistent with the current Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The Constitutional Court held the following opinion. The Election Commission passed a resolution on 26th May B.E. 2542 (1999) on the qualifications of eligible candidates for candidacy in the election of senators. The members affected by such a ruling sent a letter objecting to such a ruling of the Election Commission, which stated that existing senators were entitled to apply for candidacy in the first election of senators provided that they have the qualifications under section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), viz being a Thai national, having attained at least forty years of age at the election date and having at least a bachelors degree or its equivalent, was a resolution inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A debate on the issue was subsequently opened in the Senate in request of a resolution to submit the matter as proposed by Mr. Asis Benhawan to the Constitutional Court for ruling. The Senate passed a resolution to present the matter to the Constitutional Court for ruling. The Constitutional Court was of the opinion that the Senate, which was an organ under the Constitution, objected to such a resolution of the Election Commission, and the resolution of the Election Commission in this case was a resolution prescribing the rules and procedures made. The ruling was made pursuant to section 315 and section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and not an exercise of adjudicative powers under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the ruling was made on the provisions of section 315 and section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was therefore a dispute arising from the powers and duties of an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and within the powers of the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the Election Commission's resolution on the qualifications of eligible applicants for candidacy in the election of senators in the part which ruled that existing senators could be elected as senators in the first elections as long as they possessed the qualifications under section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. being a Thai national, having attained not less than forty years of age at the election date and having at least a bachelors degree or its equivalent, was a resolution inconsistent with section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

The Constitutional Court held that section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) meant that upon the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the existing senators remained as senators until the occurrence of one of the two conditions, namely, 1. membership of the senator terminated under the Constitution of the Kingdom of Thailand, B.E. 2534 (1991), as last amended by Constitution Amendment (No. 6), B.E. 2539 (1996); and 2. membership of the senator terminated under section 323 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which had already expired. Therefore, senators in office at the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) remained as senators under the provisions of such Constitution until the expiration of four years as from the date of Royal appointment. Section 315 paragraph four's exemption of section 125 (2) and section 125 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. "(2) being of not less than forty years of age on the election day; (3) having graduated with not lower than a Bachelor's degree or its equivalent," from their application to senators under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was provided in order to exempt the current senators who could still remain as senators even though they might not satisfy the age or academic qualification requirements of a bachelors degree or its equivalent. If section 125 (2) and section 125 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) were immediately enforced, the senators would lack qualifications under section 133 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such qualifications should therefore be excluded. However, upon the expiration of the transition period, the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) would be applied. As a result, if a current senator desired to apply for candidacy in the first election of senators, he or she should completely fulfill the qualifications in section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because a senator should possess a high degree of experience and knowledge consistent with the important functions of the Senate in scrutinising Bills and other important functions not previously held, such as selections, appointments, giving advice or giving consent to the appointment of persons to certain positions for various organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the impeachment of important persons from office.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that the Election Commission's resolution on the qualifications of eligible applicants for candidacy in an election of senators, in the part which stated that "existing senators can apply for candidacy in the first election of senators provided that they satisfy the qualifications in section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. they should be a Thai national, attained the age of not less than forty years at the election date and have an academic qualification of not less than a bachelors degree or its equivalent," was not a resolution inconsistent with section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
