

Summary of the Constitutional Court Ruling No. 6/2543

Dated 29th February B.E. 2543 (2000)*

Re : The Election Commission requested for a Constitutional Court ruling on the scope of application of section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Election Commission requested the Constitutional Court to rule on the interpretation of section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) owing to the election of senators which was going to be held on 4th March B.E. 2543 (2000). In this regard, section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “every person shall have a duty to exercise his or her right to vote at an election.

The person who fails to attend an election for voting without notifying the appropriate cause of such failure shall lose such rights as provided by law.

The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.”

The Election Commission issued the Rules of the Election Commission on Election of Senators, B.E. 2542 (1999), which was amended by the Rules of the Election Commission on Election of Senators (No. 3), B.E. 2542 (1999) in order to secure consistency with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), stating that members of the Royal Household who were ranked Phra-ong Chao or higher were eligible voters with the duty to exercise voting rights. In addition, the Lord Chamberlain was also prescribed the duty of notifying the cause of any failure to exercise voting rights on behalf of members of the Royal Household who were ranked Phra-ong Chao or higher.

The Election Commission considered this as a problem in the performance of duties under such provisions. The matter was therefore referred to the Constitutional Court for a determination of the persons who were not included within the scope of section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or were exempted from the requirement of notification of the cause of failure to attend an election under section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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2. Preliminary issue

Regarding the Election Commission's issuance of Rules of the Election Commission on Election of Senators (No. 3), B.E. 2542 (1999) in order to secure consistency with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), to prescribe members of the Royal Household who were ranked Phra-ong Chao or higher as eligible voters with the duty to exercise voting rights as well as to prescribe duties on the Lord Chamberlain to notify the cause of any failure to exercise voting rights on behalf of members of the Royal Household ranked Phra-ong Chao or higher, the Election Commission considered that there was a problem in the performance of duties under such provisions. The problem related to the determination of the persons who were not within the scope of application or were exempted from the duty to notify an appropriate cause for the failure to attend an election under section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such a case was a problem on the powers and duties of the Election Commission, which was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore had the power to consider this application 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 was whether or not persons under the duty to exercise voting rights under section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) included the King, Queen, Heir to the Throne and members of the Royal Household.

The Constitutional Court held the following opinion:

(1) Reference to members of the Royal Household had been made in the first draft Constitution of the country. This appeared in the letter of King Phra Pokklao No. 1/60, dated 14th November, B.E. 2475 (1932), to Phraya Manopakornnitithada, President of the People's Assembly, which stated therein that He agreed with Phraya Manopakornnitithada that members of the Royal Household who were ranked Mom Chao or higher should be above politics. As a consequence, the Constitution of the Kingdom of Siam, B.E. 2475 (1932), which was published in the Government Gazette on 10th December B.E. 2475 (1932), provided in section 11 that "members of the Royal Household who were ranked Mom Chao or higher by birth or by appointment shall be above politics."

Every subsequent Constitution of Thailand contained a specific chapter on the King. Such provisions recognized the special nature of the Institution of Kingship under the democratic regime with the King as Head of State. The King was above politics. The King was enthroned in a position of revered worship and should not be violated. No person should expose the King to any sort of accusation or action.

(2) Section 3 of the present Constitution stated that the sovereign power belonged to the Thai people. The King as Head of the State exercised such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the King was the exerciser of the sovereign power, there was no reason why He should be under a duty to elect a representative to exercise such powers.

After an analysis of section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court was of the opinion that the King exercised sovereign powers, was above politics and maintained political impartiality. In addition, in the past, Kings, Queens, Princes and Princesses had never exercised any voting rights. A prescription that the King, Queen, Heir to the Throne or members of the Royal Household, who were in line with the succession to the Throne under the Palace Law on Succession, B.E. 2467 (1924) and maintained close connections with the King as well as were habitually entrusted by the King to perform Royal functions on His behalf, were under a duty to exercise voting rights would create a contrariness or inconsistency with the principles of maintaining a position above politics and of political impartiality of the King.

4. Ruling of the Constitutional Court

In order to maintain the Institution of Kingship under section 71 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court therefore held that the provision in section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was not applicable to the King, Queen, Heir to the Throne and members of the Royal Household under section 22 and section 23.
