

Summary of the Constitutional Court Ruling No. 54-55/2543

Dated 31st October B.E. 2543 (2000)*

Re : Did section 17 (adding section 85/1, section 85/3, section 85/8 and section 85/9) of the Organic Bill on Election of Members of the House of Representatives and Senators (No.), B.E. contain provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The President of the Senate referred the opinion of senators in two applications, comprising of an application by Senator Mr. Panas Tasniyanon and fifty-three other senators and an application by Senator Mr. Kamnuan Chalopatham and twenty-four other senators. All the applicants were of the opinion that the Organic Bill on Election of Members of the House of Representatives and Senators (No.), B.E.was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in relation to the empowerment of the Election Commission to revoke election rights in section 85/1, section 85/3 and section 85/9 and to declare a polling card invalid in section 85/8. The matter was thus referred to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

In both applications, not less than twenty senators were of the opinion that the Organic Bill on Election of Members of the House of Representatives and Senators (No.), B.E., which had already been approved by the National Assembly, contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The opinions were presented to the President of the Senate who subsequently referred the opinions to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore had the power to accept both applications for consideration and the applications were merged and considered in one case.

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3. The issues considered by the Constitutional Court

After the Constitutional Court offered an opportunity to the Council of Ministers and the Election Commission to submit written opinions which would be taken into consideration, it was of the opinion that the two applications contained identical issues for consideration. A determination was therefore made that the following issues would be considered in both applications.

On the first issue, the Constitutional Court considered whether or not section 85/1, section 85/3 and section 85/9 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), as added by section 17 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., which empowered the Election Commission to revoke the election rights of a candidate before and after the announcement of election results by reason of the candidate's dishonest and unfair conduct, contained provisions which were contrary to or inconsistent with the principles of separation of sovereign powers under section 3 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and were contrary to or inconsistent with section 29, section 30, section 233, section 234 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 85/1, as added by the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., empowered the Election Commission to order the revocation of election rights of a candidate who had violated the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), being a revocation order before the announcement of election results. Section 85/9 empowered the Election Commission to order the revocation of election rights of a member of the House of Representatives when there appeared to be evidence inducing a reasonable belief that prior to the election, such a member had committed a dishonest act or had been dishonestly elected in violation of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), in which case the revocation order would be made subsequent to the announcement of election results. Prior to making revocation orders in both cases, the matter had to be considered by an Investigation Committee under section 85/3. However, the Election Commission needed not issue a ruling or order in accordance with the opinion of the Investigation Committee.

The provisions in all 3 sections mentioned above were provisions consistent with the powers and duties of the Election Commission under section 144, section 145 and section 147 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and were provisions which the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) allowed the National Assembly to enact so as to confer other powers and duties which would enhance the completeness of the Election Commission's powers. Hence, the National Assembly enacted section 85/1 and section 85/9 in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. to empower the Election Commission to

revoke election rights under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) by the consent of the Investigation Committee under section 85/3. Such sections were therefore not inconsistent with the principle of separation of sovereign powers under section 3 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Moreover, the sections were not enactments which restricted rights because there was a necessity for their enactment in order to eliminate obstacles in elections and to allow elections to be conducted efficiently for the benefit of the public. Thus, there were no provisions which were contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). On the contrary, the enactment was made to ensure that elections could proceed in an honest and fair manner in accordance with section 144 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). When applied to persons under investigations, there appeared to be evidence of reasonable belief that there had been commissions of acts in violation of the laws on elections by all such persons. This was therefore not discrimination under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This was also not an establishment of a new Court under section 234 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because the establishment of a new Court must be established by an “Act” and not delegated to other subordinate legislation. Therefore, the provisions in all such 3 sections did not contain any provision contrary to or inconsistent with section 233, section 234 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, the Constitutional Court considered whether or not section 85/8, as added by section 17 of the Organic Bill on Election of Members of the House of Representatives and Senators (No.), B.E., which empowered the Election Commission to rule that a political party had been fraudulent in a party-list election and determine that the polling cards which contained the people’s votes for such a party were invalid only in that specific constituency and which infringed rights under section 100 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as well as infringed the people’s election rights under section 105 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the right to unite and form a political party under section 47 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the right to become a candidate under section 107 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a restriction of rights and liberties under section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) whereas there were no laws which allowed the National Assembly to enact a law such as this.

Section 85/8 empowered the Election Commission to declare that the votes cast for a political party were invalid and not counted towards the votes in the constituency where a wrongdoing had been detected. Such was a case where the law conferred powers on the Election Commission beyond the extent provided in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). An examination revealed that the measures to be employed under section 85/8 had not yet been enacted in the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), but this was a procedure

related to the objections of the constituency basis election which the Election Commission had the power to order new elections. Although such an order might affect the bona fide voter because honest votes could not be distinguished from the bulk of votes, there was a necessity which could not be compromised. Such measures were therefore needed to ensure a fair and honest election. Hence section 85/8 was a post-election measure employed by the Election Commission in dealing with a party-list basis election that was not conducted fairly and honestly. The eligible voter had exercised their voting rights. The political parties had submitted their list of candidates. There was no restriction of fundamental rights under section 100 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). There was also no restriction of the people's right to vote under section 105 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the right to form a political party under section 47 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and on the right to become a candidate in an election under section 107 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 85/8 in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. was therefore neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

(1) Section 17 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., in relation to the addition of section 85/1, section 85/3 and section 85/9, was not inconsistent with the principle of separation of sovereign powers under section 3 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and did not contain provisions contrary to or inconsistent with section 29, section 30, section 233, section 234 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) Section 17 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., in relation to the addition of section 85/8, did not infringe the rights of the voter, the political party and the election candidate and did not contain any provision which was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
