

Summary of the Constitutional Court Ruling No. 12/2544

Dated 29th March B.E. 2544 (2001) *

Re : Is section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) consistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

Mr. Sanit Worapanya and company, a total of ten persons, submitted a petition to the Parliamentary Ombudsman stating that the Order of the Election Commission No. 81/2544, dated 13th March B.E. 2544 (2001) Re: Ordering New Elections for Members of the Senate in the Case of Protests to the Election of Members of the Senate for the Constituencies of Khon Kaen, Phayao, Phra Nakhon Si Ayutthaya, Ranong, Lop Buri, Si Sa Ket and Ubon Ratchathani, which resulted in the termination of membership of all senators subject to the Order as from the date of the Order, was unconstitutional and an exercise of powers of the Election Commission in a manner which was inconsistent with the Constitution. A request was therefore made for the Parliamentary Ombudsman to exercise powers under section 198 of the Constitution to refer the matter together with an opinion to the Constitutional Court for consideration.

The Parliamentary Ombudsman held that section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) had a problem regarding its constitutionality, and the matter was therefore submitted together with an opinion to the Constitutional Court for consideration for the following reasons:

(1) Section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) stated that when the Election Commission issued an Order for a new election, the membership of the House of Representatives and the Senate of a person subject to the protest was terminated as from the date of the Order. Such an Order was detrimental to and affected the rights or membership of members of the Senate which was guaranteed by the Constitution. Such a provision of law was therefore outside the scope of, different from or an addition to section 133 of the Constitution.

(2) Order of the Election Commission No. 81/2544, dated 13th March B.E. 2544 (2001), referred to section 97 of the Constitution because such provision guaranteed only the legitimacy of acts done by a member of the Senate in his/her capacity as a member or the

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rights to receive emoluments or other remuneration prior to the vacation of office or prior to the termination of membership of the Senate which probably meant the vacation of office as a result of being elected in violation of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), consistent with section 133 of the Constitution and as provided in section 85/9 and section 90 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).

(3) Even though section 85/9 and section 90 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 revoke the election rights of a senator in the case of a commission of an election offence, the approval of the Investigation Committee should still be obtained and such a revocation had to be done within one year as from the date of announcement of election results in order to observe care and stringency since such provisions authorised the revocation of a person's rights. If section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) were applied as if it were not contrary or inconsistent with the Constitution, it would seem that the Election Commission had wide powers to rule on the termination of memberships of the Senate without any time constraints and without any organisation to help its scrutiny.

2. Preliminary issue

Could the Constitutional Court accept the matter for consideration under section 198 of the Constitution ?

The Constitutional Court held that, in this case, the Parliamentary Ombudsman ruled that section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) had problems relating to constitutionality and referred the matter together with an opinion to the Constitutional Court for consideration. The case was therefore in accordance with section 198 of the Constitution and the Constitutional Court had the power to accept the matter for consideration.

3. The issue considered by the Constitutional Court

The issue considered was whether or not section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was consistent with the Constitution.

The Constitutional Court held as follows. Section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was enacted in order to comply with section 97, section 145 and section 147 of the Constitution because section 145 paragraph one subparagraph (4) empowered the Election Commission to order a new election when there occurred convincing evidence that the election had not proceeded in an honest and fair manner. Therefore, when the Election Commission ordered a new election of any senator in any constituency, the membership of such a senator would be terminated

accordingly. This showed that the Constitution provided for the termination of membership of the Senate for a cause other than that stated in section 133 of the Constitution. The Election Commission would order a new election after the conduct of an investigation and inquiry for finding facts under section 147 of the Constitution. Moreover, the enactment in section 96 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) on the recount of votes which was a cause for the termination of membership of the House of Representatives or the Senate of the subject of the protest, effective as from the day which the Election Commission announced the result of the new count, was also an enactment of law by virtue of the powers of the Election Commission under section 145 paragraph one subparagraph (6) of the Constitution. As for the enactment on effect in section 96 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) that “there shall be no effect to the acts done by such person in the capacity as member prior to the announcement by the Election Commission of the result of the recount,” such an enactment was a clarification of section 97 of the Constitution similar to the application in section 96 paragraph one of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) in the case of a new election.

4. Ruling of the Constitutional Court

The Constitutional Court held by a majority of 12 votes to 1 vote that section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was consistent with the Constitution.
