

Summary of the Constitutional Court Ruling No. 45/2546

Dated 11th November B.E. 2546 (2003)*

Re : The Ombudsman requested for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the constitutionality of section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995).

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1. Background and summarized facts

The Ombudsman (applicant) submitted an application together with an opinion, dated 16th January B.E. 2545 (2002), to the Constitutional Court for a ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the constitutionality of section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995), under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts under the application and supporting documents could be summarized as follows. The applicant had considered a letter of complaint from the Permanent Secretary of the Ministry of Interior and held the opinion that section 20, which provided on the qualifications of eligible candidates for Municipal Assembly elections that “(1) [a candidate] must have Thai nationality by birth, however, a person having Thai nationality whose father is a foreigner shall also have the qualifications prescribed in the law on election of members of the House of Representatives”, was a provision of law which imposed additional qualifications only for candidates in Municipal Assembly elections who possessed Thai nationality but whose fathers were foreigners. Such a provision provided varying qualifications for candidates who had Thai nationality by imposing more requirements on candidates of Thai nationality whose father were foreigners than candidates who acquired Thai nationality by birth. Section 20(1), where it was provided that “however, a person of Thai nationality whose father is a foreigner shall also have the qualifications prescribed in the law on election of members of the House of Representatives”, was therefore a provision of law which created an inequality of persons under the law and an unjust discrimination of persons on the grounds of differences in race. As a result, the applicant referred this matter together with an opinion to the Constitutional Court for a ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The Constitutional Court accepted the application for consideration under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). While pending the deliberation of the Constitutional Court, the National Assembly enacted the Election of Local Assembly Members or Local Administrators Act, B.E. 2545 (2002), in which section 3 effectively repealed the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as of 4th March B.E. 2546 (2003). The transitory provisions of such Act, however, provided that the Election of Municipal Assembly Members Act, B.E. 2482 (1939), would continue to be applicable until the occurrence of a termination event under section 136, namely, the expiration of term of the Local Assembly. Therefore, in the interest of justice, the Constitutional Court issued an order to the Minister of Interior, in his capacity as the person having charge and control of the execution of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), and to the Chairman of the Election Commission, in his capacity as the person having charge and control of the execution of the Election of Local Assembly Members or Local Administrators Act, B.E. 2545 (2002), to give statements of facts.

2. The issue considered by the Constitutional Court

The issue considered was whether or not section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995), begged a question of constitutionality under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which protected the equal rights and liberties of the Thai people under the law. All persons were equal under the law pursuant to the principle of equality. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally consistent political views were not permitted, with the exception of measures to eliminate obstacles or to promote a person's ability to exercise rights and liberties to the same extent as other persons.

Upon a consideration of section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), it was held that such provisions concerned the qualifications of candidates in Municipal Assembly elections whereby a candidate must have Thai nationality by birth and those with Thai nationality but whose father was a foreigner must also have the qualifications prescribed by the law on election of members of the House of Representatives. During the enactment of the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995), the Election of Members of the House of Representatives Act, B.E. 2522 (1979), was in force. Qualifications for candidates with Thai nationality but had foreign fathers were prescribed in section 19, which imposed additional educational qualifications. However, during the Constitutional Court deliberations of this application,

a new law was in force, namely the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), in which section 29 provided that a House of Representatives election candidate must have the qualifications under the provisions of the Constitution. Section 107 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), only provided on the qualification of a House of Representatives election candidate that a candidate must have Thai nationality by birth; without a requirement that a candidate with Thai nationality but had a foreign father must possess additional educational qualifications. It could therefore be said that, at that time, the Constitution and the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), had repealed the prior principle.

Section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), where it was provided that a candidate with Thai nationality but had a foreign father must also possess the qualifications prescribed in the law on election of members of the House of Representatives, was a prescription of different educational requirements according to the race of persons despite the lack of any difference in the personal standing of those persons. An inequality under the law was thus created.

Therefore, the prescription that a candidate in Municipal Assembly elections who had a Thai nationality but a foreign father must also have the qualifications prescribed in the law on election of members of the House of Representatives was an unjust discrimination on the grounds of differences in race, which was prohibited under section 30 in conjunction with section 107(1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, section 29 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), provided on the nationality of a candidate in an election of members of the House of Representatives only that such candidate should have Thai nationality by birth. There did not appear to be any other requirements for those candidates whose fathers were foreigners.

3. Ruling of the Constitutional Court

The Constitutional Court held that section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995), only in the part which stated "...however, a person having Thai nationality whose father is a foreigner shall also possess the qualifications prescribed in the law on election of members of the House of Representatives", begged a question of constitutionality. The provision was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and was therefore unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
