

Summary of Constitutional Court Ruling No. 2/2557 (2014)

Dated 24th January B.E. 2557 (2014)*

Re: The Election Commission submitted a matter to the Constitutional Court for a ruling under section 214 of the Constitution in the case of a conflict relating to the powers and duties of the Election Commission and the Council of Ministers pertaining to the determination of a date for the general election of Members of the House of Representatives.

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1. Summary of background and facts

The Election Commission, applicant, claimed as follows. The Royal Decree Dissolving the House of Representatives B.E. 2556 (2013) was promulgated on 9th December B.E. 2556 (2013). Section 4 provided for the general election of Members of the House of Representatives on Sunday, 2nd February B.E. 2557 (2014), and section 5 provided that the Prime Minister and the Chairman of the Election Commission had charge and control of the execution of the Royal Decree. Hence, the applicant issued a Notification of the Election Commission to determine the dates for political parties to submit a list of candidates for the election of party-list Members of the House of Representatives from 23rd December B.E. 2556 (2013) to 27th December B.E. 2556 (2013), and the dates for receiving applications for candidacy in the election of constituency Members of the House of Representatives from 28th December B.E. 2556 (2013) to 1st January B.E. 2557 (2014). However, during the period for political parties to submit lists of candidates for the election of party-list Members of the House of Representatives, it appeared that there were protesters blockading the place for receiving candidacy applications, and there were clashes with police officers securing the area resulting in deaths and injuries. As a consequence, the applicant issued a key statement to the Secretary-General to the Cabinet and expressed the opinion that to proceed with the election could result in further violence.

The Secretariat of the Cabinet issued a letter acknowledging the key statement of the applicant and referred to an opinion of the Office of the Council of State relating to such key statement, as follows:

1. The applicant was under a duty to hold an election on the election date as prescribed by the Royal Decree Dissolving the House of Representatives B.E. 2556 (2013). If any person obstructed the applicant's operations, the applicant was able to enforce the

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relevant laws to ensure that the election proceeded in a fair and just manner.

2. Any change in the polling date could only be effected in the case provided under section 78 of the Organic Act on the Election of Members of the House of Representatives and Obtaining of Senators B.E. 2550 (2007).

After opening applications for candidacy in the election of constituency Members of the House of Representatives, the applicant was informed that there were obstructions to candidacy applications resulting in many constituencies having only one election candidate, and several constituencies not having any candidate. The applicant thus sent a letter dated 12th January B.E. 2557 (2014) to the Prime Minister that the government should propose a new Royal Decree to prescribe a date for the general election of Members of the House of Representatives in order to give political parties an opportunity to consult and find a resolution for an orderly general election. After receiving the letter from the applicant, the Prime Minister did not take further action. The Prime Minister, however, expressed her view through public media affirming that a resetting of the date for the general election of Members of the House of Representatives could not be done, and that the Prime Minister as well as the applicant had no power to re-set the date for the general election of Members of the House of Representatives. The applicant was therefore of the opinion that the aforementioned case presented a case of a conflict relating to the powers and duties of the Prime Minister as the leader of the Council of Ministers and the applicant, being two or more non-judicial constitutional organ, and there was an urgent need to submit the matter to the Constitutional Court for a ruling. The applicant requested for a Constitutional Court ruling, as follows:

1. If there was an unavoidable necessity as stated in the claim, whether or not it was possible to set a new date for the general election of Members of the House of Representatives.

2. Whether the power to re-set a date for election of Members of the House of Representatives was vested in the applicant or the Council of Ministers by the Minister.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 214 of the Constitution. The Constitutional Court found that the facts in this application was a case on a conflict relating to powers and duties pertaining to the promulgation of a Royal Decree to re-set a date for the general election of Members of the House of Representatives between the Election Commission and the Council of Ministers by the Prime Minister. The case was therefore in accordance with the conditions and rules for admittance by the Constitutional Court for a ruling under section 214 of the Constitution.

3. The issues considered by the Constitutional Court

The Constitution determined that there were two issues which had to be decided, as follows:

The first issue was whether or not and to what extent the date of the general election of Members of the House of Representatives prescribed by the Royal Decree Dissolving the House of Representatives could be re-set.

The Constitutional Court found as follows. The general election date was set by the Prime Minister through the Prime Minister's submission to the King and countersignature in the Royal Decree. However, the setting of the general election date was related to the control and administration or arrangement for an election, which were powers and duties of the Election Commission as provided under section 235 of the Constitution. When setting an election date in the Royal Decree Dissolving the House of Representatives, the Prime Minister had to coordinate with the Election Commission. Upon setting the election date, proceedings relating to the control and operations to hold or to arrange for the election of Members of the House of Representatives were the powers and duties of the Election Commission as provided under the Constitution. Thus, as a general principle, upon the promulgation of the Royal Decree Dissolving the House of Representatives, a date for the general election of Members of the House of Representatives also had to be stated in the Royal Decree. The Prime Minister or the Election Commission on its own accord could not set a new general election date which differed from the date set by the Royal Decree.

Nevertheless, the provision of section 108 paragraph two of the Constitution which provided that a general election date had to be set in the Royal Decree Dissolving the House of Representatives only served as an expediting provision for the installation of Members of the House of Representatives and a new government to assume national administration. The provision was not absolute. If there was a force majeure event or other necessity which prevented the holding of a general election on the original date set to achieve the constitutional intent, a new general election date could be set to differ from the date stated in the Royal Decree Dissolving the House of Representatives as necessary under the circumstances. Therefore, the Constitutional Court found that in such an event of necessity it was possible that a new date for the general election of Members of the House of Representatives could be set which differed from the Royal Decree Dissolving the House of Representatives. However, such a change had to be effected by the promulgation of the Royal Decree to change the previously set election date.

The second issue concerned the question of which organ had the powers, duties and responsibilities to set a new date for the general election of Members of the House of Representatives.

The Constitutional Court found as follows. The setting of a new general election date could be done through the promulgation of the Royal Decree which was within the powers and duties of the Prime Minister to make a submission to the King. However, the Prime

Minister had to consult with the Election Commission before making such a submission since section 235 of the Constitution provided that the Election Commission was the organ which controlled, administered or arranged for the holding of an election of Members of the House of Representatives in a fair and just manner. Paragraph two provided that the Chairman of the Election Commission had charge and control of the Organic Act on the Election of Members of the House of Representatives and Obtaining of Senators B.E. 2550 (2007), thus he had the responsibility of controlling and administering an election to ensure compliance with such Organic Act. Furthermore, section 5 of the Royal Decree Dissolving the House of Representatives B.E 2556 (2013) provided for the Chairman of the Election Commission to have joint charge and control of the execution of such Royal Decree with the Prime Minister. Where a law provided for several responsible persons, it was the powers and duties of each responsible person to perform duties and responsibilities in respect of tasks related to their respective functions, including to coordinate performance amongst the other persons having charge and control of the law as well as relevant agencies to ensure the implementation of the law in line with the law's objectives.

4. Ruling of the Constitutional Court

The date for the general election of Members of the House of Representatives stated in the Royal Decree Dissolving the House of Representatives could be re-set and the re-setting of a date for the general election of Members of the House of Representatives was the joint power and duty and responsibility of the Prime Minister and the Chairman of the Election Commission.
