

Abstract

The purposes of this research were to study the problems on control of an election of Members of the House of Representatives, comparing to those practices in other countries, with emphasize on power of the judiciary to try and adjudicate for ordering a new election or disfranchisement, in accordance with the Constitution B.E. 2540, and the Constitution B.E. 2550.

Before B.E. 2540, an election of members of the House of Representatives had been controlled by power of the court. Due to the fact that the procedure of the court took a certain period of time while the Parliament had always been dissolved in a shorter period, therefore the cases had rarely been adjudicated. Since the corrupt and illegal practices must be controlled and proved in due time, an independent organization, the Election Commission, was legislated in the Constitution B.E. 2540 in order to control and perform an election honestly and fairly.

The Election Commission had the powers and duties to conduct investigations and inquiries and to make decisions on arising problems or disputes under the laws including to order a new election when there occurs convincing evidence that the election had not proceeded in an honest and fair manner. In B.E. 2546, there was a decision of the Constitutional Court stated that such decisions of the Election Commission shall be deemed final. This has been widely discussed whether it is inconsistent with the doctrine of separation of power, a basis of administrative law, and the protection of rights and liberties of the people to bring a lawsuit in accordance with the Constitution.

According to the Constitution B.E. 2550, The Supreme Court shall have the power to consider and adjudicate a case connected with elections and revocation of the right to stand in the election of members of the House of Representatives. The Election Commission still has the power to make a final decision to order a new election or disfranchisement. Only after the announcement of an election result, the Election Commission shall have no longer the power to do so, but has the sole right to prosecute to the Supreme Court of Justice for trial and adjudication of such cases.

In comparison with those practices in England, the U.S.A., France, and Germany, there are always check and balance mechanisms against such power of the Election Commission, under different procedures.

To overcome the problems, it is recommended herein that the Supreme Court of Justice shall have the power to try and adjudicate the election related cases and the disfranchisement at an election of members of the House of Representatives. In the court, there shall be an Election Division provided by the Constitution. The proceeding shall be using the inquisitorial method and acting quickly. Not only the Election Commission needs to submit the investigations results to the court, but also a person who is affected by an order of the Election Commission can bring a lawsuit in accordance with the Constitution.