

ABSTRACT

This Thesis aimed at studying on *“the Problem of the Restriction of the Constitutional Right and Freedom Caused by the Election Commission’s Announcement on Prohibiting the Election Poll and the Publicity of its Result”* in order to investigate the constitutionality of the said announcement subject to the Constitution of the Kingdom of Thailand B.E. 2540. Most of all, the Announcement is composed of the regulations on controlling of the election poll and the publicity of its result which have restricted the constitutional right and freedom stated in Section 29 of the Constitution of the Kingdom of Thailand B.E. 2540.

According to the study, the writer found that there is a question of the constitutionality of the Announcement both in form and in substance, as follows:

1. In Form

According to Section 29 of the Constitution of the Kingdom of Thailand B.E. 2540, in principle, the State should not place the restriction on the people’s right and freedom except that such a restriction is made by the Act.

From the study, it revealed that the poll can be characterised as academic freedom, freedom of expression, freedom of receiving information, and freedom of press and media. All of these are absolutely recognised by the Constitution. As the Election Commission stipulated the regulations on controlling the election poll and the publicity of its result in form of the Announcement instead of the Act, such regulations are unconstitutional. In contrast, the writer founded that, in some countries like U.S.A., England, Germany, and France, they stipulated the same regulations in form of the Act.

2. In Substance

Regarding the five basic principles of the election; comprising freedom of vote, principle of the general election (universal suffrage), principle of equality of the election (equal suffrage), secret vote, and direct vote, it demonstrated that the poll does not have any impact on such basic principles. However, the publicity of the result of the poll can direct or influence the voter’s decision which finally distorts the principle of freedom of vote. Regarding the period of prohibiting the publicity of the result of the poll, the Election Commission has specified merely in two cases; firstly, in the general election for members of the House of Representatives or the Senate, the result of the poll shall not be publicised as from the date of the General Election is announced in the Royal Decree until at 15.00 hrs. on the date of election, and secondly, in the election for members of the local assemblies or the local administrators, it shall not be publicised as from the date of election is announced or within sixty days before the tenure of the office is ended until at 15.00 hrs. on the date of election (or after the polls are closed). These regulations are precisely contradict to

the restriction of the right and freedom related to the “*Principle of Necessity*” as stated in Section 29 of the Constitution of the Kingdom of Thailand B.E. 2540.

To solve the problem mentioned above, the writer wishes to propose as follows:

1. The Election Commission should revoke the afore-mentioned Announcement and formulate the new “*Law on Election*” in order to control the election poll and the publicity of its result in accordance with the laws enforced in U.S.A., England, and Germany. Otherwise, it shall draft the particular “*Law on the Election Poll*” in accordance with the French Law. In case that the Commission does not revoke such an announcement, the plaintiff may file a case to the Administrative Court to adjudicate whether the Announcement is legally subject to the Constitution of the Kingdom of Thailand or not.

According to the present draft of the Statistic Act (No. ..) B.E., Section 9, it provided that “In case that any state agencies shall collect data in order to conduct the statistics on whatever matter, they shall notify the National Statistical Office of such an action no less than five days before starting such a conduct, including some further information like the project, working plan, and method of statistics collecting.” In this connection, the writer viewed that such a point shall be taken into a consideration as well.

2. There shall be an independent agency established to control the poll preparation and the publicity of its result to be standardized. The agency shall be empowered to stipulate the rules on all these activities, investigate the legality of the poll subject to the rules enforced, and punish any person who infringes such rules.

3. Regarding the Thai people’s behavior of voting in connection to some factors such as economic, social, individual psychological, and political, the extent of controlling the election poll and the publicity of its result shall be further studied in depth. To wrap up this thesis, the writer wishes to recommend that the period of prohibiting the publicity of the result of the poll shall start from the minute of the campaign by the political party is ended until at 15.00 hrs. on the election-date.