



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 4/2541*

Dated 16th July B.E. 2541 (1998)

Re : The President of the National Assembly requested for a Constitutional Court Ruling on legal issues pertaining to the term of membership of the Municipal Assembly.

.....

The President of the National Assembly submitted a letter, dated 19th April B.E. 2541 (1999) to the Constitutional Court, referring a matter on legal issues pertaining to the term of membership of the Municipal Assembly which the Municipal Association of Thailand requested the President of the National Assembly to submit to the Constitutional Court for consideration. Under section 16 paragraph one of the Municipal Act, B.E. 2496 (1953), a member of the Municipal Assembly was in office for a term of five years. However, section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that members of a local assembly, local administrative committee or local administrators held office for a period of four years. On this matter, the Council of State was of the opinion that the Municipal Act, B.E. 2496 (1953) contained provisions contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such provisions of law were therefore unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The term of office of members of the Municipal Assembly elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should therefore be in accordance with section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Municipal Association of Thailand, however, held the opinion that the Council of State's opinion was incorrect because from the principles of legal interpretation, if a retrospective law had adverse effects, such laws should be unenforceable. The term of membership of members of the Municipal Assembly elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should therefore be a period of five years.

* Published in the Government Gazette, Vol. 115, Part 47a, dated 11th August B.E. 2541 (1998)

The President of the National Assembly held that such a problem was a dispute on the powers and duties of various organs under the Constitution, i.e. the Council of State on the one hand and the Municipal Association of Thailand on the other. The matter was therefore submitted together with an opinion to the Constitutional Court for a ruling on whether the term of membership of members of the local assembly (Municipal) elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was four years under section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or five years under section 16 paragraph one of the Municipal Act, B.E. 2496 (1953). The application was thus submitted to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Municipal Association of Thailand issued the following statement through the President of the National Assembly.

Under the intentions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), from a consideration of the principles underlying the various provisions, a transitory period was provided for all applicable provisions. In other words, the provisions on the termination of membership of members of the House of Representatives, the holding of office as Ministers or the requirement of political party affiliation for at least 90 days and making an application on behalf of such political party under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were not applicable to the current members of the House of Representatives. Another provision that there should be 35 members of the Council of Ministers as well as 1 Prime Minister under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was also not applied until new elections were held. Yet another provision that senators should be elected under the new Constitution was also not applied to the current senators who remained in office until the expiration of their original term. Even the terms in office of the Tambon Chief and Village Headman in the Tambon Administrative Organisation Assemblies remained as previously provided until the expiration of such terms.

It was contended that in this case, if the Constitutional Court ruled that existing members of the Municipal Assembly maintained their five year term under the previous law until new elections were held, after which the four year term under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) would apply, an analogy could be made with the election of members of the Changwat Administrative Organisation Assembly under the current law on Changwat Administrative Organisation. In other words, the current law on Changwat Administrative Organisation prescribed a term of four years, but the transitory provisions stated that members who were in office at the date of promulgation remained in office until the expiration of their original five year term even though a Changwat Administrative Organisation Assembly is a local assembly under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) with a term of four years.

Thus, an overall picture of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) would reveal the intention to not affect the statuses of various organisations existing under pre-existing laws or regulations. Therefore, in the case of a term of membership in a local assembly, especially the Municipal Assembly according to the opinion of the Municipal

Association of Thailand in the original letter and the subsequent letter, shall remain as previously provided under the old law until new elections are held. This was claimed as being in accordance with the overall intention of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that section 70 of the Act on Rules of Administration of the State, B.E. 2534 (1991) provided that “the organisation of local administration shall be as follows... (2) Municipalities...” Therefore, a municipality is a local administrative organisation under Chapter 9 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). When a problem arose on the term of membership to the Municipal Assembly as to whether the term was in accordance with section 16 paragraph one of the Municipal Act, B.E. 2496 (1953) or in accordance with section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such a problem was a dispute on the powers and duties of organs under the Constitution. Whereas such a problem had been submitted by the President of the National Assembly to the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court therefore accepted the application for consideration.

On the issue of whether the term of membership of members of the Municipal Assembly elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was five years under section 16 paragraph one of the Municipal Act, B.E. 2496 (1953) or four years under section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that because section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the Constitution is the supreme law of the State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable” and section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “members of a local assembly, local administrative committee or local administrators shall hold office for the period of four years” and there were no transitory provisions in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the office of members of the Municipal Assembly elected prior to the promulgation of this Constitution, section 16 paragraph one of the Municipal Act, B.E. 2496 (1953), which provided for the term of membership of the Municipal Assembly to be five years, was therefore a provision contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, this case was not a matter of retroactive law, but it was a matter of a law contrary to or inconsistent with the Constitution, which is the supreme law of the country.

The Constitutional Court therefore held that the term of membership of members of the Municipal Assembly elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was four years as provided in section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
