

Summary of the Constitutional Court Ruling No. 6/2542

Dated 27th April B.E. 2542 (1999) *

Re : The Election Commission requested the Constitutional Court to rule on the question pertaining to the powers and duties of the Election Commission.

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1. Background and summarized facts

The Election Commission submitted an application dated 10th March B.E. 2542 (1999) to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the following four issues relating to the powers and duties of the Election Commission.

1. Under section 145 paragraph one subparagraph (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 15 of the Organic Act on the Election Commission, B.E. 2541 (1998), did the power and duty of the Election Commission to order or entrust Government officials, officials or employees of a Government agency, State agency, State enterprise or local government organisation or other State officials, including the power and duty to order and entrust a Government agency, local government organisation, State enterprise or other State agencies, as a whole body, to perform all necessary acts under the laws? In other words, could the Election Commission order and entrust a whole body of State agencies or only an individual official or employee, or both?

2. Under section 145 paragraph one subparagraph (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 10 (3), section 15 paragraph one and section 15 paragraph two of the Organic Act on the Election Commission, B.E. 2541 (1998), could Government officials, officials or employees of a Government agency, State agency, State enterprise or local government organisation or other State officials, including a Government agency, local government organisation, State enterprise or other State agencies, deny the power and duty of the Election Commission to order or entrust with any performance? Was any aforesaid person who denies such power and duty of the Election Commission subject to any disciplinary punishment or criminal punishment?

3. Under section 145 paragraph one subparagraph (6) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Election Commission has a power and duty to perform other acts as provided by law. Accordingly, the Election Commission was of the

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opinion that the Election Commission could order or entrust a person directly or could order or entrust any State agency to perform all necessary acts under other laws which provided the Election Commission with the power to perform, or to operate so-called “public services.” Any person or agency who was so entrusted or received such order had to perform such acts and could not deny such power of the Election Commission. Was this opinion right or wrong?

4. Under section 144 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Election Commission had to control and hold, cause to be hold, an election of members of the House of Representatives, senators, members of a local assembly and local administrators including the voting in a referendum for the purpose of rendering it to proceed in an honest and fair manner. Specifically in holding an election which the Election Commission had to prepare in advance before a Royal Decree to hold an election was issued, the Election Commission questioned on whether it could exercise all of its powers and duties to order or entrust with any performance at all time or during only the period that a Royal Decree to hold an election was existed.

2. The issues considered by the Constitutional Court

The application of the Election Commission raised the issue on whether there was a dispute about the powers and duties of organs under the Constitution under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

The application of the Election Commission was to consult about general powers and duties of itself under section 144 paragraph one, section 145 paragraph one subparagraph (2) and section 145 paragraph one subparagraph (6) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and under section 10 (3) and section 15 of the Organic Act on the Election Commission, B.E. 2541 (1998). As in part of the Constitution, the issues were only to request the Constitutional Court to explain the meaning of the provisions of the Constitution without the fact that any relevant dispute arose. Therefore, it was not a case where a dispute arose as to the powers and duties of organs under the Constitution which the Constitutional Court could consider under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As for the questions on powers and duties of the Election Commission under the Organic Act on the Election Commission, B.E. 2541 (1998), the issues were already under the power of the Election Commission to consider.

3. Ruling of the Constitutional Court

By reasons stated above, the Constitutional Court dismissed the application.
