

# Summary of the Constitutional Court Ruling No. 49/2542

Dated 5<sup>th</sup> October B.E. 2542 (1999)\*

**Re : The President of the House of Representatives referred the application of members of the House of Representatives to the Constitutional Court requesting for a ruling on the membership of Mr. Chanchai Isarasenarak, member of the House of Representatives for Nakhon Nayok Province.**

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## 1. Background and summarized facts

The President of the House of Representatives referred the application of Mr. Sittichai Kittithanesuan, member of the House of Representatives for Nakhon Nayok Province, and other members of the House of Representatives forming a total of 55 members, to the Constitutional Court requesting for a ruling on whether or not the membership of Mr. Chanchai Isarasenarak, member of the House of Representatives for Nakhon Nayok Province, terminated by reason of his use of an invalid educational qualification when applying for candidacy in an election of members of the House of Representatives.

The Constitutional Court examined the application and held that the application had been duly submitted according to the conditions under section 96 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). An Order was therefore issued to accept the application for further proceedings under the Rules of the Constitutional Court on Constitutional Court Procedure B.E. 2541 (1998) and to send a copy of the application to the respondent for the respondent to submit a statement to the Constitutional Court.

The respondent submitted a statement denying the allegations and objected that the applicants were not entitled to submit this application because the transitory provisions in section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided 3 causes for the termination of membership of a member of the House of Representatives, namely, upon the expiration of the term of the House of Representatives, upon dissolution of the House of Representatives or upon the failure under section 323 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to complete the consideration and approval of 3 Organic Bills within one hundred and twenty days as from the date of promulgation of the Constitution. The respondent contended that the application

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referred to provisions on the termination of membership which was not within the 3 causes stated above. Moreover, the applicant's application was prohibited by res judicata because the respondent had already been subjected to a protest by Mr. Suthin Jaichit in the elections at the Nakhon Nayok Provincial Court in Case No. 692/2539, which at that time was pending judgment in the Court.

## **2. Preliminary issues**

The preliminary issues considered were whether or not the applicant was entitled to make the application and whether or not the Constitutional Court had the power to accept the application for consideration.

The Constitutional Court held the following opinion. The applicant and company, a total of 55 members of the House of Representatives, constituting not less than one-tenth of the existing number of members of the House of Representatives, lodged with the President of the House of Representatives a complaint that the membership of the respondent, who was a member of the House of Representatives for Nakhon Nayok Province, terminated under section 118 (4) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the case was in accordance with section 96 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the applicant was entitled to lodge the complaint with the President of the House of Representatives and the President of the House of Representatives was entitled to refer the application to the Constitutional Court for a ruling. Under the transitory provision in section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which recognised the status of members of the House of Representatives who were in office at the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such members became members of the House of Representatives under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In that connection, 3 causes for the termination of membership to the House of Representatives were provided. However, this did not mean that the provisions on the termination of individual memberships of the members of the House of Representatives stated in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) were not applicable. Therefore, when the President of the House of Representatives referred the applicant's application to the Constitutional Court under section 96 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had the power to consider the application. The reason why the transitory provision in section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) exempted such members of the House of Representatives from the application of the minimum academic qualification of a bachelors degree under section 107 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was because such members of the House of Representatives had been elected under the Constitution of the Kingdom of Thailand, B.E. 2534 (1991), as amended by Constitution Amendment (No. 5), B.E. 2538 (1995), which had not provided for such a qualification. Hence, the Constitutional Court could not apply the academic qualification under section

107 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as a criteria for adjudicating on the termination of the respondent's membership. However, as the facts in the application further stated that the respondent, whose father was a foreigner, had used a bachelors degree, which was a qualification prescribed in section 111 (1) of the Constitution of the Kingdom of Thailand, B.E. 2534 (1991), as amended by Constitution Amendment (No. 5), B.E. 2538 (1995), in conjunction with section 19 (2) of the Act on Election of Members of the House of Representatives, B.E. 2522 (1979), as amended by the Act on Election of Members of the House of Representatives (No. 3), B.E. 2535 (1992), in his application in order to get elected as a member of the House of Representatives whose status was recognised under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had the power to apply the academic qualification used by the respondent in such an election to the Constitutional Court's adjudication on the termination of membership.

Regarding the respondent's objection that this application was prohibited by *res judicata*, even though the cause of action in the cases at Nakhon Nayok Provincial Court and at the Constitutional Court contained identical problems on points of facts, viz whether or not the respondent's vocational qualification was a proper academic qualification, which would have had consequences on the validity of his bachelors degree, when the Constitutional Court and the Courts of Justice had to adjudicate on different principles in the cases under their respective jurisdictions and no provision in the Constitution clearly stated that the power to adjudicate on facts leading to the adjudication of the primary question was within the jurisdiction of either Court, the Constitutional Court therefore had the power to adjudicate on the facts on whether or not the respondent's bachelors degree was a proper qualification. Such adjudication would lead to an adjudication on whether or not the respondent's membership to the House of Representatives had terminated.

### **3. The issue considered by the Constitutional Court**

The issue considered was whether or not the respondent's (Mr. Chanchai Isarasarak) membership of the House of Representatives terminated.

In the consideration of facts on the academic qualifications of the respondent, the Constitutional Court held trials to hear facts from witnesses of the relevant agencies, namely, the Ministry of Education, the Office of the Private Education Commission, Teachers' Trade Organisation, Sripatum University, the Department of Informal Education and the Department of Academic Affairs.

During trial, the respondent submitted a letter of resignation from membership of the House of Representatives to the President of the House of Representatives on 4<sup>th</sup> October B.E. 2542 (1999). The Constitutional Court held that even though the resignation had the effect of terminating the respondent's membership under section 118 (3) of the Constitution

of the Kingdom of Thailand, B.E. 2540 (1997), there was no effect on the issue pending under this application because no provision of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the Constitutional Court had to end its adjudication. Moreover, the applicant in this case did not request the withdrawal of his application. The case was therefore a matter which the Constitutional Court had to rule on the validity of the academic qualification used by the respondent in making the application to become an election candidate, which would eventually lead to a ruling on the issue under this application as to whether or not the respondent's membership of the House of Representatives had terminated. Therefore, the Constitutional Court had the power to continue its consideration of this application.

The Constitutional Court held the following opinion:

The Constitutional Court was of the opinion that even though the respondent used a bachelors degree qualification in his application to become an election candidate, a consideration of the validity of the bachelors degree necessarily required a consideration of the validity of the academic qualifications at every level prior to the bachelors degree owing to the interrelation between academic qualifications at every level.

After a consideration of the application, statements and relevant evidence, it appeared on the facts that the respondent completed the seventh year of his elementary education as verified by due evidence of his certificate and mutually accepted by the parties. As from the lower secondary education to the upper secondary education, the respondent was not able to produce documents evidencing his academic qualification. In this connection, the witness from the Department of Informal Education confirmed that, regarding the respondent's claim that he had completed his upper secondary education from informal education, the witness had not found the respondent's name in both the lists of admissions to and completions from informal education. Thus, the Constitutional Court held on the facts that the respondent had not completed his lower secondary education, making it impossible for the respondent to complete the upper secondary education and the Certificate of Technical Vocation because the respondent had not been qualified for entry to the courses at such levels. The respondent was therefore not able to rely on the qualifications under section 19(1) of the Act on Election of Members of the House of Representatives, B.E. 2522 (1979), as amended by the Act on Election of Members of the House of Representatives (No. 3), B.E. 2535 (1992), which provided that an applicant who had a foreign father should have completed an education level of not lower than the upper secondary education or its equivalent pursuant to the Ministry of Education curriculum or the National Education Plan in order to become an election candidate.

The Constitutional Court held *per incuriam* that even though the respondent produced an original letter certifying his completion of the CTV, claiming that that the respondent had completed the level of Certificate of Technical Vocation from Mandanukroh School of Business Administration, to the Constitutional Court, after a consideration of the testimonies of the witnesses from the relevant agencies, especially the agency entrusted with the duty of

printing the letter certifying the completion of the Certificate of Technical Vocation, namely the Teachers' Trade Organisation, who testified that the respondent's letter certifying the CTV Batch No. 1554, No. 012430, did not exist in the filing system of the Teachers' Trade Organisation's printing, together with the numerous abnormalities in the evidence adduced by the respondent in his statement to the Constitutional Court; the Constitutional Court could not accept the fact that the respondent had completed education at the CTV level from Mandanukroh School of Business Administration. As the respondent used the invalid letter certifying completion of the CTV to further his studies at Sripatum University, the bachelors degree obtained through the transfer of some credit units from education at CTV level was consequently an invalid bachelors degree under the Rules of Sripatum University on Education and Evaluation System for Certificates of Higher Vocational Training, Diplomas and Graduate Degrees, B.E. 2533 (1990), issued by virtue of the Private Higher Educational Institution Act, B.E. 2522 (1979). The respondent was therefore not able to use his local bachelors degree qualification to apply for an election candidacy under section 19 (2) of the Act on Election of Members of the House of Representatives, B.E. 2522 (1979), as amended by the Act on Election of Members of the House of Representatives (No. 3), B.E. 2535 (1992).

As the evidence was not accepted as proving that the respondent, whose father was a foreigner, had the qualifications under section 19 (1) or section 19 (2) of the Act on Election of Members of the House of Representatives, B.E. 2522 (1979), as amended by the Act on Election of Members of the House of Representatives (No. 3), B.E. 2535 (1992), the respondent therefore lacked the qualifications of an eligible candidate in an election of members of the House of Representatives under section 111 (1) of the Constitution of the Kingdom of Thailand, B.E. 2535 (1992), as amended by Constitution Amendment (No. 5), B.E. 2538 (1995). The respondent's membership of the House of Representatives obtained through the B.E. 2538 (1995) and B.E. 2539 (1996) elections were therefore improper from the beginning. As a result, the respondent was not a lawful member of the House of Representatives under section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

#### **4. Ruling of the Constitutional Court**

By virtue of the reasons stated above, the Constitutional Court held that the Mr. Chanchai Isarasarak's membership of the House of Representatives terminated under section 96 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because of his lack of qualifications as a candidate whose father was foreigner by reasons related to his academic qualifications. Other requests in the application were dismissed because of the absence of any provision in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which entitled the applicant to request for a Constitutional Court ruling.

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