

# Summary of the Constitutional Court Ruling No. 51-52/2542

Dated 23<sup>rd</sup> November B.E. 2542 (1999)\*

**Re : The President of the National Assembly referred the opinion of members of the House of Representatives to the Constitutional Court in request of a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the qualifications of candidates in an election of senators.**

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## 1. Background and summarized facts

The President of the National Assembly referred the opinion of Mr. Prayut Siripanich and other members of the House of Representatives, a total of 95 members of the House of Representatives, that the resolution of the Election Commission on the qualification of candidates in an election of Senators was an improper resolution under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling. According to the documents submitted by the President of the National Assembly, the Election Commission reached a unanimous resolution in its meeting No. 45/2542 (187) on 26<sup>th</sup> May B.E. 2542 (1999) that:

“1. Existing senators can apply for candidacy in the first election of senators to be held between 20<sup>th</sup> January B.E. 2543 (2000) to 20<sup>th</sup> March B.E. 2543 (2000).

Qualifications of candidates shall be in accordance with section 125 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. being a Thai national, being not less than 40 years old at the election date and having not less than a bachelors degree or its equivalent.

As for the prohibitions in section 126 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on being a senator or having been a senator under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) prior to applying for candidacy, it was held that such prohibitions could not be applied because this batch of senators are not senators under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. As for the existing members of the House of Representatives, the opinion was held that such members of the House of Representatives may apply for candidacy in the election of senators upon the expiration of one year after the vacation of office as a member

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of the House of Representatives up to the date of applying for candidacy provided that such members are not members of a political party under section 126 (1) and section 126 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).”

Pursuant to the above resolution of the Election Commission, 95 members of the House of Representatives raised objections stating that section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “members of the House of Representatives holding office on the date of the promulgation of this Constitution shall be members of the House of Representatives under this Constitution under the expiration of term of the House, the dissolution thereof...,” and section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “senators holding office on the date of the promulgation of this Constitution shall be senators under this Constitution until membership of senators terminates under the Constitution of the Kingdom of Thailand, B.E. 2534 (1991) as last amended by the Constitution Amendment (No. 6), B.E. 2539 (1996)...”. However, the Election Commission reached a resolution stating that the existing senators were not senators under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore had the right to become a candidate in the next election of senators, but on the other hand, the existing members of the House of Representatives were only entitled to become candidates in the election of senators if they had vacated office as members of the House of Representatives for a period of not less than one year to the election date and were not be members of a political party under section 126 (1) and section 126 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such a resolution of the Election Commission had an equivalent effect of recognising that existing members of the House of Representatives as members of the House of Representatives under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), but existing senators were not senators under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which was not consistent with the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, existing members of the House of Representatives lost their rights to apply for candidacy in the first election of senators under the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Moreover, as the provisions in section 315 paragraph two and section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) recognised the membership of both Houses in similar or identical terms, the status of membership of the National Assembly should be uniform. In other words, if it was held that existing senators were not senators under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), then there should also be a ruling that existing members of the House of Representatives were not members of the House of Representatives under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and were entitled to apply for candidacy in the first election of senators.

The President of the National Assembly considered the reasons stated above and held that as the resolution of the Election Commission, which was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), had caused a dispute to arise and sent an impact on the rights of existing members of the House of Representatives to become

candidates in the election of Senators, which could be considered as individuals in another organ, this matter was a dispute on the exercise of powers and duties of an organ which had to be adjudicated. The matter together with an opinion was therefore referred to the Constitutional Court for a ruling.

During the trial in the Constitutional Court, the President of the National Assembly referred the opinion of Mr. Den Tomina and other members of the House of Representatives, a total of 103 members of the House of Representatives, to the Constitutional Court which similarly requested that the Constitutional Court make a ruling on whether or not the Election Committee's resolution on 26<sup>th</sup> May B.E. 2542 (1999) was consistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the opinions of both groups of members of the House of Representatives referred to the Constitutional Court by the President of the National Assembly involved the same matter for consideration because the opinions contained identical sets of laws and facts. The two opinions were therefore merged into one case and a copy of the application was sent to the Election Commission for the Election Commission to submit a statement to the Constitutional Court. The President of the Election Commission thereafter submitted a statement regarding the Election Commission's resolution on 26<sup>th</sup> May B.E. 2542 (1999).

## **2. Preliminary issue**

The preliminary issue considered was whether or not the President of the National Assembly had the power to submit an application to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. The Election Commission was an organ under the Constitution. Such organ reached a resolution on 26<sup>th</sup> May B.E. 2542 (1999) regarding the qualifications of candidates in the election of senators. Subsequently, two groups of members of the House of Representative objected to the resolution of the Election Commission which disentitled members of the House of Representatives who were in office under section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) from becoming a candidate in the first election of senators under section 315 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The opinion considered that such a resolution of the Election Commission was not an exercise of powers and duties under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which provided the power and duty "(3) to conduct investigations and inquiries for fact-finding and decision on arising problems or disputes under the laws referred to in section 144 paragraph two." Such a resolution was a prescription of rules and procedures by an adjudication on the provisions in section 315 and section 126 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), not an adjudication of the Election Commission under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This case was therefore within the powers of the Constitutional Court to

accept for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The issue considered was whether or not the Election Commission's resolution on the qualifications of candidates in the election of senators in the part relating to the ruling that existing members of the House of Representatives could only become a candidate in an election of senators if such members had vacated the office of membership of the House of Representatives for a period of not less than one year to the election date was a resolution inconsistent with section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had the effect that once the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had been promulgated, existing members of the House of Representatives remained as members of the House of Representatives until the occurrence of one of the 3 causes provided, namely, 1. The expiration of term of the House, 2. the dissolution of the House and 3. the termination of membership under section 323 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, members of the House of Representatives who were in office on the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) remained as members of the House of Representatives under such Constitution until the expiration of term of the House of Representatives or upon the dissolution of the House of Representatives. In addition, section 315 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) excluded the application of section 126 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to members of the House of Representatives under section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 126 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided the characteristics of a person prohibited from becoming a candidate in the election of senators as "being a member of the House of Representatives or having been a member of the House of Representatives and his or her membership has terminated for not yet more than one year up to the date of applying for the candidacy." Such a prohibition was not applicable to the members of the House of Representatives under section 315 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because the absence of such an exemption would be equivalent to the disentitlement of the existing members of the House of Representatives from applying for candidacy in the first election of senators. Therefore, the Constitutional Court was of the opinion that such members of the House of Representatives were not under the prohibition in section 126 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which disallowed them from exercising the right to apply for candidacy in the first election of senators.

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

By virtue of the reasons stated above, the Constitutional Court held that the Election Commission's resolution relating to the qualifications of applicants for candidacy in the election of senators where stated that "as for the existing members of the House of Representatives, the opinion was held that such members may apply for candidacy in the election of senators upon the expiration of one year after the vacation of office as a member of the House of Representatives up to the date of applying for candidacy..." was a resolution inconsistent with section 315 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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