

# Summary of the Constitutional Court Ruling No. 20/2543

Dated 26<sup>th</sup> April B.E. 2543 (2000)\*

**Re : The President of the National Assembly requests for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case of a problem relating to powers and duties of the Senate.**

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## 1. Background and summarized facts

In the election of senators on 4<sup>th</sup> March B.E. 2543 (2000), there were only 122 persons from 200 persons who was announced to be senators. This resulted in the problem about the performance of duties of the Senate. There were two sides of opinions on this issue as follows:

The first side of opinions was of the senators whose term of office expired on 21<sup>st</sup> March B.E. 2543 (2000). They viewed that the Senate had to consist of 200 members under section 121 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The new Senate had to have completely 200 members before performance of its duties under the Constitution. During the unfinished election of new senators, the old senators whose membership was terminated had to continue to perform duties of senators under section 131 paragraph two and section 168 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The second side of opinions was of the new senators elected on 4<sup>th</sup> March B.E. 2543 (2000) (122 persons). They viewed that their membership of senators began on 22<sup>nd</sup> March B.E. 2543 (2000) under section 315 paragraph five subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). They could therefore perform all duties of senators. Despite section 121 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that the Senate consisted of two hundred members, section 121 paragraph two of the same provided that in the case where the office of the senator became vacant for any reason whatsoever and an election of a senator to fill the vacancy has not yet been held, the Senate had to consist of the remaining senators. As a result, candidates in the election of senators whose result of the election was formally approved by the Election Commission could form the Senate and perform duties of senators under section 121 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The previous senators whose term of office expired on 21<sup>st</sup> March B.E. 2543 (2000) therefore had no powers as alleged.

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## **2. Preliminary issue**

The Constitutional Court held that the issue submitted by the President of the National Assembly was the problem about powers and duties of the Senate. By virtue of section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the President of the National Assembly had the power to submit the application to the Constitution Court for ruling, and the Constitutional Court had the power to consider the application.

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

The Constitutional Court held that the following issues had to be considered:

1. Could elected senators of less than 200 in number according to section 121 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) hold a sitting to perform duties of senators under the provisions of the Constitution?

2. During that the number of senators elected had not reached 200 according to section 121 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), did the performance of duties of the Senate in accordance with the provisions of the Constitution fall within the power and duty of senators whose membership was terminated on 21<sup>st</sup> March B.E. 2543 (2000) or elected senators whose number were less than 200?

The Constitutional Court held the following opinion:

First issue: Could elected senators of less than 200 in number hold a sitting to perform duties of senators under the provisions of the Constitution?

The constituents of the Senate under section 121 paragraph one and section 121 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) meant the elements being a condition to become the Senate which was a constitutional organ. The Senate had to consist of exactly 200 members elected by the people. If the constituents were completed, the Senate maintained a status as an organ which could perform duties under section 121 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). According to section 121 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), when the office of the senator became vacant for any reason whatsoever and an election of a senator to fill the vacancy had not yet been held, it was allowed that the Senate consisted of the remaining senators. The provision of section 155 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that “At a sitting of the House of Representatives or the Senate, the presence of not less than one-half of the total number of the existing members of each House is required to constitute a quorum...,” was only a provision specifying the number of senators to constitute a quorum. The sitting could be held only when there was an organ being competent to perform duties. In this connection, before the sitting of the Senate could be held in order to perform its duties, the Senate had to consist of two hundred members elected by the people.

The election of senators on 4<sup>th</sup> March B.E. 2543 (2000), there was only one hundred and twelve persons who were announced as the elected senators. However, those elected senators could not fulfill the constituent of the Senate pursuant to section 121 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which had to consist of 200 members elected by the people. The elected senators therefore could not perform duties of the Senate. In addition, although the number of persons elected to be senators was not less than one-half of the total number of senators as required by the Constitution, they could not hold any sitting due to incompleteness of constituents of the Senate.

Second issue: During that the number of elected senators had not reached 200, did the performance of duties of the Senate in accordance with the provisions of the Constitution fall within the power and duty of senators whose membership was terminated on 21<sup>st</sup> March B.E. 2543 (2000) or elected senators whose number were less than 200 ?

The transitory provisions of section 315 paragraph three and section 315 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the first term of the Senate and the membership of senators under this Constitution began to run under the condition that the election of senators was finished within sixty days before the expiration of the term of four years when the membership of senators terminated under section 315 paragraph three of the Constitution. Those provisions, however, did not provided that the termination of the membership of senators under section 315 paragraph three was under the condition that the election had to be held. Therefore, the election on 4<sup>th</sup> March B.E. 2543 (2000) was held within sixty days before the expiration of the term of four years. The facts revealed that the number of senators had not reached 200. Moreover, the Election Commission issued the Notification Re: Holding the New Election of Senators, dated 21<sup>st</sup> March B.E. 2543 (2000) without any issuance of another Royal Decree holding a new election of senators. The first election of senators under this Constitution had not yet been finished. The date of the termination of membership of senators under section 315 paragraph three was not changed, because such the termination was upon the expiration of the term of four years as from the date of their appointment by the King. This was in accordance with the term of senators under section 101 paragraph one of the Constitution of the Kingdom of Thailand, B.E.2534 (1991) as amended by the Constitution Amendment (No. 6), B.E. 2539 (1996). Hence, the membership of senators under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) expired as from the date of 21<sup>st</sup> March B.E. 2543 (2000).

In considering whether the senators under section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) whose membership was terminated could perform duties of senators under the provisions of this Constitution, the Constitutional Court was of the opinion that this case was different from the case of Council of Ministers as provided in section 317 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) that the Council of Ministers which vacated office had to continue to perform duties until the newly appointed Council of Ministers had taken

office. As regards section 131 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which dealt with a general election of senators and section 131 paragraph two which provided that “For the purpose of proceeding under section 168, the senators holding office on the day on which the term of the Senate terminates under paragraph one shall continue to perform their duties until newly elected senators assume their duties,” those were the provisions applied in the case where the term of the Senate under this Constitution terminated. The said Senate meant the Senate which consisted of members elected by the people under this Constitution, but it did not include senators who had to be senators under this Constitution as provided for in section 315 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The senators whose membership was terminated on 21<sup>st</sup> March B.E. 2543 (2000) could not continue to perform their duties by virtue of section 131 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, the senators as aforementioned could not perform duties of the Senate under the provisions of the Constitution during that the number of newly elected senators had not reached 200.

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

1. The elected senators of less than 200 in number could not hold a sitting to perform duties of senators under the provisions of the Constitution.

2. During that the number of elected senators had not reached 200, the senators whose membership was terminated on 21<sup>st</sup> March B.E. 2543 (2000) could not perform duties of senators under the provisions of the Constitution.

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