

# Summary of the Constitutional Court Ruling No. 25/2543

Dated 20<sup>th</sup> June B.E. 2543 (2000)\*

**Re : The Lampang Provincial Court referred the objection of the plaintiff (Mr. Nirun Jiwasuntikarn) in the Civil Pending Case No. 962/2543 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where the Regulation of Election Commission was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)**

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## 1. Background and summarized facts

Mr. Nirun Juwasuntikarn (an applicant) as plaintiff in the Civil Pending Case No. 962/2543 filed an application to the Lampang Provincial Court to refer his objection to the constitutional Court for ruling that the Election Commission as first defendant, Mr. Thirasuk Kannasoot as second defendant, Mr. Yuwarat Kamolwech as third defendant, Mr. Kothom Areeya as fourth defendant, Mr. Sawasdi Chotipanich as fifth defendant and Mr. Jira Boonpojanasoonthorn as sixth defendant (respondents) issued the Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000) which contained terms being contrary to or inconsistent with the Constitution.

The plaintiff (the applicant) was a candidate in the election of senator in the Lampang constituency. The Election Commission (the defendant) held such election on 4<sup>th</sup> March B.E. 2543 (2000). On that day, the applicant's votes were in the third place. However, the defendants refused to approve the election result and announced a new election of senators in 35 constituencies, including the Lampang constituency, to be held on 29<sup>th</sup> April B.E. 2543 (2000). In the latter election, the applicant's votes were in second place. While waiting for the announcement of the applicant's formal result of the election, all six defendants by virtue of section 10 subparagraph (7) of the Organic Act on the Election Commission B.E. 2541 (1998) issued the Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000) dated 1<sup>st</sup> May B.E. 2543 (2000) adding article 6 bis which was read as "In the case where the Election Commission has not announced the result of an election of any candidate in such election more than one time, the Election Commission may make the decision by

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consensus that such the candidate shall be deemed as not being a candidate in a new election.” As a result, all six defendants refused to approve the applicant’s result of the election for the second time and announced another new election along with ordering that the applicant was not entitled to be a candidate in such the new election.

## **2. Preliminary issue**

The Lampang Provincial Court held that when the plaintiff alleged that the Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000) was contrary to or inconsistent with the Constitution and when there had never been the ruling of the Constitutional Court on the said law, the allegation therefore should be referred to the Constitutional Court for such ruling. In this connection, the trial and adjudication of this case had to be provisionally stayed.

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

Was the Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000) the provision of law under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

The Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000), which was issued by the Election Commission by virtue of section 10 subparagraph (7) of the Organic Act on the Election Commission B.E. 2541 (1998), was not issued by an organ exercising legislative power. According to the Constitutional Court Ruling No. 4/2542 and No. 14-15/2543, the Constitutional Court already ruled that the provisions of law under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had to be ones enacted by organ exercising legislative power. Therefore, the said Regulation of the Election Commission was not the provision of law under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case fell outside the power and duty of the Constitutional Court and could not be considered.

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

The Constitutional Court dismissed the application.

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**Remarks :** The Constitutional Court in the Ruling No. 24/2543 dated 15<sup>th</sup> June B.E. 2543 (2000) which was the case where the Ombudsman submitted an application together with the opinion to the Constitutional Court for a ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), already ruled that the Regulation of the Election Commission Ordering a New Election before Announcing the Result of the Election of Senators (No. 2), B.E. 2543 (2000) was unconstitutional, because it was contrary to or inconsistent with section 29 paragraph one and section 126 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the case was under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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