

# Summary of the Constitutional Court Ruling No. 26/2543

Dated 22<sup>nd</sup> June B.E. 2543 (2000) \*

**Re : The problem in relation to the power and duty of the Council of Ministers to issue a Royal Decree summoning the National Assembly for a legislative ordinary session**

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## 1. Background and summarized facts

Section 159 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “Each year, there shall be a general ordinary session and a legislative ordinary session,” and section 159 paragraph three of the same provided that “..., and the first day of the legislative ordinary session shall be fixed by the House of Representatives.” In compliance with those provisions of the Constitution, in the twenty-seventh sitting of the House of Representatives (general ordinary session) on Wednesday, 11<sup>th</sup> March B.E. 2541 (1998), the sitting resolved to fix the date of 24<sup>th</sup> June of every year to be the date of the first legislative session, and this resolution had been consistently complied with. Thereafter, the Council of Ministers approved the principle of the draft Royal Decree Convoking the National Assembly for a Legislative Ordinary Session, B.E. 2543 (2000) on 30<sup>th</sup> May B.E. 2543 (2000) and presented to the King for its issuance on 8<sup>th</sup> June B.E. 2543 (2000). The Royal Decree Convoking the National Assembly for a Legislative Ordinary Session was promulgated on 24<sup>th</sup> June B.E. 2543 (2000). However, it appeared that in the election of all new senators in lieu of the previous senators whose term of office expired on 21<sup>st</sup> March B.E. 2543 (2000), the number of 200 senators could not be reached to form the Senate under section 121 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, the Constitutional Court ruled in Ruling No. 24/2543 dated 15<sup>th</sup> June B.E. 2543 (2000) 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 the Constitution. As a result, the Election Commission had to postpone the unfinished vote for the election of senators in certain provinces.

These facts raised the problem relating to the power and duty of the Council of Ministers on whether the Council of Ministers had to prepare the issuance of the Royal Decree Convoking the National Assembly for a Legislative Ordinary Session to be completed on 24<sup>th</sup> June B.E. 2543 (2000). If the Council of Ministers could legally do so, there would be the further problem on whether the House of Representatives had to perform

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duties in its sitting, including the duty to consider the annual appropriations bill for the fiscal year of B.E. 2544 (2001) introduced by the Council of Ministers to be finished within one hundred and five days as from the date the bill reached the House of Representatives. However, it was certain that the election of four remaining senators could not completely be held before 24<sup>th</sup> June B.E. 2543 (2000).

## **2. Preliminary issue**

The Council of Ministers was an organ under the Constitution to which the Constitution provided the power and duty of the administration of the State affairs in accordance with its provisions in Chapter VII : The Council of Ministers. As regards the convocation of the National Assembly session, section 164 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “Subject to section 163, the convocation, the prolongation of session and the prorogation of the National Assembly shall be made by a Royal Decree.” In the issuance of the Royal Decree, it was therefore the power and duty of the Council of Ministers to present it to the King for Royal signature.

However, the election of new senators in lieu of the previous ones whose term of office expired on 21<sup>st</sup> March B.E. 2543 (2000) could not bring about the number of 200 senators. The Senate sitting thus could not be held. The problem accordingly was whether the Council of Ministers could prepare to issue the Royal Decree Convoking the National Assembly for a Legislative Ordinary Session. The Constitutional Court was of the opinion that the problem to be considered was about the performance of power and duty of the Council of Ministers, which was an organ under the Constitution, in accordance with the provisions of the Constitution. The Constitutional Court therefore had a power to consider the case under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

1) In the case where the Senate which was a constituent of the National Assembly had not completely consisted of two hundred members, could the Council of Ministers prepare to issue and promulgate the Royal Decree Convoking the National Assembly for a Legislative Ordinary Session to be in compliance with the resolution of the House of Representatives made under section 159 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

2) If the issuance of such the Royal Decree was prohibited until the Senate had full number of its members in order that the Senate and the National Assembly would be constituted respectively, when the first legislative ordinary session under section 159 paragraph two and section 159 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) could be held?

3) Could the House of Representatives hold the sitting without waiting for the completeness of constituents of the Senate?

The Constitutional Court held the following opinion:

1) The Constitution provided that there had to be a general ordinary session and a legislative ordinary session. The National Assembly was summoned for the sitting by the King through the issuance of a Royal Decree. The day of the first legislative ordinary session was fixed by the House of Representatives. In the issuance of the Royal Decree convoking the National Assembly, it was the power and duty of the Council of Ministers to present the Royal Decree to the King and the Prime Minister had to countersign the Royal Command. The convocation of the National Assembly therefore indicated the notice of the first sitting in order that members of the National Assembly attended the sitting in the performance of their duties under the provisions of the Constitution.

The Constitutional Court Ruling No. 20/2543 dated 26<sup>th</sup> September B.E. 2543 (2000) that “As long as the number of senators elected had not completely reached 200, any sitting could not be held in order that senators elected performed their duties under the provisions of the Constitution” was only the ruling made according to the issue on whether senators already elected despite their numbers less than 200 could perform duties of senators under the Constitution which was raised by the President of the National Assembly in his application. It did not imply that the Senate did not exist. Since the Senate was an organ which the Constitution provided for its existence, it had to be existed under the Constitution.

The House of Representatives, in its twenty-seventh sitting (general ordinary session) on Wednesday of 11<sup>th</sup> March B.E. 2541 (1998) resolved to fix the date of 24<sup>th</sup> June of every year to be the date of the first legislative ordinary session. Accordingly, the Constitutional Court held that the Council of Ministers therefore had the power and duty to prepare the issuance and the promulgation of the Royal Decree convoking the National Assembly for a legislative ordinary session in order to comply with such the resolution of the House of Representatives made under section 159 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2) Since the ruling on the first issue had been made by the Constitutional Court, this second issue needed not be reconsidered.

3) Section 90 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “Joint or separate sittings of the National Assembly shall be in accordance with the provisions of this Constitution.” The Constitutional Court held accordingly that the National Assembly consisted of the House of Representatives and the Senate. Their sittings could be held jointly or separately. The joint sittings were provided for in section 193 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, during that the constituents of the Senate had not been completed, the House of Representatives, which had to be performing its duties at that time, could hold its sittings in accordance with the provisions of the Constitution.

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

The Constitutional Court held that the Council of Ministers could prepare to issue and promulgate the Royal Decree convoking the National Assembly for a legislative ordinary session in order to comply with the resolution of the House of Representatives, and the House of Representatives could hold its sittings without waiting for the completeness of constituents of the Senate.

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