

Summary of the Constitutional Court Ruling No. 63/2543

Dated 19th December B.E. 2543 (2000)*

Re : The National Counter Corruption Commission requested for a ruling on its powers and duties pertaining to the consideration of the constitutionality of the Bank of Thailand (No. ...) Bill, B.E. and the Currencies Bill (No. ...), B.E. and the acts of the Prime Minister and the Minister of Finance.

.....

1. Background and summarized facts

1.1 Mr. Thongkorn Wongsamut and a company of 163,126 people exercised their rights under section 304 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to lodge with the President of the Senate a petition requesting the Senate to pass a resolution under section 307 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to remove Mr. Chuan Leekpai, the Prime Minister, and Mr. Thanin Nimanhem, the Minister of Finance, from their offices. It was alleged that those two persons' conducts indicated intentions to exercise their powers in manners inconsistent with section 27, section 29, section 30, section 48, section 201, section 205 and section 212 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). They exhibited intentions inconsistent with the constitutional provisions by submitting the Bank of Thailand (No. ...) Bill, B.E. and the Currencies Bill (No. ...), B.E. amending the Bank of Thailand Act, B.E. 2485 (1942) and the Currencies Act, B.E. 2501 (1958). The purpose was to combine the reserve currency accounts, which at the time existed in three accounts at the Bank of Thailand, into one account whose profits and accumulated returns could be applied to the repayment of debts in the Fund for the Rehabilitation and Development of the Financial Institution System (Rehabilitation Fund). The debts were a result of the Ministry of Finance's guarantee of deposits and financial institution debts. It was claimed that the property in the currency reserve accounts did not belong to the Bank of Thailand or any one government, but it was the collective property of the nation. Such acts were therefore inconsistent with section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which provided for the protection of rights in property of a person. Moreover, such acts were inconsistent with the rights and liberties under section 27 and section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and inconsistent with the solemn declaration before the King in section 205 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

* Published in the Government Gazette, Vol. 118, Part 74a, dated 3rd September B.E. 2544 (2001)

The administration of the State was also inconsistent with section 212 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

1.2 On another point, the Council of Ministers, by Mr. Chuan Leekpai as Prime Minister, had presented a Foreign Business Bill, B.E. which was inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because it prescribed differing standards in the treatment of Thais and foreigners by the Thai official service.

1.3 The President of the Senate thereafter referred the above application to the National Counter Corruption Commission (NCCC) who conducted an investigation under section 305 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 63 of the Organic Act on National Counter Corruption, B.E. 2542 (1999).

1.4 The NCCC held that the cause for withdrawal of Mr. Chuan Leekpai and Mr. Thanin Nimanhemmin from office in the case of a submission of Bills inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) gave rise to the problem of whether or not the NCCC had the power to adjudicate on whether or not the Bills in the application contained provisions which were inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and whether or not the acts of the alleged were inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such was a problem on the powers and duties of an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application was therefore submitted to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The preliminary issue considered was whether or not the NCCC had the power to submit this 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 NCCC was an organ established by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) under section 297 of the Constitution with the powers and duties provided in section 301 of the Constitution. Hence, the NCCC was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the NCCC could submit a matter together with an opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) only for cases concerning the powers and duties of the NCCC. After a consideration of the application and its supporting documents, the Constitutional Court was of the opinion that the NCCC had requested the Constitutional Court to consider the conduct of fact-finding investigation pursuant to the powers and duties of the NCCC under section 305 paragraph one of the Constitution of the

Kingdom of Thailand, B.E. 2540 (1997) and under the Organic Act on National Counter Corruption, B.E. 2542 (1999), which were already inherent powers and duties of the NCCC. There was no problem on the powers and duties of the NCCC or other organs. This was therefore not a case on the problems of the powers and duties of various organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which the NCCC could refer to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

The NCCC's application was not accepted by the Constitutional Court for consideration.
