

# Summary of the Constitutional Court Ruling No. 13/2544

Dated 29<sup>th</sup> March B.E. 2544 (2001)\*

**Re : The President of the National Assembly submitted an application to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case of whether or not an order for new elections of Senators was constitutional.**

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## 1. Background and summarized facts

The Election Commission received protests under section 94 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) stating that the election of senators in the Khon Kaen constituency, Phayao constituency, Phra Nakhon Si Ayutthaya constituency, Ranong constituency, Lop Buri constituency, Si Sa Ket constituency and Ubon Ratchathani constituency were not conducted in an honest and fair manner. Such facts lead to proceedings under the election protest procedure, revealing evidence supporting a reasonable belief that the elections of senators in all such seven constituencies had not been conducted in an honest and fair manner in relation to Mr. Tawee Supteera, senator for Khon Kaen province, Mrs. Puanglek Buncheang, senator for Phayao province, Mrs. Samruay Kaewattana, senator for Phra Nakhon Si Ayuttaya province, Mr. Thammanun Mongkol, senator for Ranong province, General Sirintr Thupklam and Mr. Sanit Worapanya, senators for Lop Buri province, Mr. Chawal Mahasutheerachai and Mr. Chit Charoenprasert, senators for Si Sa Ket province, and Mr. Nirant Pitakwatchara and Mr. Weerasak Jinarat, senators for Ubon Ratchathani province. The wrongful conduct of elections resulted from a violation of section 44 in conjunction with section 90 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). The Election Commission therefore reached a unanimous resolution to order new elections of senators for one senator in the Khon Kaen constituency, one senator in the Payao constituency, one senator in the Phra Nakhon Si Ayutthaya constituency, one senator in the Ranong constituency, two senators in the Lop Buri constituency, two senators in the Si Sa Ket constituency and two senators in the Ubon Ratchathani constituency, under Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001). As a result, the membership of senators subject to the protests under the Order terminated as from the date of the Order pursuant to section 96 of the Organic Act on Election of

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Members of the House of Representatives and Senators, B.E. 2541 (1998) and section 97 of the Constitution.

Mr. Sanit Worapanya, General Sirint Thupklam, Mrs. Puanglek Buncheang, Mr. Tawee Supteera, Mr. Weerasak Jinarat, Mrs. Samruay Kaewattana, Mr. Thammanun Mongkol, Mr. Chit Charoenprasert, Mr. Chawal Mahasutheerachai and Mr. Nirant Pitakwatchara submitted an application to the President of the National Assembly requesting for an exercise of powers under section 266 of the Constitution to refer the matter together with an opinion to the Constitutional Court for a ruling on the constitutionality of the Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), Re: Ordering a New Election for Senators.

The President of the National Assembly held that the Election Commission was an organisation under the Constitution with the powers and duties under section 145 and section 147 of the Constitution as the supervisor and organizer of elections of senators. The Election Commission's order for new elections of senators and termination of the membership of senators subject to the protests, who objected that the Election Commission was acting ultra vires and exercised powers which contravened the provisions of the Constitution, was a case on problems relating to the performance of functions of the Election Commission. The President of the National Assembly therefore requested the Constitutional Court to consider the following issues:

(1) Was the Election Commission's order for new elections of senators, pursuant to its powers and duties under section 145 paragraph one subparagraph (4) and section 147 of the Constitution and section 10 (7) of the Organic Act on Election Commission, B.E. 2541 (1998) in conjunction with section 95 (1) and section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), and the termination of the membership of ten senators whereas section 133 of the Constitution did not prescribe such a cause for termination, constitutional?

(2) Was section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) contrary to or inconsistent with the Constitution ?

(3) Was the Election Commission's order of new elections, by reason that there were protests to the elections under section 94 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) and by reasoning that there was a violation of the Organic Law on election of members of the House of Representatives and senators such that the elections were not conducted in an honest and fair manner, without proceeding to revoke election rights under section 85/9 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), constitutional?

## **2. Preliminary issue**

Did the Constitutional Court have the power to accept the matter for consideration under section 266 of the Constitution ?

The Constitutional Court held that the Election Commission was an organization established by the Constitution. It was the supervisor and organizer of elections of senators to be conducted in an honest and fair manner pursuant to section 144 of the Constitution. The Election Commission possessed the power under section 145 paragraph one subparagraph (4) of the Constitution to order a new election in any one constituency or all constituencies when it could reasonably believe on the evidence that the elections in such constituencies had not been conducted in an honest and fair manner. Thereafter, under section 147 paragraph one subparagraph (2) of the Constitution, the Election Commission had to immediately proceed with the conduct of an investigation and inquiry of facts when there appeared to be evidence from which it could be reasonably believe that prior to the election any senator had committed a dishonest act to win the election or was elected in a dishonest manner as a result of an act of a person or political party which violated the organic law on election of members of the House of Representatives and senators. The issue of an Order of such new elections of senators pursuant to the powers under section 145 paragraph one subparagraph (4) and section 147 of the Constitution and the relevant Organic Acts, which resulted in the termination of membership as from the date of the Order of senators who were the subject of protests, as well as the objections by ten senators who were the subject of protests that such an Order of the Election Commission was an unconstitutional exercise of powers, was a case where problems relating to the powers and duties of the Election Commission arose. When the President of the National Assembly referred the matter together with an opinion to the Constitutional Court for consideration, the Constitutional Court held by a majority of 8 votes to 5 votes that the case was in accordance with section 266 of the Constitution. The Constitutional Court could therefore accept the application for consideration.

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

The following issues had to be considered:

(1) Was section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) consistent with the Constitution ?

(2) Was the Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), which ordered new elections of senators and which terminated the membership of senators who were subject to protests, constitutional?

(3) Was the Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), which ordered new elections of senators due to protests being made under

section 94 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) that the elections were not conducted in an honest and fair manner, but without revoking election rights under section 85/9 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), constitutional?

The Constitutional Court held that the first issue was identical to the issue under the application of the Parliamentary Ombudsman which the Constitutional Court had already considered in Ruling No. 12/2544, dated 29<sup>th</sup> March B.E. 2544 (2001). The issue was therefore not reconsidered.

On the second issue, the Constitutional Court held as follows. Section 133 of the Constitution provided for ten causes for the termination of membership of the Senate, which were deemed as specific individual causes for the termination of membership of the Senate. However, this did not mean that the membership of the Senate could only terminate for those reasons. Whether or not there could be other causes depended on other relevant provisions of the Constitution. In this regard, it could be observed that the Constitution itself recognised that the election of a senator in violation of the organic law on election of members of the House of Representatives and senators was also another cause for the termination of membership of such senator. Therefore, whenever the Election Commission exercised powers under section 145 and section 147 of the Constitution to order a new election of a senator to replace any senator, the membership of the existing senator should by implication be terminated by reason of the new election. Otherwise, there would be an election of senators in the number which exceeded that provided by section 121 of the Constitution. For this reason, section 96 paragraph one of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was enacted consistently with section 97, section 145 and section 147 of the Constitution. Therefore, the order of new elections of senators issued by the Election Commission which resulted in the termination of membership of senators who were subject to the protests was made within the powers of the Election Commission under section 145 paragraph one subparagraph (4) and section 147 of the Constitution and section 96 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).

On the third issue, the Constitutional Court held as follows. In the supervision or conduct or organization of an election of members of the House of Representatives and senators, the Constitution prescribed a number of powers and duties on the Election Commission. The Election Commission could lawfully exercise those powers and duties in order that the election could achieve its objectives of honesty and fairness as provided by the Constitution. As the Election Commission possessed powers and duties provided by section 145 paragraph one subparagraph (4) and section 147 of the Constitution and by section 95 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) in the issue of an order for a new election and by section 85/9 and section 90 of such Act in the revocation of election rights of members of the House of

Representatives and senators, the Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), was therefore an exercise of powers as provided by the Constitution and the law.

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

The Constitutional Court unanimously held by 10 votes that:

(1) The Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), which ordered new elections for senators and which resulted in the termination of the membership of senators who were subject to the protests, was constitutional.

(2) The Order of the Election Commission No. 81/2544, dated 13<sup>th</sup> March B.E. 2544 (2001), which ordered new elections of senators due to protests being made under section 94 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) which resulted in dishonest and unfair elections, but which did not revoke election rights under section 85/9 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), was constitutional.

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