

Summary of the Constitutional Court Ruling No. 18/2546

Dated 22nd May B.E. 2546 (2003)*

Re : The Ombudsman requests for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the power and duty to consider that the Selective Committee for the Election Commission is a person under section 197 subparagraph (1) of the Constitution.

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1. Background and summarized facts

The Ombudsman (Mr. Pichet Sunthonpipith), the applicant, 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), which could be summarized as follows.

Police General Pratin Suntiprapob, a senator, and others submitted a complaint to the Ombudsman (the applicant) for deciding that the selection for the Election Commission of the Selective Committee for the Election Commission had questions on constitutionality and for submitting matter together with the opinion to the Constitutional Court for a ruling that such the selection was contrary to the Constitution. The applicant decided that the Selective Committee for the Election Commission was not a Government official, an official or employee of a State agency, State enterprise or local government organization. The complaint was therefore outside the powers and duties of the applicant to be accepted for consideration to submit the matter and opinion to the Constitutional Court for the decision on the constitutionality. Thereafter, Police General Pratin Suntiprapob and others submitted a letter objecting that the Selective Committee for the Election Commission maintained a status as a State agency under section 197 subparagraph (1) of the Constitution. The decision of the applicant that the complaint was outside his powers and duties was therefore the questions on the powers and duties of the applicant which was an organ under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The applicant was of the opinion that the case constituted a question on powers and duties of the Ombudsman as an organ under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant therefore requested the Constitutional Court for a ruling on whether or not the applicant as the Ombudsman had the power to decide that the Selective Committee for the Election Commission was the person within the power of the Ombudsman under section 197 subparagraph (1) of the Constitution as to submit the matter

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and opinion to the Constitutional Court for decision on the questions of the constitutionality of the act of the Selective Committee for the Election Commission pursuant to section 198 paragraph one of the Constitution.

2. Preliminary issue

The preliminary issue to be considered by the Constitutional Court was whether or not the Constitutional Court could accept the application for decision under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The applicant was the Ombudsman, an organ existed by section 196 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and having powers and duties as prescribed by section 197 and section 198 of the Constitution. The applicant was thus the organ under the Constitution. If the applicant had questions regarding the powers and duties under the Constitution, he had the right to submit an application to the Constitutional Court pursuant to section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the application which the Constitutional Court could accept for decision had to contain questions regarding the powers and duties of the applicant that really existed.

The Constitutional Court held the following opinion. According to the application, the applicant requested for the Constitutional Court ruling on whether or not the applicant had power to consider that the Selective Committee for the Election Commission was the person within the Ombudsman's power under section 197 subparagraph (1) of the Constitution. This was the power to consider for the submission of the matter to the Constitutional Court for decision on the questions of the constitutionality under section 198 of the Constitution. In other words, it was whether or not the applicant had power to consider that the "Selective Committee for the Election Commission" was a Government official, an official or employee of a State agency, State enterprise or local government organization within the meaning of section 197 subparagraph (1) of the Constitution. It was appeared that the applicant already exercised his power to decide that the Selective Committee for the Election Commission was not the person under section 197 subparagraph (1) of the Constitution. Accordingly, the applicant exercised his power and duty in compliance with section 197 subparagraph (1) of the Constitution. This was in accordance with the general principle that any person who had to apply any law had to have power to consider and decide on the provisions of such law. The fact that the applicant already exercised his power and duty in deciding on the matter presented that the applicant did not doubt as to whether or not he had the power as such. Moreover, the objection of Police General Pratin Suntiprapob against the applicant was not to object the power and duty as whether or not the applicant had powers and duties under section 197 subparagraph (1) of the Constitution. It was to object that the decision of the applicant that the Selective Committee for the Election Commission was not the person under section 197 subparagraph (1) of the Constitution was incorrect. This was the objection of the outcome of the decision. When the applicant already exercised his power, the case under the application requesting the Constitutional Court to rule on whether or not

the applicant had the power to decide on whether or not the Selective Committee for the Election Commission was the person within the power of the applicant under section 197 subparagraph (1) of the Constitution, was therefore not the case regarding the question on powers and duties of the applicant.

3. Ruling of the Constitutional Court

By virtue of the above reason, the Constitutional Court denied the acceptance of the application for decision under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
