

Summary of the Constitutional Court Ruling No. 19/2546

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) (the case of questions regarding the powers and duties to consider that the Selective Committee for the Judges of the Constitutional Court is a person under section 197 subparagraph (1) of the Constitution) and under section 198 of the Constitution (the case of the selection of judges of the Constitutional Court).

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1. Background and summarized facts

The Ombudsman, the applicant, submitted an application dated 18th April B.E. 2546 (2003) to the Constitutional Court for a ruling, which could be summarized as follows. The applicant received a complaint from Mr. Suriyasai Katasila, Secretary-General of the Democratic Campaigning Commission, stating that the selection of judges of the Constitutional Court by the Selective Committee for the Judges of the Constitutional Court under section 257 subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had questions regarding constitutionality and requesting that the applicant submitted the matter together with the opinion to the Constitutional Court or Administrative Court for decision under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The applicant, after consideration, held that the question on whether or not the applicant had the power to accept the matter regarding acts of selective committees for any person into consideration for questions on constitutionality contained substance regarding powers and duties of the applicant and it was the question that really existed. The case was deemed as having questions regarding the powers and duties of the applicant as an organ under the Constitution according to section 266 thereof. The applicant therefore requested the Constitutional Court to consider the followings.

(1) Was the Selective Committee for the Judges of the Constitutional Court under section 257 subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) a person under section 197 subparagraph (1) of the Constitution who was subject to the powers and duties of the applicant as to consider that his acts had questions regarding the

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constitutionality and then to submit the matter and opinion to the Constitutional Court or Administrative Court for decision pursuant to section 198 of the Constitution?

(2) If the Constitutional Court held that the Selective Committee for the Judges of the Constitutional Court was the person under section 197 subparagraph (1) of the Constitution, the Constitutional Court was requested to further consider whether or not the selection of the Judges of the Constitutional Court from qualified persons in law by the Selection Committee for the Judges of the Constitutional Court was contrary to the Constitution according to the complaint submitted to the applicant by Mr. Suriyasai Katasila, Secretary-General of the Democratic Campaigning Commission (DCC).

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 and section 198 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.

After consideration, the Constitutional Court held as follows. As regards issue (1) under the application, the applicant requested for the Constitutional Court ruling on whether or not the Selective Committee for the Judges of the Constitutional Court under section 257 subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was a person under section 197 subparagraph (1) of the Constitution who was subject to the powers and duties of the applicant as to consider that his acts had questions regarding the constitutionality and then to submit the matter and opinion to the Constitutional Court or Administrative Court for decision pursuant to section 198 of the Constitution. This was the request that the Constitutional Court be decided on whether or not the Selective Committee for the Judges of the Constitutional Court was a Government official, an official or employee of a State agency, State enterprise or local government organization under section 197 subparagraph (1) of the Constitution. If the Constitutional Court decided on this issue, it would be that wordings in the provision of section 197 subparagraph (1) of the Constitution were constructed or interpreted without that the applicant who was the exerciser of powers under section 197 subparagraph (1) of the Constitution exercised such power as to consider or interpret the issue of whether or not “the Selective Committee for the Judges of the Constitutional Court” was the person under section 197 subparagraph (1) of the Constitution. Whereas the applicant had not exercised its powers and duties under section 197

subparagraph (1) of the Constitution, the questions regarding its powers and duties had not really occurred. Moreover, there would not be the objection regarding such powers and duties which could lead to the submission of the application by the applicant to the Constitutional Court. The application in this part was not therefore the request for decision on the questions regarding the powers and duties of the applicant. The applicant was an organ under the Constitution and could exercise the right to submit the matter to the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Nevertheless, where no questions regarding the powers and duties of the applicant really existed because the applicant had not yet exercised such powers and duties, the case was a consultation in nature. The submission of the application was therefore inconsistent with section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, the application in the part of issue (1) could not be accepted for consideration.

Since the Constitutional Court did not accept the application in the part of issue (1) into consideration, the application in the part of issue (2) therefore needed not be further considered.

3. Ruling of the Constitutional Court

By virtue of the above reason, the Constitutional Court unanimously denied the acceptance of the application for decision.
