

Summary of the Constitutional Court Ruling No. 20/2546

Dated 1st June B.E. 2546 (2003)*

Re : The Ombudsman requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of problems pertaining to powers and duties in the exercise of discretion in determining that provisions of laws, rules or regulations or any act of any person under section 197 subparagraph (1) raised the question of constitutionality.

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1. Background and summarized facts

The Ombudsman 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). The application could be summarized as follows. Mr. Karun Sai-Ngam, a senator, submitted a complaint letter requesting the applicant to consider a reference to the Constitutional Court for a ruling that clause 11 paragraph two of the Rules of the Senate, B.E. 2544 (2001), raised problems of constitutionality under section 153 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant had determined that clause 11 paragraph two of the Rules of the Senate, B.E. 2544 (2001), had been enacted for the benefit of the smooth running of Senate meetings and enabled the businesses of the Senate to be conducted with greater clarity. Hence, the applicant determined that there was no problem on constitutionality and that the matter did not have to be referred to the Constitutional Court pursuant to section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in conjunction with section 17 of the Organic Act on Parliamentary Ombudsman, B.E. 2542 (1999). Nevertheless, Mr. Karun Sai-Ngam submitted a complaint objecting that the applicant did not have the power to determine whether or not provisions of law, rules, regulations or acts of any person raised the question of constitutionality because such adjudicative powers were vested in the Constitutional Court. The applicant considered such objection to the applicant's determination to be a difference in opinion which consequentially led to a conflict on the powers and duties of organs under the Constitution. Such conflict involved the essence of the Ombudsman's scope of powers and duties and was an actual problem that had already arisen. An 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).

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2. Preliminary issue

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

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the Ombudsman had the power to exercise a discretion in determining that provisions of laws, rules, regulations or acts of any person under section 197 subparagraph (1) raised the question of constitutionality pursuant to section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion.

The Ombudsman, in his capacity as the applicant, was an organ established by the Constitution, having the powers and duties as provided by the Constitution. The applicant had already exercised his powers to determine that clause 11 paragraph two of the Rules of the Senate, B.E. 2544 (2001), did not beg the question of constitutionality and that the matter needed not be referred to the Constitutional Court for a ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the applicant faced an objection by Mr. Karun Sai-Ngam, a senator, in his capacity as representative of the people for legislative affairs, that the applicant did not have the power to determine whether or not provisions of laws, rules, regulations or acts of any person under section 197 subparagraph (1) raised the question of constitutionality. At the time of the applicant's submission of the case to the Constitutional Court for a ruling, a problem had already arisen on the powers and duties of the applicant in his capacity as an organ under the Constitution. The Constitutional Court therefore accepted the application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 198 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated, "in the case where the Ombudsman is of the opinion that the provisions of the law, rules, regulations or any act of any person under section 197 subparagraph (1) begs the question of the constitutionality..." The exercise of the applicant's powers under section 198 must therefore undergo screening procedures or exercise of the applicant's discretion in determining whether or not provisions of law, rules, regulations or acts of any person under section 197 subparagraph (1) raised a question of constitutionality. If the applicant made a preliminary determination that the case raised a question of constitutionality, the applicant would then refer the matter together with an opinion on such case to the Constitutional Court or the Administrative Court. According to the application, the applicant had already exercised his discretion to determine that clause 11 paragraph two of the Rules of the Senate, B.E. 2544 (2001), did not beg the question of constitutionality and that the matter needed not be referred to the Constitutional Court. Such was an exercise of powers consistent with

section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the applicant was the holder of powers and duties under section 198, the applicant was empowered to exercise discretion in making a determination on the wordings or interpretation of the wordings in section 198 as to the nature of provisions of laws, rules, regulations or acts of any person under section 197 subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), that raised the question of constitutionality in order to determine a reference of the matter together with an opinion to the Constitutional Court or the Administrative Court as the case may be. This was in accordance with the general principle that a person who exercised powers under a law should interpret such law.

4. Ruling of the Constitutional Court

The Constitutional Court held the following opinion. The Ombudsman possessed discretionary powers in determining whether or not provisions of laws, rules, regulations or acts of any person under section 197 subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), raised the question of constitutionality in order to determine the reference of a matter together with an opinion to the Constitutional Court or the Administrative Court as the case may be.
