

Summary of the Constitutional Court Ruling No. 43/2546

Dated 6th November B.E. 2546 (2003)*

Re : The President of the National Assembly 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 whether or not the exercise of powers and duties of the Senate in deliberating a motion to establish 21 Ordinary Committees of the Senate during a legislative session was inconsistent with section 159 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The President of the National Assembly referred 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), in the case of whether or not the exercise of powers and duties of the Senate in the deliberation of a motion to establish 21 Ordinary Committees of the Senate was inconsistent with section 159 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not the result or resolution of such a Senate meeting was effective.

The facts according to the application could be summarized as follows. Senator Mr. Karun Sai-ngam and others, a total of 31 persons, submitted a letter to the President of the National Assembly requesting that a reference together with an opinion be made to the Constitutional Court for a ruling on the exercise of powers and duties of the Senate in deliberating a motion submitted by Mr. Nippon Wisistayutasasra to establish 21 Ordinary Committees of the Senate during the legislative ordinary session pursuant to the report of the Ordinary Committee for Selection of Members of Ordinary Committees of the Senate. The deliberation of such a motion during a legislative ordinary session was inconsistent with the provisions in section 159 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, the result and any resolution of such a meeting were unlawful and ineffective.

The President of the National Assembly (Major General Manoonkrit Roopkajorn, Vice-President of the National Assembly acting for and on behalf of the President of the National Assembly), as the applicant, considered the facts and relevant laws and held the

* Published in the Government Gazette, Vol. 121, Part 48a, dated 4th August B.E. 2547 (2004)

opinion that there were 31 senators objecting on this matter and that the matter had been widely criticised causing a division of opinions into two factions. One faction regarded the Senate's proceedings as proper whereas the other faction regarded the proceedings as contrary to or inconsistent with the provisions of the Constitution. Such a case could be deemed as a problem which had already arisen from the discharge of the Senate's functions and the problem was related to the discharge of functions in connection with the recruitment of personnel in an organ. If the recruitment of personnel in an organ was done unlawfully or there were objections or the recruitment was subject to doubtfulness, the performance of duties by such persons in the organ would be affected. In consequence thereof, the President of the National Assembly referred the following points 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):

(1) whether or not the exercise of powers and duties by the Senate in deliberating a motion to establish 21 Ordinary Committees of the Senate during a legislative ordinary session was inconsistent with section 159 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

(2) if the exercise of powers and duties in (1) was unlawful under the enactments of the National Assembly, whether or not the results or resolutions of such meeting were effective.

2. Preliminary issue

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

The Constitutional Court held the following opinion. The Senate was an organ under the Constitution. Once the President of the National Assembly deemed that there was a problem regarding the powers and duties of the Senate, the President of the National Assembly would refer the 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). However, the Constitutional Court would only accept an application for consideration in cases where problems concerning powers and duties of the Senate had already arisen. In this application, the President of the National Assembly had received a complaint from 31 senators belonging to the faction in disagreement with the result or resolution of the Senate, which was a matter concerning the internal operations of an organ, not a problem on the powers and duties of the Senate and not a problem on the capacity of the Senate according to its powers and duties. This was therefore not a case on the powers and duties of the Senate whereby the Constitutional Court could make a ruling.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that the case under the application was not a case of problems concerning the powers and duties of an organ under the Constitution. The application was therefore not accepted for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
