

Summary of the Constitutional Court Ruling No. 44/2546

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 problems concerning the powers and duties of the Committee for the Selection of Constitutional Court Judges).

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1. Background and summarized facts

The President of the National Assembly referred a matter together with an opinion in an application to the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), for a determination of problems concerning the powers and duties of the Committee for the Selection of Constitutional Court Judges. The application could be summarized as follows.

Pursuant to the vacation of offices by three Constitutional Court judges qualified in the field of law and one Constitutional Court judge qualified in the field of political science, the Committee for the Selection of Constitutional Court Judges undertook selection proceedings and prepared a list of six persons qualified in the field of law and two persons qualified in the field of political science in accordance with section 255(3) and (4) in conjunction with section 261 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The selection list was submitted to the President of the Senate and the Senate subsequently reached a resolution to select Mr. Manit Wittayatem, Mr. Suthi Suthisomboon, Mrs. Saowanee Assawaroj and Police General Suwan Suwanwecho for the position of Constitutional Court judge. Royal appointments of such persons were duly made thereafter.

In due course, Senator Mr. Chermesak Pinthong and others, a total of 54 persons, carried out an inspection of the selection procedure and discovered discrepancies in the powers and duties of the Committee for the Selection of Constitutional Court Judges and the Senate, which were organs under the Constitution. An opinion was submitted to the President of the National Assembly in contemplation of the exercise of powers under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), to refer the opinion to the Constitutional Court for a ruling.

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The President of the National Assembly considered the application and held that this was a case concerning the discharge of functions by the Committee for the Selection of Constitutional Court Judges which sent an impact on the discharge of functions by the Senate. A reference of the matter together with an opinion was therefore made to the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A ruling was sought on the constitutionality of Constitutional Court judge selection proceedings conducted by the Committee for the Selection of Constitutional Court Judges whereby a round of votes had been cast by the Committee Members before an adjournment and a subsequent closed meeting without any officials present in the meeting room and without any record of the discussion as evidence; subsequent to the closed discussion, a new round of votes was cast the results of which were different from the first round of votes.

2. Preliminary issue

The preliminary issue considered 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).

The Constitutional Court held that as the President of the National Assembly was the submitter of the application and the application was a request for a determination of powers and duties under section 257(1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), of the Committee for the Selection of Constitutional Court Judges, which was an organ under the Constitution and whereas the case involved a problem which had already arisen, the application was accepted 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 related to constitutionality of proceedings of the Committee for the Selection of Constitutional Court Judges whereby a round of votes had been cast and acknowledged by the Committee Members; thereafter the meeting was adjourned followed by a closed discussion without the presence of officials or records of evidence; subsequent to the closed discussion a new round of votes was cast resulting in a variation of the votes from the first votes cast.

The Constitutional Court held the following opinion. The Constitution prescribed a general procedure for the selection of Constitutional Court judges who were qualified persons in the fields of law and political science once those positions had been vacated. The procedure was to be implemented by the Committee for the Selection of Constitutional Court Judges. The procedure provided that the Committee should undertake selection and prepare a list of qualified persons in the fields of law and political science containing twice the number of vacant positions. Such nominations would then be made to the President of the

Senate with the consent of the nominees. A resolution for the nomination of candidates must be made by the votes of not less than three-fourths of the total number of existing Committee Members. As a result, the Committee was at liberty to determine its own rules and procedures for obtaining suitable candidates for nomination as Constitutional Court judges qualified in the fields of law and political science so long as the rules and procedures provided under section 261 in conjunction with section 257 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were observed. Meetings of the Committee would be held in order to search and select persons to be subsequently nominated to the Senate for further selections. In this regard, certain instances might require a meeting to be conducted in secret because a debate might be made on detail of the biography, qualifications and prohibited qualities of an applicant or nominated candidate. In such a case, it would be inappropriate to disclose minutes of the meeting to a third party. A proceeding as such was not generally inconsistent with closed meetings of the various organs, such as the National Assembly, the Senate and the House of Representatives. Nonetheless, the search and selection of candidates by closed meetings of the Committee must not run contrary to the intention behind the Constitution in relation to the selection of persons, i.e. a person or group of person must be selected from several persons in order to allow a comparison to be made for the selection of the most suitable person. In this case, after a consideration had been made of the report of proceedings of the Committee in conjunction with the statement made by the Chairman of the Committee, it was held that from the first closed meeting onwards, every Committee Member still retained the liberty of casting votes for an applicant or remaining nominees as evidenced by the diversity of votes after the closed meeting. Such liberties were maintained until the final round when nominations were made in which a three-fourths vote was necessary under the Constitution. For this reason, the proceedings of the Committee whereby several rounds of votes were cast, the Committee Members acknowledging the votes cast; then the meeting was adjourned and a closed meeting subsequently conducted without the presence of officials or record of proceedings as evidence; thereafter another round of votes was cast resulting in a change of votes for the candidates; was not inconsistent with the intentions of the Constitution on the selection of persons.

Therefore, once the proceedings for the selection of Constitutional Court judges conducted by the Committee was not inconsistent with the intentions of the Constitution on the selection of persons, such proceedings resulted in a constitutional selection of Constitutional Court judges.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that the proceedings for the selection of Constitutional Court judges conducted by the Committee for the Selection of Constitutional Court Judges were constitutionally conducted.
