

# **Summary of Constitutional Court Ruling**

## **No. 1-24/2547**

### **Dated 8<sup>th</sup> January B.E. 2547 (2004)\***

**Re: The Administrative Court requested for a Constitutional Court ruling in the case of whether or not section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), was contrary to or inconsistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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#### **1. Background and summarized facts**

The Central Administrative Court, Nakhon Ratchasima Administrative Court and Songkhla Administrative Court referred the objections of the Election Commission to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). There were a total of twenty-four applications.

The facts stated in the applications and supporting documents may be summarized as follows:

1. First Application. Mr. Sitthiratana Rattanawijarn, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 712/2545.

2. Second Application. Mrs. Phanprapa Intornwittayanant, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 307/2545.

3. Third Application. Mr. Soraj Dasri, Leader of the Prachathipatai Party, the plaintiff, filed a plaint against the Election Commission, the first defendant, the Political Party Development Fund Committee, the second defendant, and the Secretary-General of the Commission Election, the third defendant, in the Central Administrative Court in Case No. 864/2545.

4. Fourth Application. Miss Parichart Chalikrue, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 685/2545.

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5. Fifth Application. Mr. Thavil Phraisont, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 320/2545.

6. Sixth Application. Mr. Saran Saranket, the plaintiff, filed a plaint against the election Commission, the defendant, in the Central Administrative Court in Case No. 1261/2544.

7. Seventh Application. Mr. Tulapark Prasertsilp, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 3256/2544.

8. Eighth Application. Mr. Nirand Weerathamrong, Leader of the Palangmahachon Party, the plaintiff, filed a plaint against the Election Commission, the first defendant, the Political Party Registrar, the second defendant, and the Political Party Development Fund Committee, the third defendant, in the Central Administrative Court in Case No. 529/2545.

9. Ninth Application. Associate Professor Chuchart Areejitranusorn and others, a total of five plaintiffs, filed a complaint against the Office of the Election Commission and others, a total of three persons, with the Petition Analysis Committee in File No. 016/2544, dated 11<sup>th</sup> January, B.E. 2544 (2001). The case was subsequently transferred to the Central Administrative Court as Case No. 1665/2544 pursuant to the law on Council of State.

10. Tenth Application. Mr. Kowit Suraswadee, the plaintiff, filed a plaint against the Election Commission, the first defendant, and the Election Commission for Bangkok Constituency No. 30, the second defendant, in the Central Administrative Court in Case No. 1609/2544.

11. Eleventh Application. Mr. Watcharin Ketawandee, the first plaintiff, Mr. Wim Butchai-ngam, the second plaintiff, Mr. Chaikrit Kitti-udompittaya, the third plaintiff, Mr. Loilom Jantasee, the fourth plaintiff, Police Lieutenant Colonel Songdech Phajant, the fifth plaintiff, and Mr. Prasit Nonthakarn, the sixth plaintiff, filed a plaint against the Election Commission, the first defendant, the Election Commission for the Loei Province Constituency, the second defendant, and the Military Academic Council Commission, the Armed Force Education Department, Supreme Command Headquarters, the third defendant, in the Central Administrative Court in Case No. 2724/2544.

12. Twelfth Application. Mr. Narongkorn Chawalsanti, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 1628/2545.

13. Thirteenth Application. Mr. Manoj Tengmaneeewiwat, the plaintiff, filed a plaint against the Election Commission, the first defendant, and the Chairman of the Election Commission (Mr. Theerasak Karnasuta), the second defendant, in the Central Administrative Court in Case No. 1991/2544.

14. Fourteenth Application. Dr. Warunee Phurisamban, the plaintiff, filed a plaint

against the Election Commission, the first defendant, and the Office of the Election Commission, the second defendant, in the Central Administrative Court in Case No. 206/2545.

15. Fifteenth Application. Mr. Wiwatchai Hotrawaisaya, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 877/2545.

16. Sixteenth Application. Mr. Somkiart Kittithornkul, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 1329/2545.

17. Seventeenth Application. Mr. Phornphromtham Nusati, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 1639/2545.

18. Eighteenth Application. Mrs. Kanda Ratanawijarn, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 682/2545.

19. Nineteenth Application. Mr. Charn Nampich, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Nakhon Ratchasima Administrative Court in Case No. 444/2545.

20. Twentieth Application. Mr. Niwat Sunsan, the plaintiff, filed a plaint against the Election Commission, the first defendant, and the Election Director of Trang Province, the second defendant, in the Songkhla Administrative Court in Case No. 180/2544.

21. Twenty-first Application. Dr. Warunee Phurisamban, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 1558/2544.

22. Twenty-second Application. Mr. Jarasphong Laohapraditsakul, the plaintiff, filed a plaint against the Election Commission, the first defendant, and the Election Director of Bang Muang Municipality, the second defendant, in the Central Administrative Court in Case No. 565/2546.

23. Twenty-third Application. Mr. Chaowapan Keawsa-ard, the plaintiff, filed a plaint against the Election Commission, the first defendant, and others, a total of eleven defendants, in the Nakhon Ratchasima Administrative Court in Case No. 183/2546.

24. Twenty-fourth Application. Mr. Phaisal Labbua-ngam, the plaintiff, filed a plaint against the Election Commission, the defendant, in the Central Administrative Court in Case No. 1229/2546.

The Administrative Courts admitted all twenty-four plaints to trial and the Election Commission, the defendant, filed a defence stating that the defendant was not a State agency

or a State official that was under the control or supervision of the government under section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The defence also stated that section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), were provisions which prescribed the jurisdiction of the Administrative Court beyond what section 276 of the Constitution provided and that the defendant's orders were not administrative orders under the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2539 (1996). The defendant was therefore of the opinion that section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), were provisions whose effect exceeded the provisions of section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and such provisions were therefore unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Central Administrative Court, Nakhon Ratchasima Administrative Court and Songkhla Administrative Court considered and imposed a temporary stay of proceedings and referred the Election Commission's objections through official channels for a Constitutional Court ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that all twenty-four applications contained an identical issue. The applications were therefore consolidated into one ruling. The preliminary issue which had to be considered by the Constitutional Court was whether or not the Constitutional Court could accept these applications for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the preliminary issue, the Constitutional Court held as follows. The applications had stated the sections of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), namely section 3, section 9 and section 42, which were contrary to or inconsistent with section 276 of the Constitution. In addition, section 3, section 9 and section 42 of such Act were also provisions of law which were applicable to the cases by the court and there had not yet been a ruling of the Constitutional Court which were relevant to such sections. This case was in accordance with the criteria set forth by section 264 paragraph one of the Constitution. Therefore, Constitutional Court could accept the application for consideration pursuant to section 264 of the Constitution.

## **2. The issue considered by the Constitutional Court**

The issue considered by the Constitutional Court was whether or not section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), were contrary to or inconsistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 276 of the Constitution provided for the powers of the Administrative Courts to try and adjudicate cases as well as the layers of Administrative Courts, which were either two layers comprising the Supreme Administrative Court and the Administrative Courts of First Instance, or three layers comprising the Administrative Courts of First Instance, the Appellate Administrative Court and the Supreme Administrative Court. As regards the power to try and adjudicate cases, the Administrative Courts had the power to try and adjudicate cases of dispute between a government agency, State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on the one part and a private individual on the other part, or between a government agency, State agency, State enterprise, local government organization or State official under the superintendence or supervision of the Government on the one part and another such agency, enterprise, organization or official on the other part. It was apparent that the Administrative Courts had the power to try and adjudicate only cases which were disputes between a government agency, State agency, State enterprise, local government organization or State official under the superintendence or supervision of the Government and a private individual or disputes as between the government agency, State agency, State enterprise, local government organization or State official under the superintendence or supervision of the Government themselves, arising from acts or omissions of acts that, according to the law, had to be performed by such State agency, State enterprise, local government organization, or State official, or as a consequence of acts or omissions of acts under the responsibility of such government agency, State agency, State enterprise, local government organization or State official in the performance of duties under the law, as provided by law. If a dispute involved an agency or State official which was not under the superintendence or supervision of the Government, the Administrative Courts would not have the power to try and adjudicate such a case.

Section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), provided the definition for the word “administrative agency” as meaning a Ministry, Sub-Ministry, Department, etc. and the word “State official” as meaning (1) Government official, official, etc.; (2) quasi-judicial council, etc.; (3) person under the superintendence or supervision of an administrative agency or State official under (1) or (2). This raised an issue on whether or not the exclusion of explicit requirements in the wording in the definitions that the “State agency” or “State official” must be under the superintendence or supervision of the Government in the same manner provided by section 276 of the Constitution could imply that the meanings of the words “administrative agency” or “State official” under section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), also included a State agency or State official which was not under the superintendence or supervision of the Government. On this issue, the Constitutional Court held that in order to determine whether an administrative agency or State official was under the superintendence or supervision of the Government, primary guidance was to be sought from the provisions of section 276 of the Constitution. The definitions of both words under section 3 only provided a clarification of

the characteristics of types of Government agencies, agencies or officials that would fall within the ambit of the Administrative Court's jurisdiction. Those provisions provided not only the characteristics of such organs, but also the nature of exercise of powers, i.e. whether it was an exercise of administrative powers or an exercise of delegated administrative powers or the undertaking of a delegated administrative activity. These were the characteristics of an administrative agency or a State official under the superintendence or supervision of the Government, consistent with section 276 of the Constitution being the supreme law and empowering the enactment of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). Moreover, section 62 of the Constitution provided that a person's right to sue a government agency, State agency, State enterprise, local government organization or other State authority which was a juristic person to be liable for an act or omission done by its Government official, official or employee, should be protected, as provided by law. The exercise of such right should also take into account the exercise of powers under the Constitution. For these reasons, the definition of "administrative agency" and "State agency" under section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), were therefore neither contrary to nor inconsistent with section 276 of the Constitution.

With respect to section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), the Constitutional Court held that those provisions were consequential to section 3 and dealt with the prescription of types of cases that were within the jurisdiction of the Administrative Court to adjudicate and issue orders and the rights a person to initiate proceedings as well as the procedures thereof. Those provisions applied the definitions of the two words. Therefore, once it had been ruled that section 3 did not contain any provision contrary to or inconsistent with section 276 of the Constitution, for the same reasons, section 9 and section 42 were also neither contrary to nor inconsistent with section 276 of the Constitution.

### **3. Ruling of the Constitutional Court**

The Constitutional Court held that section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), were neither contrary to nor inconsistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1999).

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