

Summary of the Constitutional Court Ruling No. 15/2545

Dated 25th April B.E. 2545 (2002)*

Re : The President of the National Assembly requests the Constitutional Court to make a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the constitutionality of the procedure for the removal of Constitutional Court judges from office.

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1. Background and summarized facts

Major General Sanan Kajornprasart and company presented themselves to the President of the Senate and submitted to the latter a list of eligible voters who entered their signatures in a petition for the removal from office of the Constitutional Court judges, Mr. Kramol Thongtamachart, Mr. Jumpol Na Songkla, Mr. Phan Jantraparn and Mr. Sak Techacharn. The President of the Senate examined the petition and ruled that the petition was lawful and completely satisfied the provisions of the Constitution and Organic Act on Counter Corruption, B.E. 2542 (1999). The matter was referred to the National Counter Corruption Commission (NCCC) for investigation without delay under section 305 of the Constitution and section 63 of the Organic Act on Counter Corruption, B.E. 2542 (1999).

The President of the Senate received a letter from Mr. Sathit Lengthaisong and company, Mr. Samart Kaewmeechai (member of the House of Representatives) and company and Major General Sornchai Montriwat (member of the House of Representatives) and company requesting that the President of the Senate submit the matter together with an opinion to the Constitutional Court for a ruling on the constitutionality and lawfulness under the Organic Act on Counter Corruption, B.E. 2542 (1999) of the procedure for removal from office of the four Constitutional Court judges.

The President of the Senate held that the National Counter Corruption Commission was a constitutional organization and whereas the former Supreme Court judge and members of the House of Representatives disputed the powers and duties of the NCCC as inconsistent with section 268 of the Constitution, such a dispute was one involving the powers and duties of the Senate, the NCCC and the Constitutional Court, all of which were constitutional organs. Hence, in his capacity as President of the Senate and by virtue of section 266 of

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the Constitution, the matter was submitted to the Constitutional Court for a ruling on the following 4 issues:

(1) The Constitutional Court had reached a Ruling No. 20/2544, dated 3rd August B.E. 2544 (2001) causing an individual who did not accept the ruling to initiate a petition and presented himself to the President of the Senate after proceeding to collect and submit the signatures of not less than fifty thousand eligible voters to the latter requesting that the Senate reach a resolution to remove from office Constitutional Court judges who formed the quorum in the deliberation and ruling which ordered the petitioner to vacate office. It was alleged that the four Constitutional Court judges abused their judicial positions. Was the conduct of the petitioner and entry of signatures by such eligible voters constitutional?

(2) In the case of (1), the President of the Senate received the petition and list of eligible voters who entered their signatures and did not proceed to examine whether those signatories had been disentitled from signing a petition for a resolution of the Senate to remove a Constitutional Court judge from office under the organic law on election of members of the House of Representatives and the Senate; whether or not such an act was constitutional?

(3) In the entry of signature by not less than fifty thousand people in a petition for the removal from office of Constitutional Court judges, by reason of the Constitutional Court's ruling that Mr. Anan Sawastananont, Mr. Chatchai Sumatchotimetha, Mr. Mahusen Masuyi, Mr. Kosol Srisang, Mr. Jirayu Jarassatean, Major General Sanan Kajornprasart, Mr. Sumet Upontean and Mr. Prayut Mahakijisiri committed offences under section 295 of the Constitution and that Police Lieutenant Colonel Thaksin Shinawatra did not commit an offence under section 295 of the Constitution, in which the NCCC was the organ which submitted the matter to the Constitutional Court, it could be deemed that the NCCC was a party in the case and had a direct or indirect interest under section 29 of the Organic Act on Counter Corruption, B.E. 2542 (1999). Therefore, when a signed petition for the removal of Constitutional Court judges was lodged as in this case, could the NCCC conduct an investigation pursuant to such petition?

(4) Were the proceedings under section 303 of the Constitution for the Senate to reach a resolution to remove Constitutional Court judges from office by reason of the exercise of Constitutional Court judicial functions in the adjudication of a case in the Constitutional Court an interference of the powers of the Constitutional Court inconsistent with section 249 and section 268 of the Constitution? Were the proceedings requesting the Senate to reach a resolution to remove the four Constitutional Court judges from office in the absence of other supporting facts indicating unusual wealthiness, commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law consistent with section 303 to section 307 of the Constitution?

2. The issues considered by the Constitutional Court

The Constitutional Court has to rule on the issue whether or not this application could be accepted for consideration and ruling under section 266 of the Constitution.

On the first issue, pursuant to the application, it was held that the proceedings of the petitioner and the entry of signatures of eligible voters requesting the Senate to reach a resolution to remove Constitutional Court judges from office was not a dispute on the powers and duties of an organ under the Constitution.

On the second issue, pursuant to the application, it was held that whether or not the President of the Senate examined the name list of signatories to the petition was not a dispute on the powers and duties of an organ under the Constitution.

On the third issue, pursuant to the application, it was held that the Constitution provided for the NCCC to be a constitutional organ. Whether or not any member of the NCCC had an interest in the case was not a dispute on the powers and duties of an organ under the Constitution.

On the fourth issue, pursuant to the application, it was held that the Constitution provided for the Senate and the NCCC were organs under the Constitution which had to proceed and act according to the provisions of section 303 to section 307 of the Constitution. The application on this issue was not a dispute on the powers and duties of organs under the Constitution.

3. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that the case under this application was not a dispute on the powers and duties of organs under the Constitution. Therefore, the Constitutional Court could not accept this application for consideration and ruling under section 266 of the Constitution.
