

# **Summary of the Constitutional Court Ruling No. 29/2548**

**Dated 1<sup>st</sup> February B.E. 2548 (2005)\***

**Re: The Council of Ministers 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 a dispute on the respective powers and duties of the Ruling Committee on Information Disclosure, the National Counter Corruption Commission and the Office of the National Counter Corruption Commission, and the respective powers and duties of the Ruling Committee on Information Disclosure, the Senate and the Secretariat to the Senate.**

.....

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

The Council of Ministers, through the Permanent Secretary of the Prime Minister's Office, submitted an application dated 16<sup>th</sup> June B.E. 2547 (2004) to the Constitutional Court in request of a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on a dispute concerning the respective powers and duties of the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section, which the Council of Ministers was authorized to appoint pursuant to a recommendation of the Official Information Committee, and the National Counter Corruption Commission (NCCC) in one case, and the Office of the National Counter Corruption Commission (Office of the NCCC) and the Senate and Secretariat of the Senate in another case. The relevant facts may be summarized as follows.

1. In one case, the following facts gave rise to questions of lawfulness and the applicability the Official Information Act, B.E. 2540 (1997) to the NCCC and Office of the NCCC. Firstly, the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section, an organization under the Official Information Act, B.E. 2540 (1997), issued an order under section 32 in conjunction with section 39 of such Act summoning documents or other evidence from the Office of the NCCC to be used in the Ruling Committee on Information Disclosure Society, State Administration and Law Enforcement Section's consideration of an appeal. Secondly, the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section made a final determination requiring the NCCC and Office of the NCCC, independent organizations under the Constitution, to disclosure information in their possession to parties

---

\* Published in the Government Gazette, Vol. 122, Part 84a, dated 22<sup>th</sup> September B.E. 2548 (2005)

exercising legal rights. In response, however, the NCCC passed a resolution by virtue of section 120 of the Organic Act on Counter Corruption, B.E. 2542 (1999), refusing to comply with the order of the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section which summoned documents or other evidence and refusing to disclose information according to the ruling of the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section.

2. In another case, the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section issued an order summoning documents to be used in the consideration of an appeal by virtue of section 32 in conjunction with section 39 of the Official Information Act, B.E. 2540 (1997), as well as an order mandating the Secretariat of the Senate to disclose information in its possession to parties exercising appeal rights under the Official Information Act, B.E. 2540 (1997), but the Secretariat of the Senate refused to submit the documents required for consideration and refused to disclose information according to the ruling. The Secretariat of the Senate claimed that the information in its possession were information obtained by the Senate from the examination of backgrounds and past conducts undertaken by the ordinary committee responsible for examining the backgrounds and past conducts of persons nominated for filling vacant positions, which was an exercise of functions under section 135 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Secretariat of the Senate, the administrative agency of the Senate, only acted as an agency which archived such documents on behalf of the Senate. In addition, the Senate and Extraordinary Committee on Senate Affairs had passed a resolution prescribing a guideline which prohibited the Secretariat of the Senate from furnishing documents under the order and from disclosing information under the ruling of the Ruling Committee on Information Disclosure: Society, State Administration and Law Enforcement Section. It was therefore questioned whether such acts were lawful and whether or not the information on appeal which was presently at issue was information that was exclusive to the Senate, or information that was subject to the Official Information Act, B.E. 2540 (1997).

## **2. Preliminary issues**

A preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could accept the Council of Minister's application in both cases for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court expressed that an application which an applicant is entitled to submit to the Constitutional Court for consideration must satisfy the following criteria:

Firstly, a dispute on the respective powers and duties of organs under the Constitution must have arisen.

Secondly, applicants who were entitled to make an application consisted of the President of the National Assembly or an organ under the Constitution whose powers and duties were in dispute.

For these purposes, an organ under the Constitution meant an organ established by the Constitution and whose powers and duties were provided by the Constitution. The Council of Ministers was an organ of the executive and had the powers and duties to administer State affairs under the provisions of Chapter VII of the Constitution. The Council of Ministers was therefore an organ under the Constitution. The Ruling Committee on Information Disclosure, on the other hand, was a committee appointed by the Council of Ministers upon the recommendation of the Official Information Committee pursuant to the Official Information Act, B.E. 2540 (1997). Moreover, the Constitution provided neither for the establishment of the Committee nor its powers and duties. Therefore, the Ruling Committee on Information Disclosure was not an organ under the Constitution.

The next issue considered by the Constitutional Court was whether or not the two applications concerned disputes relating to the powers and duties of the Council of Ministers. After considering the facts stated in the applications and supporting documents, the Constitutional Court held that the disputes in both applications were cases concerning the application of laws by the Ruling Committee on Information Disclosure, which was an agency of the executive under the Official Information Act, B.E. 2540 (1997). Even though the Council of Ministers was an organ under the Constitution, the appointment of a Ruling Committee on Information Disclosure was an exercise of powers under the Official Information Act, B.E. 2540 (1997), to appoint persons or a group of persons as authorized by such Act in order to entrust the exercise of powers under the Act to those persons or group of persons. The Council of Ministers did not in any way exercise powers in its capacity as an organ under the Constitution. Therefore, a dispute on the powers and duties of the Ruling Committee on Information Disclosure appointed by the Council of Ministers was not a dispute on the powers and duties of the Council of Ministers in its capacity as an organ under the Constitution as stated in section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

By virtue of the above reasons, the Constitutional Court did not accept the application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

---