

# Summary of the Constitutional Court Ruling No. 43/2548

**Dated 26<sup>th</sup> April B.E. 2548 (2005)\***

**Re: The Central Administrative Court referred the objections of the defendant (the Council of Ministers) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 3 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.**

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

The Central Administrative Court referred the objection of the defendant (the Council of Ministers) in Pending Cases No. 772/2545 and 773/2545 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contained provisions which was contrary to or inconsistent with the Constitution. The defendant was of the opinion that section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with section 276 paragraph one of the Constitution, because such section 3 provided for the definitions of “Administrative agency” and “State official” which were contrary to or inconsistent with the Constitution. The definitions failed to limit the scope of those terms to mean a government department, State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government only. This was different from section 276 of the Constitution which provided that the Administrative Courts had the powers to try and adjudicate cases of dispute between a government department, State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between a government department, State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and another such department, agency, enterprise, organization or official on the other part.

The Central Administrative Court held the followings. Both plaintiffs filed the case to the Central Administrative Court for a ruling to withdraw the order made by the first

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defendant ordering both plaintiffs to vacate their offices as other members of the Board of Airports of Thailand. The first defendant objected that the meanings of the terms “Administrative agency or State official” as provided in section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was beyond the scope of section 276 of the Constitution. This provision was thus unenforceable under section 6 of the Constitution. Furthermore, it was the case where there has not yet been a decision of the Constitutional Court on section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Accordingly, the Central Administrative Court shall stay its trial and adjudication of the case and submit the objection of the first defendant that the said provision of law was contrary to or inconsistent with the Constitution to the Constitutional Court for consideration under section 264 paragraph one of the Constitution.

## **2. Preliminary issue**

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the followings. The application specified the provision of section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) that it was contrary to or inconsistent with section 276 of the Constitution. Section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was the provision of law which the Court shall apply to the case. The application fell within section 264 paragraph one of the Constitution. The Constitutional Court therefore could accept the application for consideration.

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

Was section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contrary to or inconsistent with section 276 of the Constitution?

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

The Constitutional Court was of the opinion that the aforesaid issue was already determined by the Constitutional Court Ruling No. 1-24/2547 dated 8<sup>th</sup> January, B.E. 2547 (2004). There was no any other reason for such ruling to be overruled by this case. The Constitutional Court therefore held that section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was neither contrary to nor inconsistent with section 276 of the Constitution.

As already held that section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was neither contrary to nor inconsistent with section 276 of the Constitution, the allegation of the applicant submitted to the Constitutional Court for a ruling under section 264 of the Constitution that the Council of Ministers was outside the jurisdiction of the Administrative Court, because it was not an administrative agency or State official and not under superintendence or supervision of the Government pursuant to section 276 of the Constitution, could not be considered by the Constitutional Court.

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