

# Summary of the Constitutional Court Ruling No. 60/2548

Dated 4<sup>th</sup> November B.E. 2548 (2005)\*

**Re: Problems relating to the powers and duties of the State Audit Commission in proceedings for obtaining a State Audit Governor as a consequence of Constitutional Court Ruling No. 47/2547.**

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## 1. Background and summarized facts

The State Audit Commission requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in a case concerning problems relating to the powers and duties of the State Audit Commission in proceedings for obtaining a State Audit Governor as a consequence of Constitutional Court Ruling No. 47/2547. The State Audit Commission submitted an application dated 20<sup>th</sup> October B.E. 2548 (2005) to the Constitutional Court for a ruling on two issues, as follows.

First issue. Pursuant to Constitutional Court Ruling No. 47/2547 which stated that the exercise of Constitutional powers and duties of the State Audit Commission and the Senate in proceedings for obtaining a State Audit Governor contained unconstitutional elements due to a failure to comply with section 312 and section 333(1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the Organic Act on State Audit B.E. 2542 (1999) with respect to section 15 paragraph one subparagraph (6) and section 30 in conjunction with clause 6(5) of the Rules of the State Audit Commission on Rules and Procedures for Selection of Suitable Candidates for Appointment as State Audit Governor B.E. 2543 (2000) and section 31.

Thereafter, the State Audit Commission carried out functions provided by the Constitution and the Organic Act on State Audit B.E. 2542 (1999) by conducting new proceedings for the recruitment and selection of suitable candidates for the position of State Audit Governor. The ruling of the Constitutional Court was deemed as binding on the State Audit Commission and the Senate. Hence, Khunying Jaruwan Menthaka was deemed as not having been selected by the State Audit Commission and not approved by the Senate *ab initio*, preventing her from performing duties as from the date of Constitutional Court ruling. In this regard, the Constitutional Court was asked to rule on whether or not such actions were constitutional.

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Second issue. The State Audit Commission had carried out new proceedings for the recruitment and selection of appropriate candidates for the position of State Audit Governor without a Royal Order removing Khunying Jaruwan Menthaka from office since the office was not provided by the Constitution. In this regard, the Constitutional Court was asked to rule on whether or not such proceedings were constitutional.

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

The Constitutional Court had to consider whether or not it had the power to accept this application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court had considered the application and requested for ruling from the State Audit Commission and found that the State Audit Commission had carried out new proceedings for the recruitment and selection of an appropriate candidate for the position of State Audit Governor subsequent to Constitutional Court Ruling No. 47/2547 and pursuant to its powers and duties under the Constitution and the Organic Act on State Audit B.E. 2542 (1999). This was in accordance with the outcome of the Constitutional Court ruling, which was binding under section 268 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The proceedings resulted in the nomination of Mr. Wisut Montriwat as the suitable candidate for the position of State Audit Governor to the Senate. The Senate approved the nomination and the President of the Senate proceeded to graciously present the candidate for Royal Appointment under section 312 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In this instance, the Constitutional Court considered that the State Audit Commission had exercised its discretion as an independent organ under the Constitution empowered to recruit and select a suitable candidate for the position of State Audit Commission, which was a proceeding taken in complete compliance with the Constitution as well as other relevant laws pursuant to Constitutional Court Ruling No. 47/2547. The State Audit Commission did not encounter any problems relating to the proceedings under its powers and duties. The withdrawal of Mr. Wisut Montriwat from the nomination, the objections filed by Khunying Jaruwan Menthaka to the proceedings taken under the powers and duties of the State Audit Commission in the recruitment of a suitable candidate for the position of State Audit Governor, and the objections of various external bodies were not objections of constitutional organs which gave rise to problems in proceedings under constitutional and legal powers and duties of the State Audit Commission that had already been completed. Moreover, when the State Audit Commission had carried out new proceedings for the recruitment and selection of a suitable candidate for the position of State Audit Governor, the proceedings taken were already in compliance with powers and duties under the Constitution and relevant laws pursuant to the Constitutional Court ruling. As for the State Audit Commission's request for a ruling on the second issue on the constitutionality of new proceedings taken by the State Audit Commission to recruit and select a suitable candidate for the position of State Audit Governor without a Royal Order removing Khunying Jaruwan Menthaka because the position was not provided by the

Constitution, the Constitutional Court held that this was part of the new proceedings for the recruitment and selection of a suitable candidate for the position of State Audit Governor and was therefore within the powers and duties of the State Audit Commission and relevant organs in the process for obtaining a State Audit Governor to make determinations to ensure compliance with the Constitution and relevant laws. Such application therefore did not concern a problem on the powers and duties of the State Audit Commission which the Constitutional Court could make a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court, by unanimous resolution, held that the State Audit Commission's application for Constitutional Court rulings on both issues did not concern problems relating to powers and duties of the State Audit Commission as a constitutional organ pursuant to the reasons given above. The Constitutional Court therefore did not accept the State Audit Commission's application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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