

# **Summary of Constitutional Court Ruling No. 5/2549**

**Dated 9<sup>th</sup> March B.E. 2549 (2006)\***

**Re: The Election Commission 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 whether or not the Central Administrative Court's admissions of complaints for trials and decisions were constitutional.**

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## **1. Summary of Background and Facts**

The Election Commission requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) on the constitutionality of the Central Administrative Court's admissions of complaints for trials and decisions in Case No. 1558/2544 Judgment No. 1234/2547, dated 7<sup>th</sup> October B.E. 2547 (2004), and Case No. 206/2545 Judgment No. 1230/2548, dated 27<sup>th</sup> September B.E. 2548 (2005).

The facts could be summarized as follows.

In Case No. 1558/2544 Judgment No. 1234/2547 between Mrs. Warunee Purisamban as plaintiff and the Election Commission as defendant, the Central Administrative Court gave judgment that the Election Commission should revoke Order of the Election Commission No. 399/2543, dated 18<sup>th</sup> October B.E. 2543 (2000), insofar as it related to Mrs. Warunee.

In Case No. 206/2545 Judgment No. 1230/2548 between Mrs. Warunee Purisamban as plaintiff and the Election Commission as the first defendant and the Office of the Election Commission as the second defendant, the Central Administrative Court gave judgment that the Election Commission and the Office of the Election Commission should disclose information relating to the allegations of wrongdoings committed by Mrs. Warunee during her tenure as Chonburi Provincial Election Commissioner, which was relied upon by the Election Commission in issuing Order of the Election Commission No. 399/2543 to remove Mrs. Warunee from office, pursuant to the Decision of the Information Disclosure Ruling Committee, Social Division, No. Sor Khor 25/2544, dated 27<sup>th</sup> July B.E. 2544 (2001).

In both cases, the Election Commission queried the constitutionality of the Administrative Court's exercise of powers in admitting both cases for trial and the

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judgments revoking the Order of the Election Commission which removed Mrs. Warunee from the office of Chonburi Provincial Election Commissioner and the ordered disclosure of information.

## **2. Preliminary Issue**

The preliminary issue which had to be considered was whether or not the Constitutional Court had the power to admit the Election Commission's application for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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

After consideration, the Constitutional Court held as follows. An application which was eligible for submission to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had to satisfy the following conditions.

Firstly, the case submitted had to be a problem that had occurred in relation to the powers and duties of various organs under the Constitution.

Secondly, the entitled applicant had to be the President of the National Assembly or organ under the Constitution which had encountered the problem on powers and duties.

In this regard, an organ under the Constitution meant an organ established by the Constitution and whose powers and duties were provided by the Constitution. As the Election Commission was an organ established under section 136 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) with powers and duties provided in such Constitution, the Election Commission was therefore an organ under the Constitution which was entitled to submit a matter together with an opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The exercise of powers of the Election Commission, the applicant, had the characteristics of both an exercise of powers pursuant to provisions of the Constitution, in the form of an order or any other act, and an exercise of administrative powers or the exercise of powers pursuant to provisions of an Act or other law which was equally effective as an Act, whether by the issuance of a regulation, administrative order or by way of the commission of any other act. The case in the application and documents supporting the application with respect to the Election Commission's issuance of Order of the Election Commission No. 399/2543, dated 18<sup>th</sup> October B.E. 2543 (2000), to remove Mrs. Warunee from the office of Chonburi Provincial Election Commissioner was an exercise of powers and duties of the Election Commission in the appointment and removal of Mrs. Warunee from the office of Provincial Election Commissioner, which was an exercise of powers provided by law, namely the Organic Act on Election Commission B.E. 2541 (1998). Such matter related to the internal

administration of the Election Commission which did not raise a problem on the constitutional powers and duties of the Election Commission.

Similarly, the refusals of the Election Commission and Office of the Election Commission to comply with the decision of the Information Disclosure Ruling Committee, which was consequential of the Election Commission's order removing Mrs. Warunee from the office of Provincial Election Commissioner, were exercises of powers under the organic law on Election Commission, as with the case of issuing an order under the first part of the application that had already been ruled upon. Such refusals were therefore by no means causes resulting from the exercise of constitutional powers and duties of the Election Commission.

The applications on both cases were therefore not cases on problems relating to the constitutional powers and duties of the Election Commission which was an organ under the Constitution. The Constitutional Court was therefore unable to admit the applications of the Election Commission for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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