

# Summary of Constitutional Court Ruling No. 6/2549

**Dated 21<sup>st</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) on the administration of a general election of members of the House of Representatives.**

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## 1. Summary of Background and Facts

The Election Commission submitted an application dated 20<sup>th</sup> March B.E. 2549 (2006) to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) on the administration of a general election of members of the House of Representatives. The facts could be summarized as follows.

Pursuant to the publication of the Royal Decree Dissolving the House of Representatives B.E. 2549 (2006) in the Government Gazette on 24<sup>th</sup> February B.E. 2549 (2006), all members of the House of Representatives vacated their offices and a general election of members of the House of Representatives was scheduled on 2<sup>nd</sup> April B.E. 2549 (2006). In this connection, the Election Commission issued a notification on applications for candidacy in the election of Members of the House of Representatives, prescribing the date for political parties to submit their party-list candidates and the date for receiving applications for candidacy in the elections of constituency members of the House of Representatives.

In the case of submission of party-list candidates by political parties, 8 political parties made party-list submissions. Subsequent to the Election Commission's examination of application documents and qualifications of candidates and publication of the list of political parties that had submitted party-list candidates, it was found that Mr. Premsak Peayura, a party-list candidate from Thai Rak Thai Party, had submitted his resignation from party membership and was ordained into monkhood, leaving only 99 out of 100 remaining party-list candidates in the list submitted by Thai Rak Thai Party.

As for the application of candidates in the elections of constituency members of the House of Representatives, there were applications for candidacy in the elections of members of the House of Representatives in all constituencies. However, it was found that out of the 400 election constituencies, there were 271 election constituencies which had only one

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candidate contesting in the elections. In one election constituency, namely the third constituency of Samut Sakorn Province, there was no candidate due to the sole applicant for candidacy, Mr. Udom Kraiwatnussorn from Thai Rak Thai Party, being found listed as ineligible (Sor Sor 32) upon examination by the Director of the Third Election Constituency. It was therefore announced that Mr. Udom's application was rejected. Mr. Udom later submitted an application to the Supreme Court and the Supreme Court subsequently issued an order that Mr. Udom was ineligible to apply for candidacy in the election of members of the House of Representatives.

The Election commission had considered the information regarding the number of candidates in the election of members of the House of Representatives in both the cases of party-list and constituency candidates and reached the following opinion.

In the case of party-list candidates, upon consideration of the information on the number of political parties fielding party-list election candidates in this election along with information on political parties that had had elected party-list candidates in previous elections, it was found that Thai Rak Thai Party would probably receive the highest number of votes. On the other hand, other parties might receive low numbers of votes, which could be fewer than five percent of the total number of votes throughout the country. In such a case, all party-list candidates from Thai Rak Thai Party in the election of members of the House of Representatives would be elected. However, as there were only 99 party-list candidates from Thai Rak Thai Party remaining, thus there was a high probability that the election on 2<sup>nd</sup> April B.E. 2549 (2006) would not yield the 100 elected party-list members of the House of Representatives as required under section 98 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

In the case of constituency candidates, upon consideration of the information on the number of election candidates in the elections of constituency members of the House of Representatives, it was found that there were several constituencies which were contested by only one candidate. In this regard, a candidate who could be elected as a constituency member of the House of Representatives had to receive the votes of at least twenty percent of the number of eligible voters in the constituency. If the electoral bases of each political party fielding candidates in this election were taken into consideration, there were several election constituencies contested by only one candidate who might not receive the votes of twenty percent of the number of eligible voters. In addition, even if the Election Commission held re-elections in such constituencies, the probabilities of such candidates obtaining twenty percent of the votes were still minimal. Also, there was one election constituency, namely the third constituency of Samut Sakorn Province which was not contested by any candidate for election of members of the House of Representatives. Therefore, the election of constituency members of the House of Representatives on this occasion would not yield the 400 members of the House of Representatives required by law.

The Election Commission was of the opinion that the administration of elections of members of the House of Representatives on 2<sup>nd</sup> April B.E. 2549 (2006) had encountered

problems and obstacles which rendered the obtaining of 500 members of the House of Representatives not possible. This was especially the case in the uncontested constituency where no provision of law provided any guidelines or procedures for resolving such problem. Thus, there was a problem on the powers and duties of the Election Commission, which was an organ under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and a ruling of the Constitutional Court was requested on three issues stated below.

## **2. Preliminary Issues**

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Constitutional Court held that the Election Commission was an organ established by the Constitution and whose powers and duties had been provided in several sections of the Constitution. The Election Commission was therefore an organ under the Constitution which was entitled to submit an application to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). However, an application which could be admitted by the Constitutional Court for trial and adjudication under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had to be a case involving a problem that had arisen on the powers and duties of the Election Commission as an organ under the Constitution.

As for the determination of whether or not there was a problem that had arisen on the powers and duties of the Election Commission, further consideration had to be made of the issues in the application which the Election Commission had submitted to the Constitutional Court for ruling. In this application, the Election Commission had requested the Constitutional Court to rule on three issues, as follows.

**The first issue** involved the Election Commission's announcement to receive applications for candidacy in the election of constituency members of the House of Representatives, which upon expiration of the application deadline it was found that the third constituency of Samut Sakorn Province was contested by only one candidate, namely Mr. Udom Kraiwatnussorn. However, after an examination of qualifications, it was found that Mr. Udom was listed in the list of ineligible persons. The Director of the Election Constituency therefore announced the rejection of the application. Mr. Udom subsequently filed an application to the Supreme Court and the Supreme Court ordered the disqualification of Mr. Udom from applying for candidacy in the election of members of the House of Representatives. As a result, there were no candidates left in such constituency. Thus, a question arose as to whether or not the Election Commission could constitutionally hold elections on 2<sup>nd</sup> April B.E. 2549 (2006) pursuant to the Royal Decree Dissolving the House of Representatives B.E. 2549 (2006) without opening applications for candidacy in such election constituency.

After consideration, the Constitutional Court held as follows. Section 144 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided that the Election Commission should act as the controller and administrator or organizer of elections of members of the House of Representatives upon the promulgation of a Royal Decree Dissolving the House of Representatives to dissolve the House of Representatives and to hold new elections of members of the House of Representatives. In this case, general elections were scheduled for 2<sup>nd</sup> April B.E. 2549 (2006) pursuant to which the Election Commission was under a duty to hold elections of members of the House of Representatives, being its powers and duties provided under section 144 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Therefore, any problem arising from such applications for candidacy were within the scope of authority of the Election Commission, as a constitutional organ entrusted with the responsibility of organizing a general election of members of the House of Representatives in accordance with the Constitution and related laws.

The Election Commission had requested for a Constitutional Court ruling on whether or not the Election Commission could constitutionally hold an election on 2<sup>nd</sup> April B.E. 2549 (2006) pursuant to the Royal Decree Dissolving the House of Representatives B.E. 2549 (2006) without opening applications for candidacy in the third constituency of Samut Sakorn Province, which had no candidate remaining, where the Election Commission had not yet exercised its powers and duties under the Constitution and related laws in reaching a decision to proceed in any way with respect to the problem on the absence of any candidate contesting in the election of members of the House of Representatives in the third constituency of Samut Sakorn Province. Thus, in regard to the application on the first issue, a problem on the exercise of constitutional powers and duties of the Election Commission in its capacity as a constitutional organ had not yet arisen.

For the above reasons, the Constitutional Court by a majority vote of 9 Constitutional Court Judges therefore declined to admit the application on the first issue for a ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). (One Constitutional Court Judge held that this case involved a problem on the powers and duties of the Election Commission which had already arisen and therefore accepted the application on the first issue for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)).

**The second issue** involved election constituencies contested by only one candidate who received less than twenty percent of the votes of eligible voters in such constituency. After re-elections were held by the Election Commission in such constituencies pursuant to section 74 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998), and upon the expiration of 30 days as from such election date under section 7/1 of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998) as amended by the Organic Act on Election of Members of the House of Representatives and Senators (No. 3) B.E. 2543 (2000), it appeared on the facts that there were still no election candidates receiving at least twenty percent of the votes of eligible voters in such constituency. Such a case could result in an

inability to obtain 500 members of the House of Representatives as required under section 98 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and the National Assembly from calling a session under section 159 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). A question therefore arose as to whether or not the Election Commission could be deemed as having completed its functions in organizing the elections.

After consideration, the Constitutional Court held that the Election Commission merely predicted that such an event would occur after holding a general election on 2<sup>nd</sup> April B.E. 2549 (2006). At the time of this application, however, an election had not yet been held on the said date and time. A problem on the powers and duties of the Election Commission had therefore not yet arisen. The application on the second issue had the characteristics of a consultation and was not an issue which the Constitutional Court could admit for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court by unanimous resolution therefore declined to admit the application on the second issue for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

**The third issue** involved the election of party-list members of the House of Representatives. After considering the list of party-list election candidates submitted by political parties fielding candidates, it was predictable with certainty that after the elections, one hundred party-list members of the House of Representatives would not be obtained. In this case, a question arose as to whether or not the Election Commission was able to accept new applications for candidacy in the election of party-list members of the House of Representatives.

After consideration, the Constitutional Court held that the Election Commission's request for a Constitutional Court ruling on this issue was premised merely a prediction of the Election Commission on a problem which had not yet actually arisen. The application on the third issue therefore also had the characteristics of a consultation and not an issue which the Constitutional Court could admit for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court by unanimous resolution therefore declined to admit the application on the third issue for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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

By virtue of the reasons above, the Constitutional Court declined to admit the application of the Election Commission on all three issues for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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