

# Summary of Constitutional Court Ruling No. 12/2549

**Dated 22<sup>nd</sup> June B.E. 2549 (2006)\***

**Re: The President of the Senate, acting as President of the National Assembly, requested for a Constitutional Court ruling under section 142 and section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in the case of a motion filed by thirty-five senators for a ruling on the retirement from office of Election Commissioners due to lack of qualifications under the Constitution.**

.....

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

The President of the Senate, acting as President of the National Assembly, received a motion from thirty-five senators requesting for a referral of an application to the Constitutional Court for a ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) that three Election Commissioners, namely Police General Wasana Permlarp, Mr. Parinya Nakchatri and Mr. Weerachai Naewbunnean, lacked the qualifications provided under the Constitution and should retire from their respective offices due to lack of political impartiality and want of honesty as provided under section 136 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The President of the Senate, acting as President of the National Assembly, found that the senators retired from their offices on 21<sup>st</sup> March B.E. 2549 (2006) but continued to exercise their functions by virtue of section 131 paragraph two and section 168 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The interpretations in relation to the powers and duties of senators who had retired from office were split into two groups, as follows.

The first group was of the opinion that the interpretation of constitutional provisions, which was deemed as a public law, should apply the jurisprudential methods of public law. In other words, a literal interpretation must be followed and the interpretation must be strict. Therefore, these senators could perform duties only with respect to the functions provided by section 168 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), on the other hand, was a case of members of the House of Representatives and senators, or members of both houses

---

\* Published in the Government Gazette Vol. 123, Part 99a, dated 25<sup>th</sup> September B.E. 2549 (2006).

aggregately, constituting not fewer than one-tenth of the existing members of both houses having the right to enter their names in a motion to the President of the Senate that an Election Commissioner lacked the qualifications or possessed a prohibited quality under section 137 or committed a prohibited act under section 139. Such functions were not in any way performances of duties by senators as provided under section 168 subparagraphs (1), (2) and (3). Therefore, the senators in this case were not able to exercise their powers in submitting a matter to the President of the National Assembly to request the Constitutional Court for a ruling under section 142.

The second group was of the opinion that the interpretation relating to the powers and duties of senators performing duties under the provisions of section 131 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in conjunction with section 168 had to be made in such a way as to give due regard to the protection of the people's rights, liberties and benefits, as well as the ability to control and inspect the exercise of functions by state agencies under the principle of the legal state. An Election Commissioner was deemed to be an organ under the Constitution appointed by the King with the advice of the Senate from persons who were politically impartial and evidently honest. It was therefore perceivable that Election Commissioners were under continuous scrutiny. In addition, problems on the appointment and removal of a holder of office in a constitutional organ was considered to be a duty charged to the interim acting senators which was clearly recognized by section 168(3), a provision stating that senators retiring from membership and provisionally remaining in office under section 131 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) continued to have the duties of removing office holders in constitutional organs. Therefore, the submission of an application to the Constitutional Court for a ruling that Election Commissioners retired from office due to lack of qualifications was considered to be a constitutional exercise of functions.

The President of the Senate, acting as President of the National Assembly, found that a problem had occurred on the scope of powers and duties of senators with at least 2 groups of senators having clearly opposing opinions. Acting in the capacity of President of the National Assembly, it was found that such a problem was deemed to be a problem on the powers and duties of organs as provided under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The President of the Senate, acting as President of the National Assembly pursuant to section 91 paragraph two and section 152 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), had verified the signatures of the petitioners of the motion and found that it was already signed by senators constituting no fewer than one-tenth of the existing members of both houses pursuant to section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The President of the National Assembly therefore referred the motion to the Constitutional Court for ruling.

## **2. Issues Considered by the Constitutional Court**

The issues considered by the Constitutional Court were whether or not the Constitutional Court had the power to admit the application of the President of the National Assembly

for ruling under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and to admit the application of thirty-five senators whose membership had expired since 21<sup>st</sup> March B.E. 2549 (2006) for ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Thus, there were altogether two issues which had to be ruled upon, as follows.

**On the first issue,** the Constitutional Court had to decide whether or not it had the power to admit the application of the President of the National Assembly for ruling under section 266 of the Constitution.

The Constitutional Court held as follows. The President of the National Assembly's referral of the motion of senators under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) to the Constitutional Court for ruling was an exercise of the power and duty of the President of the National Assembly. In this regard, the President of the National Assembly had the power and duty of examining the motion for compliance with the conditions provided under section 142. However, in the case of whether or not the President of the National Assembly could request the Constitutional Court for a ruling that three Election Commissioners retired from their offices due to lack of qualifications under section 142, such a request was made to the Constitutional Court for decision where the President of the National Assembly who had received the motion had not yet exercise his functions in examining the senators' motion for compliance with section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Moreover, the senators in the number submitting the motion was not a constitutional organ, but was only a constituent of the Senate which was a constitutional organ having a problem on differences of opinions between senators, not being a problem on the Senate as an organ itself. The Constitutional Court therefore held that a problem on the powers and duties of the Senate as a constitutional organ under section 266 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had not yet arisen. The application was thus merely a consultation, not a problem that had arisen on the powers and duties of a constitutional organ which the Constitutional Court could admit for consideration under section 266 of the Constitution.

**On the second issue,** the Constitutional Court had to decide whether or not it had the power to admit the application of thirty-five senators whose memberships had expired since 21<sup>st</sup> March B.E. 2549 (2006) for ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 130 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for the Senate to have a six-year term as from the date of election and section 133(1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for the membership of senators to expire upon the expiration of the Senate's term. In the event of the expiration of the Senate's term, section 131 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) also provided for senators holding office on the date of expiration of Senate term to continue performing duties until the newly elected senators took office, such senators having the powers to carry out only

those functions as stated in section 168 subparagraphs (1) to (3) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). In order to submit an application to the Constitutional Court for ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the application must satisfy the criteria provided under the Constitution, i.e. the applicants must be comprised of members of the House of Representatives, senators or members of both houses altogether constituting not fewer than one-tenth of the existing members of both houses, petitioning to the President of the National Assembly for a referral of the application to the Constitutional Court, being a request for a ruling that an Election Commissioner lacked a qualification or possessed a prohibited quality under section 137, or committed a prohibited act under section 139. Once these criteria had been satisfied, the President of the National Assembly would then be able to refer such an application to the Constitutional Court for a ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

In the case under the application, the applicants were senators whose memberships had expired since 21<sup>st</sup> March B.E. 2549 (2006), being expiration of memberships pursuant to the Senate's expiration of term under section 130 and section 133(1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). In this regard, section 131 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for such senators to continue performing duties until the newly elected senators took office, but only with respect to the duties provided under section 168 subparagraphs (1) to (3) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The application, however, was a request for ruling on political impartiality and evident honesty of Election Commissioners which were cases provided under section 136. The application was therefore not in compliance with the rules on continued performance of duties by senators holding office on the date of expiration of the Senate's term as provided under section 168 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in conjunction with section 131 paragraph two. Hence, the application was not made in accordance with the provisions of the Constitution on the entitlement of an applicant to file an application with the President of the National Assembly in order to request a Constitutional Court ruling under section 142 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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

By virtue of the reasons stated above, the Constitutional Court rejected the application for ruling.

---