

Summary of the Constitutional Court Ruling No. 37/2542

Dated 13th July B.E. 2542 (1999)*

Re : The President of the Senate referred the opinion of senators that the Organic Bill on Parliamentary Ombudsman, B.E. contained provisions inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.

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1. Background and summarized facts

According to the application, the following facts could be stated. The Organic Bill on Parliamentary Ombudsman, B.E. was approved in principle by the House of Representatives on 13th August B.E. 2540 (1997), after which an extraordinary committee was established to consider such an Organic Bill. Thereafter, the Organic Bill received its approval in the third reading on 29th July B.E. 2541 (1998) and was sent to the Senate who gave its approval in principle on 7th August B.E. 2541 (1998). An extraordinary committee was subsequently established in the Senate to consider the Organic Bill. The Organic Bill was considered in the Senate's third reading on 25th September B.E. 2541 (1998) with certain amendments made to it. However, the House of Representatives disagreed with the amendments made by the Senate and resolved to establish a Joint Committee to consider the Organic Bill. On 3rd March B.E. 2542 (1999), the House of Representatives approved of the Bill considered by the Joint Committee. On 5th March B.E. 2542 (1999), the Senate approved of the Organic Bill considered by the Joint Committee. This was therefore a case where an Organic Bill had been approved by both Houses of the National Assembly under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) before the Prime Minister presented such an Organic Bill to the King for signing under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Yet, on 5th March B.E. 2542 (1999), the same day as when the Senate approved of the Organic Bill, 21 senators were of the opinion that such an Organic Bill contained provisions inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In other words, it was submitted that the provision in section 39 paragraph two of the Organic Bill, which stated that "the activities of the Office of the Parliamentary Ombudsman shall not be subject to the application of the laws on labour protection, the laws on labour relations, the laws on social security and the laws on monetary compensation," were provisions which exempted the Office of the Parliamentary Ombudsman from various labour laws. Such a provision was inconsistent with section 30, section 45 and section 86 of the Constitution of the Kingdom of Thailand,

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B.E. 2540 (1997). The 21 senators exercised their powers under section 262 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to submit their opinion to the President of the Senate, and as a result, the President of the Senate referred such an opinion to the Constitutional Court for a ruling.

2. The issue considered by the Constitutional Court

The Constitutional Court considered the facts as stated in the application and the opinions of relevant persons and held that the issue which had to be considered was whether or not section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E. contained provisions inconsistent with section 30, section 45 and section 86 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “all persons are equal before the law and shall enjoy equal protection under the law.” Section 30 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “unjust discrimination against a person on the grounds of differences in origin, race... personal status... or constitutionally consistent political views, shall not be permitted.” When the laws on labour protection, the laws on labour relations, the laws on social security and the laws on monetary compensation were considered, such laws contained similar principles which were applicable to employees under a contract of employment and not applicable to government agencies or State enterprises. “Employee” meant a person who worked for an employer in return for a remuneration. “Remuneration” meant the sums paid by the employer to the employee as consideration for the work performed. Section 39 paragraph one of the Organic Bill on Parliamentary Ombudsman, B.E. provided that the Office of the Parliamentary Ombudsman had a juristic personality. Under section 41 (2) of the Organic Bill on Parliamentary Ombudsman, B.E., the officials and employees of the Office of the Parliamentary Ombudsman received salaries and remuneration at the scale prescribed in a Notification on Personnel Administration. Section 48 of the Organic Bill on Parliamentary Ombudsman, B.E. stated that the Office of the Parliamentary Ombudsman should submit an annual appropriation estimate to the Council of Ministers in order to make appropriations in support of the Office in the Annual Appropriation Bill. Moreover, under section 41 (6) of the Organic Bill on Parliamentary Ombudsman, B.E., the officials and employees were also entitled to benefits and other assistance. According to the above provisions, even though officials and employees of the Office of the Parliamentary Ombudsman did not have the status of employees under the laws on labour protection, laws on social insurance and laws on monetary compensation, such officials and employees still received protection under the law in their capacities as officials or employees of a State agency. As for whether or not the non-application of the labour laws was an unjust discrimination under section 30 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held

that, after considering the provisions in conjunction with section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such provisions laid down the principle of equal protection under the law which prohibited any unjust discrimination between people with the same status without due reason. Due to the fact that the Office of the Parliamentary Ombudsman possessed a special characteristic as a State agency under an Organic Act, and not a government agency, a State enterprise or a private agency subject to the application of labour laws, the treatment of the Office of the Parliamentary Ombudsman in a manner different from the provisions of labour law was reasonable and appropriate for the status of the operators in the Office of the Parliamentary Ombudsman. This case was therefore not an unjust discrimination under section 30 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the provisions in section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E. was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 45 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “a person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group.” As regards whether or not section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E., which excluded the application of the laws on labour relations, was inconsistent with the liberty of a person under the Constitution, the Constitutional Court held that the laws on labour relations did not apply to government agencies and State enterprises. Whereas the Office of the Parliamentary Ombudsman was a State agency, the officials and employees of the Office of the Parliamentary Ombudsman did not have the status of “employees” under such laws. Section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) guaranteed that officials or employees of State agencies enjoyed the same rights and liberties under the Constitution as those enjoyed by other persons. Such rights and liberties were not limited to those stated in the laws on labour relations. Officials and employees of the Office of the Parliamentary Ombudsman therefore had the liberty to unite under section 45 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provisions in section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E. was therefore neither contrary to nor inconsistent with section 45 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 86 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the State shall promote people of working age to obtain employment, protect labour, especially child and woman labour, and provide for the system of labour relations, social security and fair wages.” Such provisions were not rights and liberties but were included in the chapter on the directive principles of fundamental State policies for the purposes of laying down guidelines for the enactment of laws and the determination of policies for the administration of the State. When the Council of Ministers embarked on the administration of State affairs, it had to expressly declare to the National Assembly that administration of the State affairs would proceed in accordance with the directive

principles of fundamental State policies. Section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E. was by no means a provision which restricted the powers of the State in implementing such directive principles on fundamental State policies and was therefore neither contrary to nor inconsistent with section 86 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 held that the provisions in section 39 paragraph two of the Organic Bill on Parliamentary Ombudsman, B.E. was neither contrary to nor inconsistent with section 30, section 45 and section 86 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
