

# Summary of the Constitutional Court Ruling No. 16-19/2543

Dated 4<sup>th</sup> April B.E. 2543 (2000)\*

**Re : The Suphan Buri Provincial Court referred the objection of the defendant to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

.....

## 1. Background and summarized facts

The public prosecutor of Suphan Buri Province, as plaintiff, filed claims to the Suphan Buri Provincial Court in the Criminal Pending Cases No. 3746/2542, No. 5367/2542, No. 3808/2542, No. 5467/2542 and No. 6977/2542 against Mr. Dilok Yamnuam, Mr. Boonlert Lertsiri, Mr. Manoon Suthijinda, Mr. Amphai Sridee and Mr. Boonnak Nopnoi as defendants, respectively, on a charge of breaking the Order of Suphan Buri Provincial Governor No. 1/2541 Re: Suspension of Farming Giant Tiger Prawns in Low-Salt Water, which was issued under the power as entrusted by the Prime Minister.

The five applicants objected that the Order of Suphan Buri Provincial Governor No. 1/2541 and the Order of the Prime Minister No. 2/2541 were inconsistent with section 9 of the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992). They stated that farming giant tiger prawns in closed circulation of low salt water did not affect neighbouring environment. The prohibition of farming giant tiger prawns in all system undermined the right of prawn growing farmers who were in good governance. The applicants were of the opinion that such Orders were contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and that the term “law” in section 50 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) meant a law enacted by the Parliament and did not include an administrative order issued by the Administration. The issuance of such Orders after the applicants made a living with farming prawns was unfair. Therefore, such Orders were illegal and, as already mentioned, were contrary to the Constitution. Mr. Manoon Suthijinda, Mr. Amphai Sridee and Mr. Boonnak Nopnoi made the statement in addition to the statement given by Mr. Dilok Yamnuam and Mr. Boonlert Lertsiri that the said two Orders were also contrary to section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). They were of the opinion that the Orders were initiated by the National Environment Commission established under section 12 of the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992). This was because persons whose rights and liberties might be affected from

---

\* Published in the Government Gazette, Vol. 117, Part 107a, dated 17<sup>th</sup> November B.E. 2543 (2000).

such Orders had not been given any opportunity to participate or to express their views in the administrative procedures of state authorities. Therefore, the above mentioned Orders could not be enforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## **2. Preliminary issue**

The Constitutional Court considered all five applications referred to it by the Suphan Buri Provincial Court and accepted them for consideration altogether.

## **3. The issues considered by the Constitutional Court**

Were the Order of the Prime Minister No. 2/2541 and the Order of Suphan Buri Provincial Governor No. 1/2541 contrary to section 30, section 50 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

The Order of the Prime Minister and the Order of the Suphan Buri Provincial Governor were not issued by an organ exercising legislative power. Such Orders were therefore not the provisions of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was beyond the jurisdiction of the Constitutional Court and this was in accordance with the Constitutional Court Ruling No. 4/2542 dated 1<sup>st</sup> April B.E. 2542 (1999). Consequently, it was unnecessary for the Constitutional Court to rule on whether such Orders were contrary to or inconsistent with section 30, section 50 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court dismissed the application.

---