

Summary of the Constitutional Court Ruling No. 21/2543

Dated 2nd May B.E. 2543 (2000) *

Re : The President of the Senate referred the opinion of senators to the Constitutional Court for a ruling on whether or not the Rules on the Administration of the Courts of Justice Bill, B.E. contained any provision which was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

65 senators presented their opinions to the President of the Senate for a referral of an application to the Constitutional Court for a ruling on whether or not the Rules on Administration of the Courts of Justice Bill, B.E., which did not contain provisions conferring on the Office of the Courts of Justice the powers and duties pertaining to the functions of legal execution, probation, correction and protection of children and the juvenile, was a Bill which was contrary to or inconsistent with section 275 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Rules of the Administration of the Courts of Justice Bill, B.E. had already been considered by the House of Representatives. Upon its arrival at the Senate for consideration, the Senate passed a resolution approving of the Bill in principle. An extraordinary committee was appointed on 16th July B.E. 2542 (1999) to consider the Bill and a resolution was passed on 3rd September B.E. 2542 (1999) approving of such Bill with amendments to certain sections. The House of Representatives disagreed with the amendments of the Senate and therefore a Joint Committee was appointed to consider the Bill. The Joint Committee completed its consideration of the Bill and submitted the revised Bill to the House of Representatives and the Senate for approval. The Senate gave its approval of the Bill but the House of Representatives did not. As a result, this Bill was withheld pursuant to section 175(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, as the Bill withheld was a Money Bill, the House of Representatives proceeded to reconsider it and resolved on 8th October B.E. 2542 (1999) to reaffirm the original Bill of the House of Representatives by the votes of more than one-half of the total number of the existing members of the House of Representatives. Under section 176 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such a Bill was therefore deemed to have been approved by the National Assembly.

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2. Preliminary issue

The Constitutional Court held the following opinion. The President of the Senate referred the opinion of senators to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (1). At the time when the President of the Senate made such a reference of the opinion of senators there were 382 members of the House of Representatives and 250 senators, a total of 632 members. Hence, 65 senators were therefore a number which exceeded one-tenth the total number of existing members in both Houses of the National Assembly. The Constitutional Court could therefore accept this matter for consideration.

3. The issue considered by the Constitutional Court

The issue considered was whether or not the Rules on Administration of the Courts of Justice Bill, B.E. was contrary to or inconsistent with section 275 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Section 275 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the Courts of Justice shall have an independent secretariat, with the Secretary-General of the Office of the Courts of Justice as the superior responsible directly to the President of the Supreme Court of Justice.” Section 275 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the Office of the Courts of Justice shall have autonomy in personnel administration, budget and other activities as provided by law.” Therefore, the organisation of the Office of the Courts of Justice must be in accordance with section 275 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. the Office of the Courts of Justice must have autonomy in personnel administration, budgetary affairs and other activities as provided by law. In other words, section 275 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the determination of the organisation of the Office of the Courts of Justice was a discretion of the organ with legislative powers as long as autonomy in the administration of personnel and the budget was accounted for.

When the National Assembly approved of the Rules on Administration of the Courts of Justice Bill, B.E., in which section 6 in conjunction with section 36 provided that the Office of the Courts of Justice only had the powers and duties pertaining to the secretarial work of the Courts of Justice, the promotion of the judiciary and academic work, but did not include the functions of legal execution, probation and correction and protection of children and the juvenile, such an approval was an enactment of a law by the National Assembly pursuant to the power under section 275 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Rules on Administration of the Courts of Justice Bill, B.E. did not in any way have the effect of compromising the autonomy of the Office of the Courts of Justice, being the Secretariat to the Courts of Justice.

4. Ruling of the Constitutional Court

The Constitutional Court held that the Rules on Administration of the Courts of Justice Bill, B.E., which did not contain provisions conferring powers and duties on the Office of the Courts of Justice pertaining to the functions of legal execution, probation and correction and protection of children and the juvenile, was a Bill which was neither contrary to nor inconsistent with section 275 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
