

Summary of the Constitutional Court Ruling No. 56/2543

Dated 31st October B.E. 2543 (2000)*

Re : Did section 22 (adding section 113/1 paragraph three and section 113/1 paragraph four) of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. contain provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

.....

1. Background and summarized facts

The President of the House of Representatives referred the opinion of Mr. Marut Bunnag, a member of the House of Representatives, and forty-two other members of the House of Representatives stating the opinion that section 22 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., which provided that in the case where a member of the House of Representatives elected on a constituency basis was subsequently appointed to become a Prime Minister or Minister, such member of the House of Representatives and the political party with which such member was affiliated should jointly be responsible for the costs of holding new elections to replace the vacant position in that constituency, in conjunction with section 113/1 in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., which provided that only a member of the House of Representatives coming from a constituency basis election would be responsible for the costs of holding a new election to replace the vacant position in the case where he or she was appointed as Prime Minister or a Minister, were provisions of law specifically applicable to persons in such a capacity but did not include members of the House of Representatives who were elected from the party list and senators who might also be appointed as a Prime Minister or a Minister. Such provisions therefore possessed characteristics of being an unjust discrimination contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provisions were also applied to cause detriment or damage to a specific case or specific person, the enactment of which were prohibited by section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) for being inconsistent with the rule of law. In addition, such rules in section 113/1 paragraph three were contained in the chapter on penalties. Hence, the rules were imposable penalties on a person even though no provisions of law prohibited a member of the House of Representatives from being appointed

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as a Minister. This was inconsistent with the principle “no punishment without a crime and no crime without a law” expressly recognised by section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 113/1 paragraph four further stated that “revenues under this section shall be remitted to the Treasury as revenues of the State.” Section 113/1 paragraph three and section 113/1 paragraph four in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. had already been approved by the National Assembly and this application was submitted to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (2) on whether such sections contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The Constitutional Court held that this was a case where not less than twenty members of the House of Representatives were of the opinion that the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. approved by the National Assembly contained provisions contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The opinion was presented to the President of the House of Representatives who referred it to the Constitutional Court for a ruling. The case was in accordance with section 262 paragraph one subparagraph (2). The Constitutional Court therefore had the power to accept the application for consideration.

3. The issues considered by the Constitutional Court

The issues considered were whether or not section 113/1 paragraph three and section 113/1 paragraph four as added by section 22 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., contained provisions which were contrary to or inconsistent with section 29, section 30 and section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

(1) Section 113/1 paragraph three and section 113/1 paragraph four in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. were not provisions which deducted or restricted the rights of members of the House of Representatives from constituency based elections to become a Prime Minister or a Minister any more than that provided by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The rights of members of the House of Representatives were already deducted or restricted under section 118 and section 204 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 113/1 paragraph three and section 113/1 paragraph four in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. were not within section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540

(1997) and were neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided two different types of members of the House of Representatives differentiated by their origins, viz either those coming from a party list or from a constituency election. However, all members of the House of Representatives possessed the same powers and duties and were under the same restriction of rights from becoming a Minister. Nevertheless, a member of the House of Representatives from a constituency election who became a Minister ceased to be a member of the House of the Representatives thereby creating a need for a re-election in that constituency. The State incurred extra costs as a result of such re-elections. It was therefore fair and equitable that such a person or his political party be made to cover the expenses of the State. Moreover, section 113/1 paragraph three in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. was equally applicable to all members of the House of Representatives coming from constituency based elections who became the Prime Minister or Ministers, holding them jointly responsible with their political party for the expenses of the election to replace the vacant positions.

(3) Section 113/1 paragraph three and section 113/1 paragraph four in the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E. provided that a member of the House of Representatives coming from a constituency based election who was appointed as a Prime Minister or a Minister should be jointly liable with his or her political party for the expenses of a re-election to replace the vacant position and the remittance of such sums was deemed as a revenue of the State. The liability for such expenses was not a criminal sanction. It was a measure specifically applicable to the member of the House of Representatives or political party which bore the characteristics of a compensation. The provisions were therefore neither contrary to nor inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

Section 113/1 paragraph three and section 113/1 paragraph four, added by section 22 of the Organic Bill on Election of Members of the House of Representatives and Senators (No. ...), B.E., did not contain any provisions which were contrary to or inconsistent with section 29, section 30 and section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
