

Summary of the Constitutional Court Ruling No. 58-62/2543

Dated 30th November B.E. 2543 (2000)*

**Re : Is the Act on Provincial Administrative Organisation, B.E. 2540 (1997)
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

A Tambol Administrative Organisation, a Provincial Administrative Organisation and a Municipality submitted applications together with opinions, a total of five applications, to the Constitutional Court for a ruling as follows:

The first application was of Kantararom Tambol Administrative Organisation, Amphoe Khukhan, Srisakes Province, through Mr. Suree Sangarun, the Chairman of Administrative Committee of Kantararom Tambol Administrative Organisation (the applicant). The application stated in summary that section 64 and section 65 of the Act on Provincial Administrative Organisation, B.E. 2540 (1997) empowering a Provincial Administrative Organisation to issue a regulation levying tax on oil and tobacco retailing stores and collecting fee from visitors of a hotel to. Unlike the Act on Provincial Administrative Organisation, B.E. 2489 (1946) which was already repealed, the said Act did not clearly specified the area in a province in which the tax could be levied by the Provincial Administrative Organisation. In this connection, the Provincial Administrative Organisation could levy such tax in whole area of a province. As a result, the area of levying tax under the power of the Provincial Administrative Organisation was overlapped the area of levying tax under the power of other local organisations in the same province which were, inter alia, Municipalities and Tambol Administrative Organisations. The aforesaid provisions of the Act on Provincial Administrative Organisation, B.E. 2540 (1997) were therefore contrary to or inconsistent with section 78, section 87, section 88, section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and could not be enforceable under section 6 of the Constitution;

The second application was of Chiang Mai Provincial Administrative Organisation through Mr. Udonphan Jantaraviroj, the President of Chiang Mai Provincial Administrative Organisation, and Mr. Sakchai Techakriengkrai, the Chairman of the Assembly of Burirum Provincial Administrative Organisation (the applicants), as entrusted by other Provincial

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Administrative Organisations, requested the Constitutional Court to make a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on whether a Tambol Administrative Organisation was an organ under the Constitution and whether a Provincial Administrative Organisation was an organ under the Constitution having a power to make an application and an objection;

The third application was of the Municipality of Tambol Koh Pangun, Amphoe Koh Pangun, Surat Thani Province, through Mr. Worapong Limsuwan, the Mayor of Tambol Koh Pangun Municipality (the applicant). The application stated in summary that section 8, section 64 and section 65 of the Act on Provincial Administrative Organisation, B.E. 2540 (1997) empowering a Provincial Administrative Organisation to issue a regulation levying tax on oil and tobacco retailing stores and fee on visitors of a hotel in the area of a province which included the applicant's parish. This resulted in the lack of an autonomy of locality under section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Act on Provincial Administrative Organisation, B.E. 2540 (1997) therefore contained the provisions which were contrary to or inconsistent with the Constitution;

The fourth application was of Bantai Tambol Administrative Organisation, Amphoe Koh Pangun, Surat Thani Province, through Mr. Thirayudh Plaisuwan, the Chairman of Administrative Committee of Bantai Tambol Administrative Organisation (the applicant), and the fifth application was of Koh Pangun Tambol Administrative Organisation through Mr. Boonyaridh Kaewraung, the Chairman of Administrative Committee of Koh Pangun Tambol Administrative Organisation (the applicant). What stated in the applications could be summarized altogether as follows:

Section 8 and section 65 of the Act on Provincial Administrative Organisation, B.E. 2540 (1997) provided that a governmental area of a Provincial Administrative Organisation was a provincial area which covered all municipal areas and Tambol Administrative Organisations' areas. Accordingly, the governmental areas were overlapped one another. This was contrary to the spirit of the Constitution in relation to the autonomy of locality. Moreover, by virtue of section 65 of the Act on Provincial Administrative Organisation, B.E. 2540 (1997), Ministry of Interior issued a ministerial regulation levying an excise tax on oil retailers at the rate of not exceeding five satangs per litre and imposing fee on visitors of a hotel at the rate of two percent. This was deemed that the regulation was issued to be enforced on persons in the governmental area of both Tambol Administrative Organisations. The applicants by virtue of the right under section 286 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) submitted the applications to the Constitutional Court for a ruling that the Act on Provincial Administrative Organisation, B.E. 2540 (1997) was contrary to or inconsistent with the Constitution.

After considering all five applications, the Constitutional Court held that the applications were connected to one another, and therefore could be jointly considered.

2. Preliminary issue

Could the Constitutional Court accept all five applications for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that an organ under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which could submit a matter together with the opinion to the Constitutional Court for ruling meant an organ established and provided with powers and duties by the Constitution. A Tambol Administrative Organisation, a Provincial Administrative Organisation and a Municipality were localities. Under section 283 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), any locality which met the conditions of self-government was entitled to be formed as a local government organisation as provided by law. In this connection, Tambol Administrative Organisations were established by the Act on Tambol Assembly and Tambol Administrative Organisation, B.E. 2537 (1994). Provincial Administrative Organisations were established by the Act on Provincial Administrative Organisation, B.E. 2540 (1997). Municipalities were established by the Act on Municipalities, B.E. 2496 (1953). All these organisations were therefore established by the specific acts not by the Constitution. When it appeared that Tambol Administrative Organisations, Provincial Administrative Organisations and Municipalities were not organs established by the Constitution and did not have any role and powers and duties under the Constitution, they therefore could not submit the matter together with the opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As regards the submission of the applications by the Tambol Administrative Organisation and the Municipality to the Constitutional Court for a ruling on whether the Act on Provincial Administrative Organisation, B.E. 2540 (1997) was contrary to or inconsistent with the Constitution, those organisations could submit the matter through the Ombudsman under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or through the Court under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitution did not provide the applicants with the right to directly submit the matter to the Constitutional Court for a ruling.

3. Ruling of the Constitutional Court

The applications were not accepted for consideration.
