

# Summary of the Constitutional Court Ruling No. 1/2546

Dated 4<sup>th</sup> February B.E. 2546 (2003)\*

**Re : The Central Administrative Court referred the objections of a plaintiff to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on whether or not section 8 paragraph two, section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) were 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

The Central Administrative Court referred the objection of Mr. Sunthorn Wangphattanathon and Mr. Somchitr Ngeamphaisal and others, plaintiffs in a case at the Central Administrative Court against the Surat Thani Changwat Administrative Organisation, to the Constitutional Court. In that case, the plaintiffs suffered hardship due to the Surat Thani Changwat Administrative Organisation's issue of Enactment of the Surat Thani Changwat Administrative Organisation Re: Collection of Surat Thani Changwat Administrative Organisation Maintenance Fees from Hotel Guests, No. 1, B.E. 2542 (1999) and No. 2, B.E. 2543 (2000), made pursuant to the powers under section 8 paragraph two, section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997). It was contended section 8 paragraph two, section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997), which prescribed the boundaries of a province as the jurisdictional limits of a changwat administrative organisation, and provided that a Changwat Administrative Organisation had powers and duties of issuing enactments for the collection of fuel oil and tobacco tax from retailers in the province as well as issue enactments for the collection of fees from hotel guests, the enactments thereof to be applied within the jurisdictional limits, were provisions contrary to the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such provisions prescribed overlapping jurisdictions between changwat administrative organisations and other local administrative organisations, depriving those other local administrative organisations of their independence, in particular financial and fiscal independence. This was inconsistent with the principle of self-determination, which was the essence of the establishment of local administrative organisations provided by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in section 282, section 283 and section 284.

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The Central Administrative Court held that the determination of the case necessarily required the application of the Changwat Administrative Organisation Act, B.E. 2540 (1997). However, the applicant and others objected to the provisions of section 8 paragraph two, section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) as being contrary to section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Central Administrative Court therefore referred the applicant's objection to the Constitutional Court for ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## **2. Preliminary issue**

The Constitutional Court held that this case was in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was therefore accepted for consideration.

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

The first issue considered was whether or not section 8 paragraph two of the Changwat Administrative Organisation Act B.E., 2540 (1997) was contrary to or inconsistent with section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. A changwat administrative organisation was a juristic person and a local government agency. Section 8 paragraph two of the Changwat Administrative Organisation Act, B.E. 2540 (1997) provided that the boundaries of the province were also deemed as the jurisdictional limits of the changwat administrative organisation while section 5 of such Act defined the word "province" as referring to the province under the law on public administration. As territory was the determining factor of jurisdictional limits in the decentralisation of administrative powers to local government agencies under the principles of decentralisation, the result of providing that the changwat administrative organisation's jurisdictional limits covered the entire province was the inclusion of jurisdictional limits of other local administrative organisations within the same provincial area. Thus, jurisdiction was exercised jointly or concurrently by the two agencies. Nonetheless, the Act on Determination of Plans and Stages of Decentralisation to Local Administrative Organisations, B.E. 2542 (1999) had been enacted for the purpose of dividing the powers of each local administrative organisation and avoiding potential conflicts in the independence of local administrative organisations in each locality due to the shared or overlapping jurisdictional limits. Under such Act, the powers and duties of the changwat administrative organisation were limited to matters pertaining to the formulation of plans, coordination, the promotion of other local administrative organisations or powers and duties which were beyond the capacity of other local administrative organisations. Hence, the powers and duties of the changwat administrative organisation were therefore extended to the entire provincial area.

The second issue considered was whether or not section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) was contrary to or inconsistent with section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 45 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) provided that monies should be appropriated to the Tambon Council and local government agencies. Section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) provided the changwat administrative organisation with powers to issue enactments to collect taxes and fees as another source of income. However, the collection of such taxes and fees could result in multiple tax liabilities for the people in any given locality if local administrative organisations situated in the jurisdiction of the changwat administrative organisation were also given identical powers. Hence, the Act on Determination of Plans and Stages of Decentralisation to Local Administrative Organisations, B.E. 2542 (1999) provided that a changwat administrative organisation had the power to issue enactments for the collection of taxes on petrol, diesel, petroleum gas, tobacco and fees for hotel guests whereas other local administrative organisations such as municipalities, tambon administrative organisations and Pattaya City did not have such powers. It followed that the collection of such sums by the changwat administrative organisation was in accordance with the powers given by provisions of law and was by no means restrictive of the independence of other local administrative organisations.

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

By virtue of the reasons above, the Constitutional Court, by a majority of 9 votes to 3 votes of Constitutional Court judges, held that section 8 paragraph two, section 64 and section 65 of the Changwat Administrative Organisation Act, B.E. 2540 (1997) were neither contrary to nor inconsistent with section 282, section 283 and section 284 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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