

# Summary of the Constitutional Court Ruling No. 3/2546

**Dated 20<sup>th</sup> February B.E. 2546 (2003)\***

**Re: The Central Labour Court referred an objection of a plaintiff (Mrs. Jeerawan Triphatransikul) to the Constitutional Court for a ruling on whether or not section 56 paragraph one and section 65 paragraph one of the Social Insurance Act B.E. 2533 (1990), as amended by the Social Insurance Act (No. 2), B.E. 2537 (1994), were contrary to or inconsistent with section 4, section 26, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## **1. Background and summarized facts**

Mrs. Jeerawan Triphatransikul, the plaintiff in Case No. 8794/2544 (the applicant), has been an employee of the Kurusapa Business Organisation since 1<sup>st</sup> July, B.E. 2540 (1997) until the present. She had given birth on 14<sup>th</sup> January, B.E. 2543 (2000). Thereafter on 19<sup>th</sup> July, B.E. 2543 (2000), the Kurusapa Business Organisation issued a Notification of the Kurusapa Business Organisation No. 1/2543-44 Re: Remittance of Supplemental Sums to the Social Insurance Fund in the Case of Childbirth, which was published on 19<sup>th</sup> July, B.E. 2543 (2000), notifying all employees that the Kurusapa Business Organisation's portion (the employer) and the staff's portion (the employees) of the supplemental sums had already been retroactively remitted to the social insurance fund for the case of childbirth since April B.E. 2538 (1995) to 30<sup>th</sup> June, B.E. 2543 (2000). Moreover, the employer (Kurusapa Business Organisation) started deducting an amount from all employees' remuneration, including the applicant, at an increased rate of 2.62 percent from the previous 2.44 percent, commencing from 1<sup>st</sup> July, B.E. 2543 (2000). As a result, the applicant had been a contributor of supplemental sums in the case of childbirth for not less than seven months within the fifteen month period preceding the date of childbirth, in accordance with section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990), as amended by the Social Insurance Act (No. 2), B.E. 2537 (1994). The applicant proceeded to file an application to receive compensatory benefits in the case of childbirth at the Compensatory Benefits Section of the Social Insurance Office Area 5 on 24<sup>th</sup> January, B.E. 2544 (2001). The Compensatory Benefits Section, Social Insurance Office Area 5, issued an order denying the payment of compensatory benefits in the case of childbirth on the grounds that

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the applicant filed an application to receive compensatory benefits after the expiration of one year as from the date entitled to receive the compensatory benefits, pursuant to section 56 paragraph one of the Social Insurance Act, B.E. 2533 (1990). The applicant appealed to the Appeals Committee who reached a resolution dismissing the appeal based on reasons identical to that given by the Social Insurance Office. The applicant disagreed with the decision and therefore filed a claim at the Central Labour Court, requesting the court to issue an order or judgment to revoke or amend the compensatory benefits order of the Compensatory Benefits Section, Social Insurance Office Area 5, as well as the ruling of the Appeals Committee, and to compel the defendant to pay compensatory benefits in the case of childbirth and financial aid for work absence due to childbirth. The applicant also submitted that the prescription of conditions for entitlement to beneficial rights and the prescription of time limits for the exercise of beneficial rights or annulment of beneficial rights under section 56 paragraph one and section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990), were contrary to or inconsistent with section 4, section 26, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Central Labour Court held that the objections in the plaintiff's claims had never been ruled by the Constitutional Court. A temporary stay was therefore imposed on the case and the application referred to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

1. The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the application stated that section 56 paragraph one and section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990) were contrary to or inconsistent with section 4, section 26, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and that such sections referred to by the applicant were provisions of law to be implemented in a case and there had not yet been a ruling of the Constitutional Court pertaining to whether or not such sections were contrary to or inconsistent with the Constitution. This case was therefore in accordance with the criteria under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court could accept the application for consideration.

2. The issue under the application which was considered by the Constitutional Court was whether or not section 56 paragraph one and section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990), as amended by the Social Insurance Act (No. 2), B.E. 2537 (1994), were contrary to or inconsistent with section 4, section 26, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. The Social Insurance Act, B.E. 2533 (1990) was enacted with the purpose of providing security for employees and other persons by way

of establishing a social insurance fund, to which the relevant parties, namely, the government, employees and insurers, had to remit supplemental funds. In the event that the insured faced hazards or suffered illness, incapacities or death, gave birth to a child, is under a burden of having to raise a child or has attained old age, such insured persons or other persons would receive compensatory benefits as prescribed by law. In the case of childbirth, the insured, who had to take leave for childbirth, would receive a financial aid for childbirth leave of absence for a maximum of two occasions. Payment would be made in lump sum at a rate of fifty percent of the remuneration over a period of ninety days per occasion. In addition, a childbirth payment of 4,000 baht would also be paid. The said law prescribed as condition to entitlement of the rights that the insured must pay supplemental sums for a period not less than seven months within the fifteen month period prior to giving childbirth in section 65 paragraph one and prescribed a time limit for the exercise of rights to receive the compensatory rights under section 56 paragraph one. However, if the right-holder was absent from the country or performance within such time limits was not possible because of necessary circumstances, an application could be filed before the expiration of such time limit for an extension or postponement of the prescribed dates by stating the necessary circumstances. Once the Secretary-General deemed appropriate, an extension or postponement could be made as necessary for the case under section 84 bis, provided that, however, that the extension did not exceed the period prescribed in such sections.

The prescription of conditions and time limits under section 56 paragraph one and section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990) as amended by the Social Insurance Act (No. 2), B.E. 2537 (1994), were therefore not acts which were inappropriate with the human nature of the insured under the definition of the phrase “human dignity” and in no manner a violation of rights and liberties of the insured under section 4 and section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The contents of the Constitution in relation to rights and liberties as provided in section 29 and section 30 have conferred the equal protection of rights and liberties of persons as recognised by the Constitution. It has also been provided that the restriction of rights and liberties and discrimination by restriction of rights and liberties could only be imposed by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties recognised by the Constitution. Moreover, the restriction should be of general application and should not be intended to apply to any particular case or person. As for discrimination, only discrimination which was unjust was prohibited. The Social Insurance Act, B.E. 2533 (1990), was a law enacted in order to build security for employees and other related persons by establishing a fund which also assisted the case of childbirth. It was therefore an enactment of law for the purpose determined by the Constitution and only to the extent of necessity. The prescription of the one year time limit for filing an application to receive compensatory benefits was generally applicable to all employees. If any insured employee was unable to comply with

such time limit due to necessity, he/she could file an application under section 84 bis before the expiration of the time limit in order to obtain an extension or a postponement as necessary in each case. Such a condition, therefore, did not affect the essential substance of the rights and liberties of the person. Moreover it had a general application not intended to apply to any particular case or person and not considered as an unjust discrimination under section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court held that section 56 paragraph one and section 65 paragraph one of the Social Insurance Act, B.E. 2533 (1990), as amended by the Social Insurance Act (No. 2), B.E. 2537 (1994), were neither contrary to nor inconsistent with section 4, section 26, section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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