

Summary of the Constitutional Court Ruling No. 32/2546

Dated 22nd September B.E. 2546 (2003) *

Re : The House of Representatives referred the opinion to the Constitutional Court for a ruling on whether or not the violation of section 180 paragraph six of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had occurred in the consideration of section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) concerning only the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy.

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1. Background and summarized facts

1.1 52 members of the House of Representatives submitted an application on 16th September B.E. 2546 (2003) referring the opinion to the Constitutional Court for considering that there was the violation of section 180 paragraph six of the Constitution in the consideration of section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) concerning only the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy. This resulted from findings in examination that the acts of a member of the House of Representatives (Acting 2nd Lieutenant Pairoj Suwannachawee) as a member of the special committee on the consideration of the Annual Appropriations Bill, B.E. 2547 (2004) and as the chairman of the special sub-committee on the consideration of budgetary appropriation to local administrative organizations, violated section 180 paragraph five and section 180 paragraph six of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The said provisions prohibited members of the House of Representatives or of the special committee on the consideration of the Annual Appropriations Bill, B.E. 2547 (2004) from commission of any act which resulted in direct or indirect involvement by members of the House of Representatives, senators or members of a committee in the use of the appropriations and in

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the submission of a motion adding any item or amount in the item to the appropriations for the fiscal year B.E. 2547 (2004). Such the violating acts could be clarified as follows.

Acting 2nd Lieutenant Pairoj Suwannachawee as the chairman of the special sub-committee exercised his powers and duties in budgetary appropriations by submitting the motion adding items and amount in the items to and committing any act regarding the appropriations for projects of the promotion and development of local administrative organizations plan of the Department of Local Administration Promotion, the Ministry of Interior in the part of specific subsidy for the development of local administrative organizations under the country development strategy in the prescribed amount of 3,226,543,600 Baht without project details and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy in the prescribed amount of 1,640,689,400 Baht without project details. Various means were employed in the meeting of the special sub-committee to prepare details for adding items or amount in the items to the appropriations for the said two projects as desired by himself and his companions. It was for the purpose of the appropriations to the provincial area of himself and his companions. The evidence was appeared in the budgetary documents, Issue 8, Volume 4, which contained the expenditure estimates appropriated to the area of Nakhon Ratchasima Province, the old constituency of Acting 2nd Lieutenant Pairoj Suwannachawee, in the amount of 420 million Baht. These were the reasons for the debate of members of the House of Representatives that unusual great amount of expenditure estimates in this part were appropriated to the area of members of the special sub-committee. In this connection, the House of Representatives resolved to attach additional remarks with the Annual Appropriations Bill, B.E. 2547 (2004) that the budgetary appropriations of the Department of Local Administration Promotion in the part of specific subsidy project for the development of local administrative organizations under the country development strategy had to be wide and just. Acting 2nd Lieutenant Pairoj Suwannachawee accepted the matter in the meeting of the House of Representatives and took responsibility for the correction according to the resolution. Moreover, he delivered a letter to members of Thai-Ruk-Thai Party accepting responsibility and making apology for that he could not appropriate budget to every area as desired by them.

1.2 The Constitutional Court accepted the application for consideration (the Court had to decide it within 7 days as from the date of its receipt pursuant to section 180 paragraph seven of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)). The Constitutional Court, in this connection, required members of the House of Representatives who signed their names in the submission of the opinion, involved persons and agencies, i.e. Acting 2nd Lieutenant Pairoj Suwannachawee, the special committee on the consideration of the Annual Appropriations Bill, B.E. 2547 (2004), representatives of the Council of Ministers which were the Budget Bureau and the Office of the Secretariat of the Council of Ministers and representatives of the Department of Local Administration Promotion, to designate representatives for giving statements in its consideration.

2. The issue considered by the Constitutional Court

The issue to be considered by the Constitutional Court was whether or not there was the violation of section 180 paragraph six of the Constitution in the consideration of section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) concerning only the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy.

The process of preparing the expenditure estimates could be summarized as follows. After the Council of Ministers approved the total amount of annual expenditure estimates, it would assign policies to Ministries and agencies as to set strategy and aims to be consistent with strategy of annual appropriations. Then, the application for expenditure estimates had to be prepared and submitted to Ministers for approval before referring thereof to the Budget Bureau in order that the latter prepared the proposal of annual appropriations to be later submitted back to the Council of Ministers. After the approval of the Council of Ministers, the Budget Bureau would publish the Annual Appropriations Bill, B.E. 2547 (2004) and submit it to the Council of Ministers for another approval before referring it to the House of Representatives for consideration in three agenda. The first agenda was for the acceptance of the principle of the bill. After the House of Representatives accepted the principle of the Annual Appropriations Bill, B.E. 2547 (2004), a special committee was appointed for the consideration of such Bill. The special committee was empowered to consider details and adjust the budget in any item of appropriations for ministries and other agencies. When the deducted amount of the budget was appeared, the Council of Ministers made a request for an increase in the budget. In this connection, the Council of Ministers would set rules for the request of increased budget to the ministries and state agencies in order that the latter would prepare the application for additional budget to be submitted to the Budget Bureau. In this regard, the Budget Bureau would gather such applications and submit them to the Council of Ministers for approval before referring them to the special committee of the House of Representatives for consideration. After consideration was finished, the special committee would submit the report together with the approved Annual Appropriations Bill, B.E. 2547 (2004) to the House of Representatives for consideration in the second agenda in which the Bill would be considered in order of its section. Thereafter, the House of Representatives would consider the approval of the Bill in the third agenda before referring it to the Senate for consideration.

The Constitutional Court considered section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) concerning the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy. The facts appeared that the Department of Local Administration Promotion prepared the two subsidy projects which had to be subject to the strategy plan of

the Ministry being consistent with development plans under the country development strategy and tourism development strategy as set forth by the Council of Ministers. The said projects were already scrutinized and reviewed by the Minister of Interior as assigned by the Council of Ministers and were submitted to the Budget Bureau in order to be referred to the special committee for considering their approval. It was also appeared that no members of the House of Representatives, members of the special committee on the consideration of the Annual Appropriations Bill, B.E. 2547 (2004) or members of the special sub-committee made budgetary appropriations to local administrative organizations by means of exercising their powers to add items and to commit any act in the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy which resulted in direct or indirect involvement by members of the House of Representatives, senators or members of a committee in the use of appropriations under section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) as claimed by the applicant.

3. Ruling of the Constitutional Court

The Constitutional Court unanimously held that no acts were appeared to be the violation of section 180 paragraph six of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the consideration of section 17 of the Annual Appropriations Bill, B.E. 2547 (2004) concerning only the appropriations of the Department of Local Administration Promotion in the part of specific subsidy for the development of local administrative organizations under the country development strategy and specific subsidy for the development of tourism of local administrative organizations under the Thailand tourism development strategy.
