

# Summary of the Constitutional Court Ruling No. 37/2546

Dated 9<sup>th</sup> October B.E. 2546 (2003)\*

**Re : The Ombudsman requests for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on whether or not section 9 of the Nationality Act, B.E. 2508 (1965) has questions regarding constitutionality.**

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## 1. Background and summarized facts

Mr. Pongthep Thepkanjana, the Chairman of Sub-Committee on Legal, Social and Political Fields, submitted a petition to the Ombudsman which could be summarized as follows. Section 9 of the Nationality Act, B.E. 2508 (1965) provided for the principle regarding the nationality alteration of a foreign woman who married a man with Thai nationality. The principle stated that a person who wished to acquire Thai nationality could submit an application to a competent authority for altering nationality. However, the said Nationality Act did not entitle a foreign man who married a woman with Thai nationality to acquire Thai nationality by alteration. That foreign men who married women with Thai nationality were not entitled to acquire nationality by alteration as same as foreign women who married men with Thai nationality were, gave rise to questions on personal status and family establishment of women in terms that there was inequality between Thai women and Thai men who married foreign men or foreign women respectively. Such the provision of section 9 may accordingly be contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which stated that “Men and women shall enjoy equal rights”. Therefore, the Ombudsman was requested to submit the case and the opinion to the Constitutional Court for decision under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## 2. Preliminary issue

After considering the application of the Ombudsman, the Constitutional Court held the followings. Section 9 of the Nationality Act, B.E. 2508 (1965) provided that only foreign women who married men with Thai nationality had the right to apply for Thai nationality. The said provision did not grant the same right to foreign men who married women with Thai nationality. The provision of section 9 was therefore deemed as unjust

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\* Published in the Government Gazette, Vol.121, Part 41a, dated 25<sup>th</sup> June B.E. 2547 (2004)

discrimination against a person on the ground of the difference in gender. Whereas section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was the provision regarding the review of constitutionality of the provisions of the law, rules, regulations or any act of any person under section 197 subparagraph (1) of the Constitution by way that the Ombudsman submitted the case and the opinion to the Constitutional Court or Administrative Court for decision, and whereas, according to the application, the issue to be considered was whether the provision of section 9 of the Nationality Act, B.E. 2508 (1965) had questions regarding the constitutionality, the case was therefore within the power of the Constitutional Court to accept the application of the Ombudsman containing the matter and opinion for decision under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

Was there section 9 of the Nationality Act, B.E. 2508 (1965) questions regarding constitutionality under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

The Constitutional Court held as follows. The acquisition of Thai nationality of foreigners by marriage was the sovereignty of the State to prescribing rules and conditions in form of promulgating a law which was the Nationality Act, B.E. 2508 (1965). The said Act contained the provisions of section 9 paragraph one which provided that “If a woman who is a foreigner and is married to a man with Thai nationality desires to acquire Thai nationality, she shall submit an application to the official in the form and according to procedures prescribed by ministerial regulations” and section 9 paragraph two which provided that “The permission or non-permission of acquiring the Thai nationality shall be at the discretion of the Minister”. The promulgation of such Act was within the power of the State. After considering the above-mentioned provisions, it could not be deemed that these provisions resulted in the inequality before the law between men and women or unequal rights giving to men and women. It was because they were measures determined by the State to be appropriate for social nature and security of the State. The law did not bar the right of foreign men who were married to women with Thai nationality to acquire Thai nationality. They could acquire the Thai nationality according to the rules and conditions prescribed by the law which was as provided in section 10, section 11 and section 12 in Chapter 1: the Acquisition of Thai Nationality of the Nationality Act, B.E. 2508 (1965). Those provisions did not cause any difficulty and any question on personal status whatsoever and could not therefore be deemed as unjust discrimination against a person on the ground of the difference in gender and being contrary to international law. Accordingly, the provision of section 9 of the Nationality Act, B.E. 2508 (1965) was consistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court held that section 9 of the Nationality Act, B.E. 2508 (1965) had no questions regarding the constitutionality, because it was not contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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