

# Summary of the Constitutional Court Ruling No. 65-82/2547

Dated 9<sup>th</sup> November B.E. 2547 (2004)\*

**Re:** The Supreme Administrative Court referred the objection of plaintiffs in eighteen applications to the Constitutional Court for a ruling under section 264 of the Constitution in the case of whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with section 4, section 6, section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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## 1. Background and summarized facts

The cause of action in the complaints could be summarized as follows. State agencies had filed complaints in disputes concerning administrative contracts (scholarship service contracts, construction contracts and concession contracts) at the Administrative Court of First Instance due to breaches by the defendants. The Administrative Court of First Instance held that the plaintiffs filed complaints outside the period for filing complaints in relation to administrative contracts, being one year as from the date of acknowledge. or reasonable grounds to know of the cause of action, but no longer than ten years as from the occurrence of the cause of action pursuant to section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). Such cases were not concerned with the protection of public interests or the statuses of persons for which complaints could be filed at any time. Moreover, those complaints were neither filed for the common benefit nor contained compelling reasons for the Administrative Court to admit for trial under section 52. Therefore, the Administrative Court of First Instance made an order to decline the admission of such complaints for trial.

The plaintiffs appealed the order of the Administrative Court of First Instance which declined the admission of complaints for trial to the Supreme Administrative Court together with an objection that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with section 4, section 6, section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The plaintiffs objected that section 51 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), relied on by the Administrative Court of First Instance as the reason for declining admission of complaints was a law which was contrary to or inconsistent with the Constitution. In other words, prior to the enactment of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), the right to bring a suit in administrative contract disputes was found in the Civil and Commercial Code, i.e. a suit could be brought within the prescription period of ten years. In a lawsuit concerning an administrative contract, the plaintiff of the case could be either a private party or an administrative agency. The right to bring a suit was therefore a legal right which was recognized and protected with respect to the rights of a person by section 4 of the Constitution. In addition, section 62 of the Constitution also provided that “the right of a person to sue a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to be liable for an act or omission done by its Government official, official or employee shall be protected, as provided by law”. This was further recognized by section 27 of the Constitution. Under section 29 of the Constitution, the restriction of a person’s right recognized by the Constitution could not be imposed. Any law enacted to restrict the rights of a person without the authority of any provision of law would be contrary to or inconsistent with the Constitution. Consequently, the provisions of such law would be unenforceable pursuant to section 6 of the Constitution. It was therefore requested that the Supreme Administrative Court impose a temporary stay on the trial and refer the plaintiffs’ opinion objecting that section 51 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999) was contrary to or inconsistent with the Constitution, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Supreme Administrative Court considered all eighteen applications and held that a complaint should be filed at the court by the plaintiff within the time limit imposed by law for such a case. In this connection, section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was a procedural law which prescribed the time limit for filing a complaint at the Administrative Court which the Supreme Constitutional Court had to apply in order to reach a judgment or make an order in this case. However, since the plaintiffs objected that such provision of law was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court relevant to such a provision, a temporary stay was therefore imposed on the trials and the plaintiffs’ opinions referred to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the eighteen applications contained the same issue for consideration. The applications were therefore consolidated into one trial. Since the matter raised in these cases was the objection by parties that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with the Constitution, on which the Supreme

Administrative Court had sent an opinion through official channels that the court would apply those provisions to cases, this was then an objection of a provision of law enacted by the legislature on a matter not yet ruled upon by the Constitutional Court. This case was therefore in accordance with section 264 of the Constitution. The Constitutional Court could accept the applications for consideration.

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

The issue which had to be considered by the Constitutional Court was whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with section 4, section 6, section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 4 of the Constitution was enacted in Chapter 1 General Provisions, which referred to human dignity, rights and liberties of a person in terms of principles for the protection of rights and liberties of a person under the Constitution. This was not a provision which section 51 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), could be contrary to or inconsistent with. As for section 6 of the Constitution, the provision was also found in Chapter 1 General Provisions which provided the principle of protecting the legal supremacy of the Constitution in order to prevent laws, rules or regulations currently in force or subsequently enacted from containing provisions that were contrary to or inconsistent with the Constitution. This was also not an instance which section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), could be contrary to or inconsistent with.

Section 27 of the Constitution was a provision which recognized the rights and liberties and the enforceability of such rights and liberties in order to ensure their practical effect on the enactment of laws, the application of laws and the interpretation of laws. This showed that the Constitution had recognized and protected the rights and liberties of persons on an equal basis. However, this did not mean that the rights and liberties recognized by this Constitution could never be restricted. In this regard, section 29 of the Constitution provided that the restriction of rights and liberties recognized by the Constitution could be imposed subject to certain conditions prescribed by the Constitution. The conditions were that the restriction must be a case where the Constitution had given authority to enact a law to restrict certain rights and liberties which must be made to the extent of necessity without affecting the essential substance of the rights and liberties recognized by the Constitution and also provided that the restriction was generally applicable and not directed at any particular case or person. As for section 62 of the Constitution, the provision granted a right on a person to sue a government agency, State agency, State enterprise, local administration or other State organs for wrongful acts or omissions committed by government officials, officials or employees of such agencies. The right to sue a State agency was therefore a right recognized

by the Constitution. Such a right was deemed to be a right pertaining to the good order of the people. However, in the cases under the applications, the plaintiffs were government agencies or State agencies filing complaints against persons for breaches of administrative contracts. Such cases were therefore different from the right to sue recognized under section 62 of the Constitution. Moreover, the provisions of section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), were not specifically applied to any particular case or person, but had a general application. Therefore, section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was in no way contrary to or inconsistent with section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court, by the votes of 12 Constitutional Court judges, held that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was neither contrary to nor inconsistent with section 4, section 6, section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Three Constitutional Court judges held in the minority that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with section 29 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

By virtue of the reasons stated above, the Constitutional Court held that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was neither contrary to nor inconsistent with section 4, section 6, section 27, section 29 and section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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