

## Summary of Constitutional Court Ruling

No. 7/2563 (2020)

Dated 27<sup>th</sup> May B.E. 2563 (2020)

Re: Mr. Witteveen Tjibbe Ulysses Michael, or Tjibbe Ulysses Michael Witteveen (applicant) requested for a Constitutional Court Ruling under section 213 of the Constitution.

### **1. Summary of background and facts**

Mr. Witteveen Tjibbe Ulysses Michael, or Tjibbe Ulysses Michael Witteveen, applicant, claimed that he was the lawful son of Mr. Durk Witteveen, a Dutch national, and Miss Daochai Khanthakkoot, a Thai national. He was born on 31<sup>st</sup> March B.E. 2522 (1979) in the Utrecht, the Netherlands, with his birth registered at the Utrecht City Registrar, the Netherlands. The applicant's father and mother registered their marriage at the Utrecht City Registrar, the Netherlands. The applicant was an employee in a service establishment in Phuket Province. Subsequently, the Minister of Interior enforced a stringent policy of social order with regard to service establishments under the law. Inspections were carried out in various service establishments, including the service establishment where the applicant was employed. Thereafter, the applicant had to leave Thailand. The Ministry of Interior then issued Order No. 115/2546, dated 26<sup>th</sup> March B.E. 2546 (2003), denying permission for the applicant's re-entry into the Kingdom, due to the applicant being a person exhibiting cause to believe that entry was sought for the purpose of prostitution, trafficking women or children, trafficking narcotic drugs, evading customs duties or engaging in other activities contrary to public order or good morals of the people, thus having the characteristics of a person banned from entry into the Kingdom pursuant to section 12 paragraph one (8) of the Immigration Act B.E. 2522 (1979). The applicant's mother later filed a letter with the Immigration Bureau seeking leave for the applicant's entry into the Kingdom to apply for a national identity card and file for Thai nationality. The Immigration Office replied in writing that the applicant's entry into Thailand was denied due to Order of the Ministry of Interior No. 115/2546, and that the Minister's order was final and non-appealable. Additional information to the records to permit the applicant to enter the Kingdom was not authorized. The applicant filed an application at Krabi Provincial Court, Re: Application for Thai Nationality. The court dismissed the application. The applicant appealed. The Court of Appeals Region 8 affirmed the decision. The applicant filed a complaint with the Ombudsman, seeking a revocation of Ministry of Interior Order No. 115/2546. The Ombudsman received the application on 4<sup>th</sup> March B.E. 2562

(2019). The applicant claimed that a period of sixty days had lapsed since the application was received from the applicant but the Ombudsman had not yet giving a decision.

The applicant requested for a Constitutional Court ruling under section 213 of the Constitution, as follows:

(1) that Ministry of Interior Order No. 115/2546 was contrary to or inconsistent with section 39 of the Constitution and was a direct violation of rights and liberties, being an order issued by a state agency pursuant to a law which violated rights and liberties thus causing unavoidable grievances and losses, and that such order with respect to the applicant should be revoked;

(2) that the written order of the Immigration Bureau Commissioner dated 2<sup>nd</sup> May B.E. 2561 (2018) which denied additional information to be recorded to allow the applicant to enter the Kingdom was contrary to or inconsistent with section 39 of the Constitution, and therefore that such order should be declared null and void;

(3) that a decision be given to allow the applicant to enter the Kingdom as a Thai national by birth in order to add his name to the civil register and issue a national identity card as a Thai national pursuant to section 39 of the Constitution.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to accept the application for a ruling under section 213 of the Constitution.

After deliberations, the Constitutional Court found as follows. The applicant was an individual whose rights and liberties under the Constitution had been directly violated and had suffered grievances or losses due to such order and actions. Such violation of rights and liberties were still ongoing. The case was therefore in accordance with rules, procedures and conditions under section 213 of the Constitution in conjunction with section 46 paragraph one of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). Hence, an order was given to accept the application for consideration.

Pending consideration of the Constitutional Court, the Immigration Bureau submitted a letter to report additional proceedings as follows. On 4<sup>th</sup> October B.E. 2562 (2019), data was recorded in the information system that the applicant was a Thai national, and that the Ministry of Interior issued Order No. 2752/2562 dated 27<sup>th</sup> December B.E. 2562 (2019) revoking the denial of leave to enter the Kingdom for the applicant. Thereafter, on 23<sup>rd</sup> January B.E. 2563 (2020), the Immigration Bureau entered additional data in the information system, removing the applicant's name from the list of persons prohibited from entering the Kingdom, and the applicant

submitted a motion to file additional documents, dated 1<sup>st</sup> May B.E. 2563 (2020), stating that the applicant's prohibition from entering Thailand has been revoked pursuant to Ministry of Interior Order No. 2752/2562, dated 27<sup>th</sup> December B.E. 2562 (2019), Re: Repeal of Denial of Leave to Enter the Kingdom for Foreigners, and that the applicant had acquired Thai nationality and had already obtained a Thai national identity card and passport.

The Constitutional Court found that, despite the repeal of prohibition of the applicant from entering Thailand, as well as the obtaining of Thai national identity card and passport, remedying the applicant of the grievances or losses, thus resulting in the lapse of the applicant's claim of violation of rights and liberties, the facts in the application involved a case where a Thai national possessing Thai civil rights suffered from grievances or losses as a result of a state action and such cause related to the person's standing as a Thai national who could not be expelled from the Kingdom, or could not be banned from entering the Kingdom as recognised by the Constitution. As a consequence, further deliberations of this case would be beneficial to the public pursuant to the provisions of section 51 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018) that the Constitutional Court had the competence to not dismiss the case. Further, in order to provide an official directive for future occasions, the Constitutional Court accepted the case for consideration.

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

The Constitutional Court determined that the issue which required ruling was whether or not the expulsion of a Thai national from the Kingdom or the prohibition of a Thai national from entering the Kingdom was permissible.

After deliberations, the Constitutional Court found as follows. Section 39 paragraph one of the Constitution was a provision which protected the rights and liberties of a Thai national from expulsion from the Kingdom or from prohibition from entry into the Kingdom. This was an absolute right. Nationality served as tool to indicate membership or citizenship of a state, which exhibited ties or political loyalty to a state, as well as created a legal relationship between the host state and the individual holding nationality of such state. The acquisition or renunciation of nationality was determined exclusively by the state. A person who had acquired Thai nationality enjoyed protection under the Constitution and laws. Such person had the civil right to reside in the Kingdom, whilst the state could not expel a person having Thai nationality from the Kingdom. Therefore, a person having Thai nationality could not be deprived of the unfettered right to enter the Kingdom, being a fundamental right recognised by the Constitution.

As for the acquisition of Thai nationality of an individual, section 7 paragraph one of the Nationality Act B.E. 2508 (1965) provided that a person born from a father or mother having Thai nationality, regardless of whether the birth occurred within or outside of the Kingdom of Thailand, and a person born in the Kingdom of Thailand, except for a person under section 7 bis paragraph one, acquired Thai nationality by birth. Thus, a person having all the factual elements as provided by law would acquire Thai nationality by birth, which could be divided into acquisition of nationality by way of bloodline principle or territorial principle. This right was recognised by section 39 paragraph two of the Constitution, which provided that “the revocation of Thai nationality acquired by birth is not permitted.” Steps and procedures for the acquisition of Thai nationality by birth was specifically provided by relevant laws and regulations. A person born from a father or mother holding Thai nationality had the right to acquire Thai nationality by birth pursuant to the bloodline principle, being an acquisition of Thai nationality by law. However, such person had to make initial contact the relevant agency and proceed in accordance with the applicable rules and regulations.

The acquisition of Thai nationality was effected by law and all processes had to be completed, e.g. recording the individual’s entry in the civil register under the law on civil registration. However, the legal status of an individual as a Thai citizen was a different matter, and did not affect the pre-existing Thai nationality, since where a person is concerned, regardless of whether or not an entry had been recorded in the civil registry, could not override the fact that such person had to hold at least one nationality as provided under municipal laws and international law to prevent a case of a person being born stateless. Such principle formed part of the human rights of the global population. For these reasons, entries in the civil register and holding nationality were two separate cases.

As regards section 57 of the Immigration Act B.E. 2522 (1979), this provision stated that a person having sufficient proof for a competent official to believe as being a person holding Thai nationality could prove oneself to be a Thai national. In this regard, Rules of the Royal Thai Police on Proof of Nationality B.E. 2557 (2014) was issued, wherein article 3 and article 4 provided that a person seeking to prove Thai nationality had to submit an application along with evidence to a competent official in accordance with the Proof of Nationality Application Form (Tor Mor 10). The form specified that an application was allowed only in the event that the person seeking to prove Thai nationality was able to travel into the Kingdom. Even though such Rule did not contain any provision which deprived a Thai national from entering the Kingdom to apply for proof of Thai nationality, a person banned by order of the Ministry of Interior from entering the Kingdom resulted in such person being unable

to enter the Kingdom to prove Thai nationality as provided under such Rule. Thus, the person was affected by the condition set by the Rule that an application to prove Thai nationality had to be submitted in person, whereas generally a person wishing to prove Thai nationality could freely enter the Kingdom to prove Thai nationality. However, there could be certain cases where a person could not enter the Kingdom. The absence of any exception for the case of a person who could not enter the Kingdom to prove Thai nationality, such as the case under this application, could prejudice the rights and liberties of such person as protected under the Constitution. If such person had the opportunity to enter the Kingdom to prove Thai nationality, or had the opportunity to prove Thai nationality abroad at a state agency stationed overseas tasked with the function of proving Thai nationality, the rights and liberties would be protected under section 39 of the Constitution.

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

The Constitutional Court held that deportation of a Thai national from the Kingdom or the prohibition of a Thai national from entering the Kingdom was prohibited under section 39 paragraph one of the Constitution.

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