

Summary of Constitutional Court Ruling No. 6/2559 (2016)

Dated 28th September B.E. 2559 (2016)*

Re: The Constitution Drafting Committee submitted the Draft Constitution which was amended in the relevant provisions for a ruling on whether or not it was consistent with the referendum outcome pursuant to section 37/1 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) as amended by Amendment (No. 1) B.E. 2558 (2015) in conjunction with section 39/1 paragraph twelve of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) as amended by Amendment (No. 2) B.E. 2559 (2016).

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1. Summary of background and facts

The Constitution Drafting Committee submitted the Draft Constitution to the Constitutional Court for a ruling under section 37/1 in conjunction with section 39/1 paragraph twelve of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557, as amended, which provided that upon approval of the Draft Constitution in a referendum and the approval of the additional question, the Constitution Drafting Committee should complete the amendment of the relevant provisions in the Draft Constitution within thirty days as from the announcement of the referendum results and submit such Draft Constitution to the Constitutional Court for review of consistency with the referendum outcome.

The question in the referendum (hereinafter referred to as “additional question”) stated “whether or not you agree that in order to ensure continuity in national reform in accordance with the National Strategic Plan, there should be a transitory provision that during the first 5 years as from the installation of the first National Assembly under this Constitution, the joint sitting of the National Assembly shall deliberate to approve the appointment of a suitable person to become Prime Minister.” The outcome of the referendum showed that both the Draft Constitution and additional question were approved. The Constitution Drafting Committee thereafter amended the Draft Constitution by moving the previous provisions in section 272 to the second paragraph and included the additional question as the first paragraph of draft section 272. As a result, there was a change in section 272 from:

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“In the initial period, after an election of Members of the House of Representatives under section 268, if for any reason there is a case where a Prime Minister cannot be appointed from a person in the lists submitted by the political parties under section 88, and not less than one-half of the existing Members of the House of Representatives file petition to the President of the National Assembly for a resolution of the National Assembly to waive the requirement of nominating a Prime Minister from a person in the lists submitted by the political parties under section 88. In such a case, the President of the National Assembly shall convene a joint sitting of the National Assembly immediately. In the case that the National Assembly adopts a resolution by the votes of not less than two-thirds of the existing number of members of both Houses to approve the waiver, the House of Representatives shall proceed under section 159 by nominating a person who may or may not be named in the list submitted by the political parties under section 88.”

The “new section 272” provided:

“During the first five years as from the installation of the National Assembly after an election of Members of the House of Representatives under section 268, the approval of appointment of a suitable person to become Prime Minister shall proceed under section 159, except for the approval under section 159 paragraph one which shall be done by the joint sitting of the National Assembly and the resolution to approve the appointment of any person to become Prime Minister under section 159 paragraph three shall be adopted by the votes of more than one-half of the existing Members of both Houses.

In the initial period, after an election of Members of the House of Representatives under section 268, if for any reason there is a case where a Prime Minister cannot be appointed from a person in the lists submitted by the political parties under section 88, and not less than one-half of the existing Members of the House of Representatives file petition to the President of the National Assembly for a resolution of the National Assembly to waive the requirement of nominating a Prime Minister from a person in the lists submitted by the political parties under section 88. In such a case, the President of the National Assembly shall convene a joint sitting of the National Assembly immediately. In the case that the National Assembly adopts a resolution by the votes of not less than two-thirds of the existing number of members of both Houses to approve the waiver, the House of Representatives shall proceed under section 159 paragraph one by nominating a person who may or may not be named in the list submitted by the political parties under section 88.”

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court could admit this application for consideration.

This application was a case where the applicant amended the Draft Constitution in the relevant provisions in line with the referendum outcome and submitted the Draft Constitution to the Constitutional Court for a ruling on whether or not the changes were

consistent with the referendum outcome. The case was therefore in accordance with section 37/1 in conjunction with section 39/1 paragraph twelve and section 45 paragraph two of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014), as amended, and article 17(20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore admitted the application for consideration.

3. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court was whether or not the Draft Constitution amended in the relevant provisions by the Constitutional Drafting Committee was consistent with the referendum outcome.

In order to determine this question, the Constitutional Court identified preliminary questions which had to be decided as follows:

(1) The person eligible to nominate the Prime Ministerial candidate and the body giving approval for the appointment of the Prime Minister.

The Constitutional Court found as follows. Since the referendum voted on the additional question only with respect to "...the joint sitting of the National Assembly shall deliberate to approve the appointment of a suitable person to become Prime Minister," it could be understood that the additional question was focused merely on the joint sitting of the National Assembly adopting a resolution to approve the appointment of a suitable person to become Prime Minister. This did not include nomination of a person suitable to become Prime Minister. The provision in section 272 paragraph one was therefore consistent and in line with the referendum outcome.

(2) The person eligible to propose a waiver from nominating a Prime Ministerial candidate from the list and a resolution to approve such waiver.

The Constitutional Court found as follows. The proposal of a waiver from nominating a Prime Ministerial candidate from the lists submitted by political parties under section 88, with respect to which the House of Representatives had been stipulated as the organ having the right to propose such a waiver, if there was a difficulty in the process for collecting the names of Members of the House of Representatives in a number not less than one-half the existing Members of the House of Representatives thereby causing a delay in the entire process or the inability to proceed with the collection of names of Members of the House of Representatives for any reason, there would be an impact on the continuity of the process for installation of a Prime Minister which had to be conducted in accordance with the decision of the joint sitting of the National Assembly. Therefore, by giving senators, who did not have the right to make a nomination of a suitable Prime Ministerial candidate, an opportunity under Draft Constitution section 272 paragraph one to participate in the proposal of a waiver under Draft Constitution section 272 paragraph two, the provision was consistent with the referendum outcome on the second question, which was intended to provide a mechanism to

ensure continuity of national reform under the National Strategic Plan during the transitory period in the first five years. Hence, it was appropriate that members of the National Assembly who gave approval to a suitable person for appointment as Prime Minister to perform national administration functions during the transitory period in the first five years should jointly perform functions, i.e. Senators should participate in the process for proposing a waiver from nominating a Prime Ministerial candidate from the lists submitted by political parties under section 88.

Draft section 272 paragraph two was therefore not consistent with the referendum outcome which intended for the joint sitting of the National Assembly to consider giving approval to the appointment of a suitable person to become Prime Minister without any problem during the transitory period in the first five years.

As for the resolution to waive the requirement of nomination of Prime Ministerial candidate from the lists submitted by political parties under section 88, draft section 272 paragraph two provided that the joint sitting of the National Assembly should adopt a resolution by the votes of not less than two-thirds of the existing Members of both Houses, which did not raise any question of consistency with the referendum outcome.

(3) Time period and commencement of time period under Draft Constitution section 272 paragraph one and paragraph two.

The Constitutional Court found as follows. The additional question provided on the time period and commencement of time period as follows “...during the first 5 years as from the installation of the first National Assembly under this Constitution...” The commencement of time therefore started from the date when the House of Representatives and Senate were properly constituted as a National Assembly and able to perform the functions of the National Assembly. The period under Draft Constitution section 272 paragraph one provided that “during the first five years as from the installation of a National Assembly after an election of Members of the House of Representatives under section 268...” There were still certain texts which were inconsistent with the referendum outcome which provided for a mechanism to oversee the continuity of national reform under the National Strategic Plan during the five-year transitory period “as from the date of installation of the first National Assembly under this Constitution.”

Draft Constitution section 272 paragraph two provided that “in the initial period, after an election of Members of the House of Representatives under section 268...” The term “in the initial period” referred only to the initial period after the first election of Members of the House of Representatives. As a result, a new waiver proposal could not be made for the approval of appointment of a new Prime Minister if there was a cause for the Prime Minister to vacate office for any reason, even during the first five years under paragraph one. This provision was therefore inconsistent with the intent of the referendum outcome which desired for the joint sitting of the National Assembly to give approval to the appointment of a suitable person to become Prime Minister for the entire first five-year period as from the

installation of the first National Assembly under this Constitution in order to steer national reform in various areas and achieve results under the National Strategic Plan and the intents of the Draft Constitution in an efficient manner and utmost benefits to the nation and people.

Therefore, the provision of period and commencement of time in section 272 paragraph one and paragraph two of the Draft Constitution were therefore inconsistent and not in line with the referendum outcome.

4. Ruling of the Constitutional Court

The Constitutional Court held that the Draft Constitution amended in the relevant provisions by the Constitution Drafting Committee in section 272 were not in accordance with the referendum outcome and the Constitution Drafting Committee should amend the Draft Constitution according to the relevant decision of the Constitutional Court, as well as revise the preamble accordingly pursuant to section 37/1 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) as amended by Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) Amendment (No. 1) B.E. 2558 (2015).
