

Summary of Constitutional Court Ruling No. 7/2559 (2016)

Dated 26th October B.E. 2559 (2016)*

Re: The Council of Ministers requested for a Constitutional Court ruling under section 5 paragraph two of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), in a case on the revision of the preamble to the Draft Constitution.

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1. Summary of background and facts

The Constitution Drafting Commission submitted the Draft Constitution of the Kingdom of Thailand which had been revised in line with the outcome of the referendum on the additional question as well as relevant texts in the preamble pursuant to Constitutional Court Ruling No. 6/2559 (2016) to the Prime Minister for presentation to the King for royal assent on 11th October B.E. 2559 (2016). As His Majesty King Bhumibol Adulyadej passed away on 13th October B.E. 2559 (2016), it was necessary to revise the preamble to the Draft Constitution in accordance with such change. However, there was no provision in the Constitution providing for such a procedure. The Council of Ministers therefore requested the Constitutional Court for a ruling under section 5 paragraph two of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) on whether or not the Prime Minister could revise the preamble to the Draft Constitution in accordance with the aforesaid facts.

2. Preliminary issue considered by the Constitutional Court

The preliminary issue considered was whether or not the Constitutional Court had the competence to admit the application for a ruling under section 5 paragraph two of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014).

The Constitutional Court found that the case in the application raised a question which required a ruling under section 5 paragraph one of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), concerning a matter outside the scope of functions of the National Legislative Assembly, and the Council of Ministers submitted the application. The Constitutional Court had the competence to admit such an application for ruling under section 5 paragraph two in conjunction with section 45 paragraph two of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) and article 17(20) and article 27 of the Rules of the Constitutional Court on Procedures and Rulings, B.E. 2550 (2007).

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3. The issues considered by the Constitutional Court

The Constitutional Court determined that there were two issues which had to be decided as follows.

The first issue was whether or not the preamble to the Draft Constitution could be revised to reflect the actual facts.

The Constitutional Court found as follows. After the Constitution Drafting Commission had amended the Draft Constitution and revised the preamble to the Draft Constitution in accordance with the Constitutional Court ruling and submitted the Draft Constitution to the Prime Minister to present to the King for royal assent, it appeared on the facts that during the process of presentation for royal assent, His Majesty King Bhumibol Adulyadej passed away, thus resulting in the preamble to the Draft Constitution not being in accordance with the actual facts, and such an event had never occurred before. In addition, there were no provisions in this Constitution being applied specifically to this case. Hence, the matter had to be dealt with in accordance with Thailand's conventions on the democratic form of government with the King as Head of State. In the past, all Constitutions had to be enacted and would become fully effective upon royal assent granted by the King and publication in the Government Gazette. Until such process had been completed, the Draft Constitution would not be effective. This practice had become a part of Thailand's conventions on the democratic form of government with the King as Head of State.

In order to complete the Draft Constitution and ensure consistency with actual facts, prior to the Prime Minister's presentation to the King for royal assent, according to Thailand's such convention of democratic form of government with the King as Head of State, the Constitutional Court therefore found that the enactment of a law had to reflect actual facts. A necessity arising from an actual fact was paramount. This ensured that the necessary act was taken lawfully and according to the rule of law. Moreover, a revision of the preamble was not a change to the provisions which constituted the essence of the Draft Constitution. Therefore, the preamble to the Draft Constitution could be amended to reflect the occurring actual facts.

The second issue concerned the question who the person took in charge to undertake the revision of the preamble to the Draft Constitution to reflect the actual facts.

The Constitutional Court found as follows. Section 39/1 paragraph ten of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), as amended, provided that the Constitution Drafting Commission had the duty of completing the revision of the preamble to the Draft Constitution before the Prime Minister's presentation to the King for royal assent. Although this Draft Constitution remained under the process of the Prime Minister's presentation to the King for royal assent, the Draft Constitution was still ineffective. The Constitution Drafting Commission, which had the duty to prepare and revise the Draft Constitution, therefore had the duty to revise the preamble to the Draft Constitution until perfection was achieved.

4. Ruling of the Constitutional Court

The Constitutional Court held that the revision to the preamble to the Draft Constitution to reflect actual facts could be done and the Constitution Drafting Commission had the duty to revise the preamble to the Draft Constitution to properly reflect the actual facts prior to the Prime Minister's presentation to the King for royal assent.
