

# Summary of Constitutional Court Ruling\* No. 13/2556 (2013)

Dated 2<sup>nd</sup> October B.E. 2556 (2013)

**Re: Whether or not section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979) was contrary to or inconsistent with section 41 of the Constitution.**

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## 1. Summary of background and facts

The Central Administrative Court referred the objection of the first plaintiff (Mr. Chalor Rabtong) and the second plaintiff (Miss Somporn Rabtong) in Black Case No. 869/2556 to the Constitutional Court for a ruling under section 211 of the Constitution. The facts in the application and supporting documents could be summarized as follows. The plaintiffs filed a plaint against the Provincial Waterworks Authority in the Central Administrative Court, claiming compensation for damages suffered as a consequence of the defendant's installation of water pipelines in trespass of underground ownership rights belonging to the three plaintiffs. During trial, the first and second plaintiffs filed a motion for the Central Administrative Court to refer an objection to the Constitutional Court for a ruling on whether or not section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979), in relation to the powers of the Provincial Waterworks Authority to use private property for the installation of water pipelines without paying compensation, was contrary to or inconsistent with section 41 of the Constitution.

## 2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court could admit this application for a ruling under section 211 paragraph one of the Constitution.

The Constitutional Court found that the application raised an objection that section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979) was contrary to or inconsistent with section 41 of the Constitution. The Central Administrative Court was going to apply such provision of law to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision. The case was in accordance with section 211 paragraph one of the Constitution in conjunction with clause 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of this application for consideration.

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\* Published in the Government Gazette Vol. 131, Part 2a, dated 6<sup>th</sup> January B.E. 2557 (2014).

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

The issue considered by the Constitutional Court was whether or not section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979) was contrary to or inconsistent with section 41 of the Constitution.

The Constitutional Court found as follows. Section 30 paragraph one of the Provincial Waterworks Authority Act B.E. 2522 (1979) provided for the powers of the Provincial Waterworks Authority to lay water pipelines and install equipment under, above, on or across any person's land, provided that there was no residential building situated on such land, for the purpose of producing, transporting and distributing tap water as a public service. Paragraph two provided procedures for laying water pipelines with a diameter of eighty centimetres and above. In this case, the Provincial Waterworks Authority had the power to designate an area of land for laying water pipelines and installation of equipment, of which width could not exceed two metres and fifty centimetres from each side of the water pipeline. The Provincial Waterworks Authority shall also affix markings in the area to show the boundaries of such area in accordance with regulations published by the Minister. Paragraph three provided that, in the area prescribed under paragraph two, the Provincial Waterworks Authority had the power to remove structures or installations, or chop trees, branches or roots of trees or any plants, upon payment of fair compensation for the use of the land and the removal or chopping, as the case may be, to the owner or possessor, unless the owner or possessor had acquired a worthwhile benefit from such an action. In the event that compensation could not be agreed upon, section 29 paragraph three shall be applied *mutatis mutandis*. Paragraph four provided that after payment of compensation to such owner or possessor, or the owner or possessor willingly declined compensation, or had no right to compensation, such person could not subsequently make another claim for compensation. Paragraph five provided that the Provincial Waterworks Authority shall, upon a written notice, inform the owner or possessor of the relevant property of actions to be taken under this section. The provisions of section 29 paragraph one (2) shall be applied *mutatis mutandis*. Such owner or possessor of property had the right to submit a petition stating the causes for unsuitability of such an action to the Provincial Waterworks Authority Board for a decision within thirty days as from the date of receiving the written notice. The decision of Board was final.

The provisions of section 30 paragraph two and paragraph three did not expressly stipulate compensation in the case of an installation of water pipeline that was not in accordance with paragraph two where the water pipeline had a diameter of less than eighty centimetres. Such a provision had led to an interpretation and relied upon as legal precedent that if a water pipeline installed by the Provincial Waterworks Authority had a diameter of less than eighty centimetres, the Provincial Waterworks Authority did not have to compensate an owner or possessor of the land. It was discernible that this provision was unfair to the owner or possessor of the land. Even though the state's use of personal land was performed for public benefit, the action still prejudiced the person's rights in property regardless of whether the size of the water pipeline was greater or lesser than eighty centimetres.

Furthermore, the laying of water pipeline and installation of equipment required the designation of an area where the owner or possessor was excluded from utilization. This constituted an unjust interference in the rights and liberties of a person. Upon an examination of the utilisation of land by the public at present, a person would generally have the ability to utilise land to which one had ownership or possession rights, inclusive of the area above the surface and underground to a depth of five to ten metres depending on the nature of use. Whereas in such a case, the owner or possessor of land was unable to construct any building or other structure, including to plant any trees or commit any act in such area where the water pipeline was laid and equipment was installed due to possible harm or obstruction to the tap water production, transport or distribution system. Such a legal prohibition was stated in section 31 of the Provincial Waterworks Authority Act B.E. 2522 (1979).

Hence, the provision of section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979), only in regard to the absence of stipulation that the Provincial Waterworks Authority shall pay compensation for the use of land to the owner or possessor of the land in the event of laying water pipeline with a diameter of less than eighty centimetres, was the provision of law which restricted or encroached upon the property rights of an owner or possessor of land as provided under section 41 of the Constitution, which was inconsistent with section 29 paragraph one of the Constitution. The restriction of a person's property rights recognised by the Constitution was more than necessary and affected the essential substances of the rights. The provision also created an unreasonable burden to the public, which was inconsistent with the fundamental principles of the liberal democratic system where the state shall protect and recognise the people's property rights in the essence. If there was an exception for the state to interfere with the property rights of the people, the state shall bear responsibility for giving fair compensation, the case may be. Moreover, the provision was contrary to or inconsistent with the rule of law under section 3 paragraph two of the Constitution.

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

The Constitutional Court held that section 30 of the Provincial Waterworks Authority Act B.E. 2522 (1979), only in regard to the provisions which stated that the Provincial Waterworks Authority did not have to pay compensation for the use of land and the removal of buildings or installations, or the chopping of trees, branches or tree roots or any other plants, to the owner or possessor of the land in the event of laying water pipeline with a diameter of less than eighty centimetres under, above, along or across the surface of land that was not a residential building, for the purpose of producing, transporting, distributing tap water, was contrary to or inconsistent with section 41 in conjunction with section 3 paragraph two and section 29 of the Constitution. The provision was thus invalid under section 6 of the Constitution.

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