

Summary of the Constitutional Court Ruling No. 3-4/2545

Dated 29th January B.E. 2545 (2002)*

Re : The Senate requested the Constitutional Court to rule on a question pertaining to the powers and duties of the Senate under section 266 of the Constitution and the President of the Senate submitted the opinion of Senators for a ruling under section 262 paragraph one (1) (a case where the House of Representatives confirmed the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. without waiting for the Senate to complete its consideration of the Bill as considered by the Joint Committee)

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1. Background and summarized facts

The Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. had been approved by the House of Representatives before it was presented to the Senate. The Senate considered the Bill and made amendments before remitting it to the House of Representatives. The House of Representatives reached a resolution rejecting the amendments made by the Senate. As a result, a Joint Committee was established to consider such Bill. The Joint Committee completed its consideration of the Bill, which was submitted to both Houses with an accompanying report. The House of Representatives placed the bill on its agenda on 21st November B.E. 2544 (2001) while the Senate placed the bill on its agenda on 23rd November B.E. 2544 (2001). The House of Representatives reached a resolution rejecting the Bill which had been considered by the Joint Committee. Thereafter, members of the House of Representatives submitted a motion asserting that the Bill in question was a money bill and therefore requested that the House of Representatives immediately exercise the right to reaffirm the bill under section 176 of the Constitution. A member of the House of Representatives debated on the necessity of having to wait for the Senate to exercise its right to affirm the bill as considered by the Joint Committee before the House of Representatives could exercise its right to reaffirm. Ultimately, the House of Representatives resolved that it had the ability to exercise the right to reaffirm the bill without having to wait for the Senate to complete its consideration. In this regard, the House of Representatives reaffirmed the bill by the votes of more than one-half of the total number of the existing members of the House of Representatives. The President of the House of Representatives sent a letter dated 22nd November B.E. 2544

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(2001) to the Senate notifying the result of such sitting adding the fact that the bill had already received the approval of the National Assembly and would be sent to the Prime Minister who would subsequently present such bill to the King for signature under section 93 of the Constitution.

In the sitting of the Senate on 23rd November B.E. 2544 (2001), the President of the Senate notified the quorum of the letter affirming the bill from the President of the House of Representatives. The President also discussed with members of the Senate regarding its most appropriate course of action. The majority of the Senate held the opinion that the House of Representatives' exercise of right to reaffirm the bill without waiting for the completion of the Senate's consideration was possibly unconstitutional. The Senate sitting therefore resolved by a majority of votes that the House of Representatives' resolution to reaffirm the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. on 21st November B.E. 2544 (2001) was inconsistent with the procedural stages laid down by the Constitution. As a consequence, the bill could not be deemed to have been given the National Assembly's approval under section 176 of the Constitution. In this case, the bill which had been scrutinized by the Joint Committee had to be considered by the Senate, the completion of which was a prerequisite to the exercise of the House of Representatives' right of reaffirmation.

The House of Representatives' resolution to reaffirm its original bill by the votes of more than one-half the total number of all the existing members of the House before the Senate's consideration of the Joint Committee's bill lacked an essential element for the consideration of the Joint Committee's bill which had to be considered by the two Houses of National Assembly under section 175 paragraph one sub-paragraph (3) of the Constitution. Could it therefore be deemed that pursuant to the letter of the President of the House of Representatives which stated that the bill had received the approval of the National Assembly under section 176 of the Constitution, the legislative procedure had been carried out in accordance with section 175 paragraph one sub-paragraph (3) and section 176 of the Constitution ?

Hence, the Senate requested that the Constitutional Court rule on the following questions regarding the powers and duties of the Senate under section 266 of the Constitution:

1. By the House of Representatives' act of passing a resolution which disapproves the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. as considered by the Joint Committee, of which the Senate had not yet completed its consideration, could the bill be regarded as having been withheld under section 175 of the Constitution?

2. If the Constitutional Court does not consider this case to be one of withholding legislation under section 175 of the Constitution, could the House of Representatives'

resolution to reaffirm its original bill and their presumption that such bill had received the approval of the National Assembly be considered as consistent with the constitution?

3. Could the powers and duties of the Senate be deemed as having been deducted by the House of Representative's resolution to reaffirm its original bill immediately without waiting for the result of considerations undertaken by the Senate, which in effect reduced the Senate, or in other words, the Senate was not able to consider the bill presented by the Joint Committee?

In addition, the President of the Senate sent the opinion of 103 senators who considered that the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons was not enacted lawfully under the Constitution. The opinion requested that the Constitutional Court make a ruling under section 262 paragraph one sub-paragraph (1) of the Constitution as to whether the legislative procedure adopted in a way which the House of Representatives' passed a resolution reaffirming its original bill by the votes of more than half the number of existing members prior to the Senate's consideration of the Joint Committee's bill was constitutional under section 175 paragraph one (3) and section 176 of the Constitution.

2. Preliminary issue

In this application, the Constitutional Court had to consider the following preliminary issues:

2.1 Was the Senate's submission of the case together with their opinion to the Constitutional Court for the latter's adjudication consistent with section 266 of the Constitution ?

The Constitutional Court held that according to the application, the case was one where the Senate, as an organization under the Constitution, considered that there was a problem regarding the powers and duties of the Senate and the House of Representatives. The Senate resolved by a majority vote to submit this problem to the Constitutional Court. The case was a submission of a matter together with an opinion under section 266 of the Constitution on a dispute which had already arisen. Thus, the Constitution Court had the power to hear the application.

2.2 Was the President of the Senate's submission of opinion of the senators for a ruling of the Constitutional Court in accordance with section 262 paragraph one sub-paragraph (1) of the Constitution?

The Constitutional Court held that the case where 103 senators, or calculated as not less than one-tenth of all existing members of both Houses, who were of the opinion that

the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E., and who affixed their signatures on such opinion which was presented to the President of the Senate who in turn submitted the opinion to the Constitutional Court for a ruling, was in accordance with section 262 paragraph one sub-paragraph (1) of the Constitution. The Constitutional Court could hear this application.

3. The issue considered by the Constitutional Court

Owing that both applications involved the same issues, the Constitutional Court merged the issues in both applications in one ruling.

The Constitutional Court considered both applications and determined that the issues which had to be ruled upon was, first of all, whether the House of Representatives' resolution to disapprove of the Joint Committee's Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. before such bill was considered by the Senate constituted a withholding of the bill under section 175 paragraph one sub-paragraph (3) of the Constitution. Secondly, the Court had to consider the question of whether the legislative procedure whereby the House of Representative's reached a resolution reaffirming the original draft of the House of Representatives by the votes of more than one half the total number of existing members of the House of Representatives prior to the completion of consideration of the Joint Committee's bill by the Senate was constitutional under section 175 paragraph one sub-paragraph (3) and section 176 of the Constitution.

The Constitutional Court considered that according to the legislative process under section 90 and section 92 of the Constitution, a bill must be considered by both Houses before it could be deemed as having been approved by the National Assembly. In the case of the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E., the Senate amended the bill approved by the House of Representatives and the House of Representatives disagreed with the Senate's amendments. The case therefore called for the establishment of a Joint Committee to consider the bill under section 175 paragraph one sub-paragraph (3) of the Constitution. Upon the Joint Committee's completion of their consideration of the bill, a report and the Joint Committee's version of the bill was sent to both Houses. Section 175 paragraph one sub-paragraph (3) of the Constitution stated that both Houses should consider the bill as considered by the Joint Committee and thereafter take further proceedings under section 93 of the Constitution. If either House disapproved of the bill, such bill should be withheld. In other words, for the withholding of a bill by either House disapproving of the bill as considered by the Joint Committee, both Houses must have completely considered the Joint Committee's bill under the constitutional procedure as provided for in section 92 of the Constitution. Thereafter if the result were either House not approving of the bill, such bill would accordingly be withheld.

Hence, under section 175 paragraph one sub-paragraph (3) of the Constitution, the House of Representatives' consideration and resolution to disagree with the Joint Committee's bill on 21st November B.E. 2544 (2001) could not be deemed as the withholding of the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. until the Senate completed their consideration of the Joint Committee's bill. As the bill had not yet been withheld, the House of Representatives could not therefore immediately resubmit the bill for consideration and resolve to reaffirm the House of Representatives' original draft under section 176 of the Constitution even if such a bill was a money bill. Such an act would encroach upon the powers and duties of the Senate under section 175 paragraph one sub-paragraph (3) read in conjunction with section 90 and section 92 of the Constitution. As a result, the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. could not be said to have been approved by the National Assembly under section 176 of the Constitution. Moreover, because the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. could not be deemed as having been approved by the National Assembly under section 176 of the Constitution, it was not necessary to rule on this issue under section 262 paragraph one sub-paragraph (1) of the Constitution.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court held that the House of Representatives' resolution disagreeing with the Joint Committee's version of the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. ...prior to the Senate's complete consideration of the bill as considered by the Joint Committee could not be deemed as an act of withholding the bill under section 175 paragraph one sub-paragraph (3) of the Constitution. It could also not be deemed that the bill received the approval of the National Assembly. Once it has been held that the bill could neither be deemed as being withheld under section 175 paragraph one sub-paragraph (3) of the Constitution nor as having received the approval of the National Assembly, it was not necessary to rule on the issue as to whether the legislative procedure employed for the Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons, B.E. was consistent with section 175 paragraph one sub-paragraph (3) and section 176 of the Constitution.
