

## **Summary of the Constitutional Court Ruling No. 62/2545**

**Dated 17<sup>th</sup> December B.E. 2545 (2002)\***

**Re : The Criminal Court referred the application of the defendant (Mr. Sulaksana Siwarak or S. Siwarak) to the Constitutional Court for a ruling that section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) were inconsistent with section 35, section 44 and section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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### **1. Background and summarized facts**

The State Attorney of Kanchanaburi Provincial Court (Thongphaphum), as plaintiff, prosecuted Mr. Sulaksana Siwarak, the defendant and applicant, for charges of joint obstruction of the Petroleum Authority of Thailand or its officers or persons working in affiliation with the officers in the construction of a petroleum pipeline system. The defendant and his accomplices had entered the area of construction of the petroleum pipeline system via natural gas pipes at Tambon Huay Kayeng, Amphoe Thongphaphum, Kanchanaburi province. The applicant and his accomplices, without permission, jointly formed a standing barrier and sat in a group across the operational path of the machinery. Such acts constituted offences under section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978). A submission was therefore made for the Court to sentence the defendant accordingly.

The applicant submitted a plea of not guilty, stating that he did not in any manner jointly commit the offences in the allegations because the project was itself unlawful. Section 30 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) empowered the Petroleum Authority of Thailand (PTT) to proceed with constructions immediately after the issue of a Notification to prescribe the boundaries under section 30 (1) of such Act. The law on expropriation of property applied only if the operations caused any damage. On the other hand, the applicant's protest was conducted peacefully, openly, free from arms and in good faith pursuant to the rights of the people under the Constitution and the protesters were members of the traditional community who had the right to conserve and participate in the maintenance and exploitation of natural resources. The applicant therefore deemed the exercise of powers under section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 to be unlawful and inconsistent with the Constitution.

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Subsequently, the applicant received the permission to transfer the case to the Criminal Court and a request was submitted for the Criminal Court to refer the application to the Constitutional Court for a ruling that section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) were inconsistent with section 35, section 44 and section 46 of the Constitution.

Through the course of official service, the Criminal Court referred the defendant's claims that section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) were inconsistent with the Constitution to the Constitutional Court for consideration and imposed a temporary stay on the case.

Later, the applicant submitted an additional statement to the Constitutional Court and the Ministry of Industry, in his capacity as the Minister having charge and control of the execution of the Petroleum Authority of Thailand Act, B.E. 2521 (1978), also submitted a written statement to the Constitutional Court.

The Constitutional Court conducted a trial in order to offer an opportunity to the applicant and Petroleum Authority of Thailand Public Limited Company, as the relevant party, to adduce the testimony of witnesses, and present documents and evidence in connection with the trial.

During the consideration of the Constitutional Court, the Emergency Decree on Prescription of Time Condition for the Repeal of the Law on Petroleum Authority of Thailand, B.E. 2544 (2001) and the Emergency Decree on Prescription of Powers, Rights and Benefits of PTT Public Limited Company, B.E. 2544 (2001) were enacted on 1<sup>st</sup> October B.E. 2544 (2001) by virtue of section 26 of the State Enterprise Capital Act, B.E. 2542 (1999). Therefore, an issue arose for the Constitutional Court's consideration as to whether or not the Constitutional Court should continue its consideration of this application. On this issue, the majority of Constitutional Court judges held that the Constitutional Court should continue its consideration of the issue in this application. Two Constitutional Court judges held a minority opinion that the Constitutional Court did not have to consider the issue in this application because the Petroleum Authority of Thailand Act, B.E. 2521 (1978) had been repealed by the Emergency Decree on Prescription of Time Condition for the Repeal of the Law on Petroleum Authority of Thailand, B.E. 2544 (2001), which included the repeal of section 30 and section 53 of such Act.

## **2. Preliminary issue**

The Constitutional Court held that the case was in accordance with section 264 of the Constitution and therefore accepted the case for consideration.

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

Were section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) contrary to or inconsistent with section 35, section 44 and section 46 of the Constitution?

The Constitutional Court held that section 30 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) provided for the transport of petroleum via pipelines by empowering the Petroleum Authority of Thailand to (1) prescribe the boundaries of the pipeline system, (2) lay pipelines beneath, above, along or across the land of any person, (3) remove buildings or demolish constructions, destroy or cut branches, roots, trees or plants in the pipeline boundary. If any damage occurred, compensation would be given under the law on expropriation of property. As for the relevant provisions of the Constitution, section 35 of the Constitution provided for the liberty of dwelling; section 44 of the Constitution provided for the liberty to assemble peacefully and without arms; and section 46 of the Constitution provided for the assembling of a traditional community and their participation in the management, conservation and exploitation of natural resources and the environment in a balanced and sustainable fashion. Although those three sections of the Constitution were provisions which protected the liberties of a person, such liberties could be restricted where provided by law or by a law which was necessary for the benefit of the public, for the economy or national defence or the environment. Therefore, section 30 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) was neither contrary to nor inconsistent with section 35, section 44 and section 46 of the Constitution.

Section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978), provided for sanctions to enable the exercise of PTT's powers under section 30 of such Act. As the Constitutional Court had already ruled that section 30 was neither contrary to nor inconsistent with section 35, section 44 and section 46 of the Constitution, a consequence would be to rule that section 53 of the said Act was also neither contrary to nor inconsistent with section 35, section 44 and section 46 of the Constitution.

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

By virtue of the reasons above, the Constitutional Court held that section 30 and section 53 of the Petroleum Authority of Thailand Act, B.E. 2521 (1978) were neither contrary to nor inconsistent with section 35, section 44 and section 46 of the Constitution.

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