

# Summary of the Constitutional Court Ruling No. 5-26/2548

**Dated 20<sup>th</sup> January B.E. 2548 (2005)\***

**Re: The Supreme Administrative Court referred the objections of the plaintiffs, twenty-two applications in total, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with section 6, section 29, and section 48 of the Constitution.**

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

The facts stated in the applications could be summarized altogether as follows. State agencies filed cases against individuals in disputes arising out of administrative contracts (scholarship contracts and construction contracts) to the Administrative Court of First Instance due to the breach of contracts by the defendants. The Administrative Court of First Instance held that the plaintiffs filed the cases to the Administrative Court at the expiration of the period of time fixed for the submission of the complaint in relation to the administrative contract, which was within one year as from the day the cause of action was aware of or should have been aware of but not later than ten years as from the date of such cause of action pursuant to section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). In addition, the cases did not concern the protection of public interest or a status of an individual person in which they may be filed at any time pursuant to section 52 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). The Administrative Court of First Instance therefore ordered the cases not accepted for consideration.

The plaintiffs appealed against the orders of the Administrative Court of First Instance not accepting the cases for consideration to the Supreme Administrative Court together with the objections that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with section 6, section 29, and section 48 of the Constitution. The plaintiffs objected that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) to which the Administrative Court of

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First Instance referred as a ground not to accept the complaints was the provision of law being contrary to or inconsistent with the Constitution. To be amplified, before the enactment of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the right to file the case concerning the dispute in relation to the administrative contract was under the Civil and Commercial Code providing the prescription period of ten years. The case concerning the dispute in relation to the administrative contract could be filed by any party, as plaintiff, regardless of being a private person or an administrative agency. Filing of the case is a legal right guaranteed and protected by the Constitution. Section 29 paragraph one of the Constitution provided that “The restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties”. Section 29 paragraph two thereof provided that “The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein”. Moreover, section 48 paragraph one thereof provided that “The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law”. In the regard, the property right of a person resulting from a claim under a contract shall be protected. Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which provided that the case concerning the dispute relating to the administrative contract shall be filed within one year from the day the cause of action was known or should have been known but not later than ten years from the day such cause of action occurred, was the provision enacted beyond the extent of necessity and affecting the essential substances of the property right of a person, because it shortened the prescription period of minimum two years as prescribed by the Civil and Commercial Code to only one year. Accordingly, the provision of section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was unenforceable. The Supreme Administrative Court was requested to stay its trial and adjudication of the case and to refer the opinions of the plaintiffs, objecting that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with the Constitution, to the Constitutional Court for a ruling under section 264 of the Constitution.

The Supreme Administrative Court considered all twenty-two applications and was of the following opinions. To file the cases to the Court, the plaintiffs had to submit the complaints within the period of time fixed by the law for such cases. Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was procedural law providing the period of time to file the case to the Administrative Court. The Administrative Court therefore must apply that provision to the consideration and adjudication of the case. However, the applicants (the plaintiffs) objected that the said section 51 was contrary to or inconsistent with the Constitution, and there had not yet been any decision of the Constitutional Court on such provision. The Supreme Administrative

Court therefore stayed its trial and adjudication of the case and submitted the opinions of the applicants (the plaintiffs) to the Constitutional Court for consideration according to section 264 of the Constitution.

The Constitutional Court was of the opinion that all twenty-two applications had the same issue to be considered and determined, and then they shall be consolidated for consideration. The cases related to the objections of the parties thereto that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with the Constitution. The Supreme Administrative Court, in this connection, was of the opinion that section 51 was the provision of law to be applied to the cases. These cases were to object to the provision of law enacted by the legislative body, and there had not yet been the decision of the Constitutional Court on this matter. The cases fell within section 264 of the Constitution. The Constitutional Court could therefore accept the applications for consideration.

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

Was section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contrary to or inconsistent with section 6, section 29, and section 48 of the Constitution?

For the issue on whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with section 6 and section 29 of the Constitution, it was already held by the Constitutional Court in the Ruling No. 65-82/2547 dated 9<sup>th</sup> November, B.E. 2547 (2004) that such section 51 was neither contrary to nor inconsistent with section 6 and section 29 of the Constitution.

Hence, the only one issue to be considered by the Constitutional Court was whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was contrary to or inconsistent with section 48 of the Constitution.

The Constitutional Court held the followings. Section 48 paragraph one of the Constitution was the provision of the law to protect the property right of a person. The scope and restriction of such right could be imposed by virtue of the law enacted under the authorization of the Constitution. However, the restriction of the property right of the person shall be imposed only to the extent of necessity and shall not affect the essential substances of the property right of the person. Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) entitled the plaintiffs to file the cases concerning the dispute relating to wrongful acts or any other liabilities of administrative agencies under section 9 subparagraph (3) and the cases concerning the dispute relating to the administrative contracts under section 9 subparagraph (4), provided that these cases shall be filed within one year from the day the cause of action

was known or should have been known but not later than ten years from the day such cause of action occurred. The cases, accordingly, did not relate to the property right of the person or the restriction of such right within the meaning of section 48 of the Constitution. On the other hand, they concerned the law prescribing the right to file the cases within the period of time fixed by the law according to the type and nature of the cases referred to in the applications. Therefore, section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was neither contrary to nor inconsistent with section 48 paragraph one of the Constitution.

As for section 48 paragraph two which provided that “The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.”, the Constitutional Court, after considering the objections of the plaintiffs, was of the opinion that the applications did not clearly object to or describe that to what extent the said provision was contrary to or inconsistent with the right of succession of a person. In addition, this provision did not relate to the facts under the applicants’ applications. Hence, it needed not to be considered.

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

The Constitutional Court unanimously held that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was neither contrary to nor inconsistent with section 6, section 29, and section 48 paragraph one of the Constitution.

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