

Summary of the Constitutional Court Ruling No. 27-28/2548

Dated 20th January B.E. 2548 (2005)*

Re: The Supreme Administrative Court referred the objections of the plaintiffs, 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, section 48 and section 75 of the Constitution.

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1. Background and summarized facts

The Supreme Administrative Court referred the applications of Office of the Permanent Secretary of Ministry of Public Health and Mahasarakham University, two applications in total, to the Constitutional Court for a ruling under section 264 of the Constitution. The facts stated in those two applications could be summarized altogether as follows. Office of the Permanent Secretary of Ministry of Public Health brought actions against Mr. Tawatchai Chiengsom and others, and Mahasarakham University brought actions against Mr. Kittipong Wongkalasin and others, in disputes arising out of administrative contracts (scholarship contracts) to the Administrative Court of First Instance (Khon Kaen Administrative Court) 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.

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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, section 48, and section 75 of the Constitution. The plaintiffs objected that section 6, section 29 paragraph one, and section 48 of the Constitution guaranteed and protected the property right of a person in a lawsuit of which the restriction shall not be imposed. The Civil and Commercial Code, being previously applicable law to the case, provided that this kind of cases could be filed within ten years as the period of prescription. The period of time fixed for filing the cases pursuant to section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), i.e. within one year as from the date of knowing or possibly knowing the cause of action, was therefore contrary to or inconsistent with section 29 paragraph one and section 48 of the Constitution. Consequently, this provision of law shall be unenforceable according to section 6 of the Constitution. Furthermore, these cases involved the disputes in relation to the administrative contracts which constituted the case concerning the protection of public interest or being useful for public, and thus the period of time fixed for filing such cases as provided by section 52 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which was at any time, should be applied. That the Administrative Court of First Instance applied section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was the case where such Court applied and interpreted the law in contradiction to section 75 of the Constitution.

The Supreme Administrative Court considered both objections 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 those 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 promulgated 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, section 48, and section 75 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, section 29, section 48 of the Constitution, it was already held by the Constitutional Court in the Ruling No. 65-82/2547 dated 9th November, B.E. 2547 (2004) that such section 51 was neither contrary to nor inconsistent with section 6 and section 29 of the Constitution, and in the Ruling No. 5-26/2548 dated 20th January, B.E. 2548 (2005) that such section 51 was neither contrary to nor inconsistent with section 48 paragraph one 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 75 of the Constitution.

The Constitutional Court held the followings. Section 75 of the Constitution was contained in Chapter 5: Directive Principles of Fundamental State Policies. This Chapter provided that State shall ensure the compliance with the law protecting the rights and liberties of a person, provide efficient administration of justice, serve justice to the people expediently and equally, organize an efficient system of public administration and other State affairs to meet people's demand, and allocate budgets for the independent administration of the constitutional organizations, in order to protect and uphold the security of State, religions, institution of kingship, democratic regime of government, and living in harmony with happiness of Thai people. Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) provided for filing an administrative case under section 9 paragraph one subparagraph (3) or subparagraph (4) within the period of time fixed by the law, namely that the case shall be filed within one year from the day the cause of action was aware of or should have been aware of but not later than ten years from the date of such cause of action. If the case could not be filed within the fixed period of time, such case could not be filed to the Administrative Court. The said section 51, accordingly, was not relevant to the matter of fundamental State policies as provided in section 75 of the Constitution. 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 75 of the Constitution.

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, section 48 paragraph one, and section 75 of the Constitution.
