

# Summary of the Constitutional Court Ruling No. 31/2548

**Dated 8<sup>th</sup> February B.E. 2548 (2005)**

**Re: The House of Representatives requested the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the National Human Rights Commission’s investigation report on human rights violation in the case of “violence in connection with the Thailand-Malaysia Gas Pipeline Project”.**

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

The House of Representatives by the President of the House of Representatives submitted an application dated 16<sup>th</sup> September B.E. 2546 (2003) to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the National Human Rights Commission’s investigation report on human rights violation in the case of “violence in connection with the Thailand-Malaysia Gas Pipeline Project”. The application may be summarized as follows. The National Human Rights Commission submitted an investigation report on the said project to the House of Representatives pursuant to section 31 of the National Human Rights Commission Act B.E. 2542 (1999). However, before the matter could be considered, there was a debate by members of the House of Representatives and a divergence of opinions into 2 divisions. The first division was of the opinion that even though the National Human Rights Commission report referred to powers under section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), it was also necessary to consider section 200 paragraph one subparagraph (6). As there were facts stated in the report that there were violence between police officials and protestors of the project that were matters being adjudicated in the Court of Justice, it would seem that the proceedings of the National Human Rights Commission were inconsistent with section 22 of the National Human Rights Commission Act B.E. 2542 (1999). Once the proceedings of the National Human Rights Commission were unlawful, if the House of Representatives considered the report and the court subsequently passed a judgment that was inconsistent with the National Human Right’s conclusion, a problem would eventually arise. On the other hand, the second division was of the opinion that it was unlikely that the proceedings of the National Human Rights Commission were inconsistent with section 22 of the said Act because the matter for which a lawsuit had been filed in court was a different case from the matter considered by

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the National Human Rights Commission. In addition, the National Human Rights Commission had initiated its investigation prior to the lawsuit in court.

The House of Representatives held that the case concerned a dispute on the powers and duties of organizations under the Constitution. A resolution was therefore passed that a reference be made to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on whether or not the National Human Rights Commission Report on violence in connection with the Thailand-Malaysia Gas Pipeline Project was prepared in accordance with section 22 of the National Human Rights Commission Act B.E. 2542 (1999) and other relevant laws, and whether or not the House of Representatives could acknowledge or carry out further proceedings if the report was found to be inconsistent with such provisions of law.

For the benefit of the case deliberations, the Constitutional Court summoned the parties and witnesses referred to by the parties to give oral testimonies. The President of the House of Representatives did not wish to express any additional opinions while the National Human Rights Commission gave testimony through Mr. Sane Jamrik, Chairperson of the National Human Rights Commission, Mr. Wassan Panich, National Human Rights Commissioner, Mr. Dejudom Krairit, President of the Law Society, and Mr. Jaran Pakditanakul by a written statement to the Constitutional Court.

## **2. Preliminary issue**

The Constitutional Court held that the House of Representatives and the National Human Rights Commission were organizations established by the Constitution and whose scope of powers and duties were provided for by the Constitution. The two bodies were therefore constitutional organizations and the case was a dispute on the performance of duties of constitutional organizations. The case in the application was a dispute that had arisen between the powers and duties of the House of Representatives and the National Human Rights Commission, which were both constitutional organizations. Upon the House of Representative's submission of an application for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court could accept the application for consideration.

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

The issue considered by the Constitutional Court was whether or not the National Human Rights Commission had the powers and duties under section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 22 of the National Human Rights Commission Act B.E. 2542 (1999) to inspect and prepare a report in the case of violence in connection with the Thailand-Malaysia Gas Pipeline Project which was thereafter submitted to the House of Representatives.

The Constitutional Court held as follows. Section 199 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided for the establishment of the National Human Rights Commission. Section 200 provided for the National Human Rights Commission's powers and duties to inspect and prepare reports on acts or omissions which constituted violations of human rights or which were not in accordance with international obligations with respect to human rights to which Thailand was a party. In such event, the National Human Rights Commission should propose suitable remedial measures to the persons or agencies responsible for such acts or omissions for further action. If it appeared that no action was taken pursuant to the proposals, a report should be submitted to the National Assembly for further proceedings. Other powers and duties of the National Human Rights Commission included giving advice on policies, proposals for the reform of laws, regulations or rules to the National Assembly and the Council of Ministers that were aimed at the promotion and protection of human rights, the promotion of education and research and the promotion of cooperation and coordination between government agencies, private organizations and other organizations on human rights as well as to prepare an annual assessment report of the domestic human rights situation to the National Assembly. In the performance of duties by the National Human Rights Commission, account must be taken of the collective benefits of the nation and its people. These powers and duties were provided in the Constitution. Therefore, they were constitutional powers and duties of the National Human Rights Commission. Moreover, section 200 paragraph one subparagraph (6) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided that the National Human Rights Commission had other powers and duties as provided by law. This meant that the Constitution empowered the National Assembly to enact laws to provide for powers and duties of the National Human Rights Commission other than those already provided in section 200 paragraph one subparagraphs (1) to (5) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), insofar as they were not contrary to or inconsistent with the powers and duties of the National Human Rights Commission under the Constitution.

The reason for promulgating the National Human Rights Commission Act B.E. 2542 (1999) was stated as follows: "Whereas section 199 and section 200 of the Constitution of the Kingdom of Thailand provided for the establishment of the National Human Rights Commission to perform the duties of inspecting and reporting acts or omissions which constituted violations of human rights or which were not in accordance with international obligations on human rights that Thailand was a party to and to propose suitable remedial measures as well as to have the powers and duties to promote and protect human rights whether that may be achieved by giving policy advice to the National Assembly and Council of Ministers or by promoting education, research and the cooperation and coordination of agencies, including the preparation of an annual report. It has also been provided that other powers and duties of the National Human Rights Commission as well as the qualifications, prohibited qualities, recruitment, selection, removal and prescription of remuneration for National Human Rights Commissioners shall be in accordance with provisions of law. As it is expedient to implement such provisions of the Constitution, it is therefore necessary to enact this Act." Section 15 of the National Human Rights Commission Act B.E. 2542 (1999)

provided for powers and duties of the National Human Rights Commission as stated in the Constitution and provided for other powers and duties consistent with the principal powers and duties under the Constitution. The purpose of enacting this Act was to install a system and provide for the scope of powers and duties that would enable the National Human Rights Commission to perform its constitutional duties so as to protect human rights. This was specifically designed to deal with matters on human dignity, rights, liberties and equality of persons recognized or protected under the Constitution of the Kingdom of Thailand or under laws or treaties under which Thailand had an obligation to comply. Processes and procedures were laid down for proceedings of the National Human Rights Commission. In brief, the National Human Rights Commission had the powers and duties to investigate an act or omission which constituted a violation of human rights and propose remedial measures to the relevant person or agency for carrying out the remedy. Where it appeared that the remedy was not been carried out under the proposed measures or the remedy was carried out but not to completion without proper cause, the National Human Rights Commission should file a report to the Prime Minister for an order to carry out the remedial measures within sixty days as from the receipt of the report. However, if the proceedings were not subject to executorial powers of the Prime Minister or proceedings were not carried out or no order was made to carry out the remedial measures after the National Human Rights Commission had filed a report with the Prime Minister, the National Human Rights Commission Act B.E. 2542 (1999) provided that the National Human Rights Commission should report to the National Assembly for further action. Such processes and procedures provided in the law were consistent with provisions of section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Upon a consideration of section 22 of the National Human Rights Commission Act B.E. 2542 (1999) which stated that, “in the event of an act or an omission which constituted a violation of human rights and the matter was not subject to legal proceedings in court or for which a final court judgment or order had been made, the National Human Rights Commission shall have the power to investigate and propose remedial measures under this Act,” the Constitutional Court found that the purpose of this provision was to designate the courts as the adjudicating body of acts or omissions concerning unlawful violations of human rights. In any case, however, the application of such provisions should not affect the powers and duties to investigate human rights violations by the National Human Rights Commission under section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The investigation report on human rights violations “in the case of violence in connection with the Thailand-Malaysia Gas Pipeline Project” stated that the event was a result of acts of police officials to disperse mobs of protestors who were opposed to the project. There were injuries and police officials had arrested a number of protestors on 20<sup>th</sup> December B.E. 2545 (2002). The National Human Rights Commission carried out its investigation and prepared a report on those acts or omissions that constituted a violation of human rights as well as proposed remedial measures. However, those measures were not

followed. After filing a report with the Prime Minister, the National Human Rights Commission proceeded with a report to the National Assembly for further action. Although legal actions in court might have been taken subsequent to the initiation of an investigation by the National Human Rights Commission, the investigation of the National Human Rights Commission was an exercise of powers under section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 22 of the National Human Rights Commission Act B.E. 2542 (1999) with respect to the portion which provided for the powers and duties of the National Human Rights Commission in investigations and proposals of remedial measures, consistent with section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

By virtue of the above reasons, the Constitutional Court held that the National Human Rights Commission had the powers and duties under section 200 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), to investigate and prepare a report in the case of violence in connection with the Thailand-Malaysia Gas Pipeline Project and to submit such report to the House of Representatives.

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