

Summary of the Constitutional Court Ruling No. 44/2548

Dated 26th April B.E. 2548 (2005)*

Re: The Central Administrative Court referred the objections of the defendant (the National Counter Corruption Commission) 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 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) were contrary to or inconsistent with section 276 of the Constitution.

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1. Background and summarized facts

The Central Administrative Court referred the objection of the defendant (the National Counter Corruption Commission) in Pending Case No. 1482/2546 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 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contained provisions that were contrary to or inconsistent with the Constitution. The defendant was of the opinion that the defendant itself was neither a State agency nor State official under the superintendence or supervision of the Government under section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, the provisions of section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) prescribing powers and duties of the Administrative Court were beyond the scope of section 276 of the Constitution. The terms “State agency” or “State official” in such section 276 meant the State agency or State official that only were under the superintendence or supervision of the Government. However, those terms appeared in section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) included the State agency or State official that not were under the superintendence or supervision of the Government. Furthermore, the order given by the defendant was not an administrative order under the Administrative Procedure Act, B.E. 2539 (1996), since this Act shall not apply to the organizations exclusively exercising Constitutional powers.

The Central Administrative Court held the followings. The plaintiff filed the case to the Central Administrative Court for a ruling that the defendant must comply with the

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decision of the Information Disclosure Tribunal in Social, State Administration and Law Enforcement Field. Under the decision thereof, the plaintiff shall be allowed to inspect and obtain copies of information concerning the defendant's inquiry. The defendant objected that the meanings of the terms "State agency" or "State official" in section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) were beyond the scope of section 276 of the Constitution. Those provisions were thus unenforceable under section 6 of the Constitution. Furthermore, it was the case where there has not yet been a decision of the Constitutional Court on section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Accordingly, the Central Administrative Court shall stay its trial and adjudication of the case and submit the objection of the defendant that those provisions of law were contrary to or inconsistent with the Constitution to the Constitutional Court for consideration under section 264 paragraph one of the Constitution.

2. Preliminary issue

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the followings. The application specified the provisions of section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) that they were contrary to or inconsistent with section 276 of the Constitution. Those sections were the provisions of law which the Court shall apply to the case. The application fell within section 264 paragraph one of the Constitution. The Constitutional Court therefore could accept the application for consideration.

3. The issue considered by the Constitutional Court

Were section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contrary to or inconsistent with section 276 of the Constitution?

4. Ruling of the Constitutional Court

The Constitutional Court was of the opinion that the aforesaid issue was already determined by the Constitutional Court Ruling No. 1-24/2547 dated 8th January, B.E. 2547 (2004). There was no any other reason for such ruling to be overruled by this case. The Constitutional Court therefore held that section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) were neither contrary to nor inconsistent with section 276 of the Constitution.
