

# Summary of Constitutional Court Ruling No. 11/2549

Dated 23<sup>rd</sup> May B.E. 2549 (2006)\*

**Re: The President of the National Assembly requested for a Constitutional Court ruling under section 262 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in the case of whether or not section 20 of the Highway Bill (No. ..) B.E. .... which provided for the addition of section 46/1 was contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).**

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## 1. Summary of Background and Facts

The President of the National Assembly referred the opinion of members of the House of Representatives and senators to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The facts could be summarized as follows.

95 members of the House of Representatives and 79 senators constituting a total of 174 members of the National Assembly were of the opinion that section 20 of the Highway Bill (No. ..) B.E. ...., which provided for the addition of section 46/1 wherein paragraph one stated that “no person shall assemble in the highway zone in a manner which obstructs traffic or may pose a danger or cause injury to vehicles or highway users, except where written permission of the Director of Highways or a person delegated by the Director of Highways is obtained, or the assembly is constituted as a column, procession or traditional or cultural assembly, or a public benefit activity or situated within an area exempt from permission filings as prescribed by notification of the Minister,” and paragraph two stated that “applications for permission and the grant of permissions shall be in accordance with the rules and procedures prescribed by Ministerial Regulation,” contained provisions which were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) due to their discriminatory character and non-general application. It was contended that the provisions were specifically directed at assemblies, and therefore constituted a clear restriction of the right and liberty to assemble, which was inconsistent with the spirits of the Constitution.

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## **2. Preliminary Issue**

The preliminary issue which had to be considered by the Constitutional Court was whether or not the application referred by the President of the National Assembly to the Constitutional Court for ruling on whether or not section 20 of the Highway Bill (No. ..) B.E. .... contained provisions which were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was made in accordance with section 262 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. The Highway Bill (No. ..) B.E. .... was a bill of law that had already been approved by the National Assembly pursuant to section 176 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Prior to the Prime Minister's presentation of such bill to the King for Royal Assent under section 93, the President of the National Assembly made a referral of the opinion of 95 members of the House of Representatives and 79 senators, altogether 174 members constituting not fewer than one-tenth of the existing members of both houses of the National Assembly. With respect to the submission of an opinion by such members of the House of Representatives and Senators to the President of the National Assembly, and the President of the National Assembly's referral of such opinion to the Constitutional Court for ruling, such case was in accordance with the provisions of section 262 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Constitutional Court therefore had the power to admit this application for ruling.

## **3. Issues Considered by the Constitutional Court**

The issues considered by the Constitutional Court were whether or not section 20 of the Highway Bill (No. ..) B.E. ...., which added section 46/1, contained provisions which were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 20 of the Highway Bill (No. ..) B.E. .... provided that "the following shall be added as section 46/1 of the Highway Act B.E. 2535 (1992)", wherein section 46/1 paragraph one stated that "no person shall assemble in the highway zone in a manner which obstructs traffic or may pose a danger or cause injury to vehicles or highway users, except where written permission of the Director of Highways or a person delegated by the Director of Highways is obtained, or the assembly is constituted as a column, procession or traditional or cultural assembly, or a public benefit activity or situated within an area exempt from permission filings as prescribed by notification of the Minister," and paragraph two stated that "applications for permission and the grant of permissions shall be in accordance with the rules and procedures prescribed by Ministerial Regulation." Such provisions were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) because it more than

necessarily restricted the liberty to assemble peacefully and without arms, and affected the essential substance of the fundamental liberty of the people as provided under section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

Once it was held that section 20 of the Highway Bill (No. ..) B.E. .... which added section 46/1 lapsed, it was held further that the provisions of section 30 of the Highway Bill (No. ..) B.E. .... which added a penal provision in section 73/1 of the Highway Act B.E. 2535 (1992), only with respect to the text stating “section 46/1”, which was connected to section 20, also lapsed.

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

The Constitutional Court held that section 20 of the Highway Bill (No. ..) B.E. ...., which added section 46/1, was contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and therefore lapsed. Furthermore, it was held that the provision in section 30 which added a penal provision in section 73/1, only with respect to the text stating “section 46/1”, which was connected to section 20 providing for the addition of section 46/1, also lapsed.

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