

Summary of Constitutional Court Ruling No. 14/2551

Dated 29th September B.E. 2551 (2008)*

Re: Senators submitted an opinion in request of a Constitutional Court ruling under section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) on whether or not the increase in expenditure budget for the fiscal year B.E. 2552 (2009) contained a violation of section 168 paragraph six of the Constitution.

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1. Summary of background and facts

The President of the Senate referred an application consisting of the opinion of 30 senators (applicant) under section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) requesting for a Constitutional Court ruling that the motion to increase in expenditure budget for the fiscal year B.E. 2552 (2009) contained a violation of section 168 paragraph six of the Constitution and that the motion or violating act should be voided. The facts in such application, a total of 5 clauses, could be summarized as follows.

Clause 1. In the second reading of the Bill on Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009), there was a budget cut in the amount of 45,009,585,700 baht. Such amount was, however, later added back by a resolution of the Council of Ministers, who was the spender of the budget and also had the capacity of members of the House of Representatives. As such, the Council of Ministers was therefore prohibited from submitting a motion or performing any other act that would result in or confer an interest, directly or indirectly, in the expenditure of the budget. Those acts were therefore inconsistent with section 168 paragraph five and paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Clause 2. The Minister of Finance, Mr. Surapong Suebwonglee, was prosecuted in a criminal case at the Supreme Court Criminal Division for Political Position Holders by the Scrutinizing Committee in connection with the issue of special 3-digit and 2-digit lotteries, and the Supreme Court Criminal Division for Political Position Holders had already admitted the case for trial. Such person's continued performance of duties as Chairman of the Extraordinary Committee for the Bill on Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009) was therefore inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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Clause 3. The introduction of a Bill on Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009) without supporting documents as required under section 167 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), especially with regard to the part where increases were made without details, was inconsistent with the Constitution.

Clause 4. The preparation of a central expenditure budget was inconsistent with section 167 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Clause 5. The preparation of the Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009) did not appear to have any working plan or any project with the objective of administering the state in accordance with the fundamental policies of the state under section 75 and section 76 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The budget was therefore unconstitutional.

For the benefit of this trial, the Constitutional Court summoned the applicant and a related person, namely a representative of the Budget Bureau, for statements and submissions of supporting documents.

2. Preliminary issue

The Constitutional Court examined the application and held that the number of senators who had joined in the submission of the opinion was not less than one-tenth of the total number of existing senators. The submission was therefore made in accordance with the criterion under section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As for the issue raised in the application, the Constitutional Court found that clause 1 which asserted the commission of an act in violation of section 168 paragraph five of the Constitution and clause 2 to clause 5 were not causes within the adjudicative jurisdiction of the Constitutional Court under section 168 paragraph seven of the Constitution.

The only remaining issue was clause 1 only with respect to the assertion of a violation of section 168 paragraph six of the Constitution that was in accordance with the criterion under section 168 paragraph seven of the Constitution. An order was therefore issued to admit this application for consideration only with respect to the assertion in clause 1 of a violation of section 168 paragraph six of the Constitution.

3. Issue considered by the Constitutional Court

The Constitutional Court determined that the issue which had to be ruled upon was whether or not the increase in annual expenditure budget for the fiscal year B.E. 2552 (2009) contained a violation of section 168 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court made the following findings. In the process of preparing and approval of the expenditure budget under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and law on budgetary procedure, the executive (Council of Ministers) was given the authority to carry out the preparation of the expenditure budget since it was the collector of taxes and other revenues for use in the administration of the state. The legislature (National Assembly), on the other hand, had the power of approving the expenditure budget proposed by the Council of Ministers. Once the Council of Ministers approved of the annual expenditure budget amount, policies were assigned to ministries and state agencies to determine strategies and targets which were consistent with the strategies for making appropriations to the annual expenditure budget. Those agencies had to prepare a budget request which was then proposed to the Minister for approval before submitting to the Budget Bureau for the preparation of an annual expenditure budget proposal for introduction to the Council of Ministers. Upon approval by the Council of Ministers, the Budget Bureau proceeded to prepare a Bill on Annual Expenditure Budget for re-approval by the Council of Ministers before introduction to the House of Representatives for consideration in three readings. The first reading was the principle approval stage. Upon approval of the principle, the House of Representatives appointed an extraordinary committee to consider the Annual Expenditure Budget in the second reading. Such committee had the power of considering in detail and making cuts to the budgets of ministries and state agencies in various items. After the reduction of a certain amount, the Council of Ministers then sought to request for an increase of expenditure budget by assigning rules and conditions for expenditure budget increases to the ministries or state agencies in order to prepare an additional expenditure budget increase request. The request was then submitted to the Budget Bureau for compilation of a proposal for the approval of the Council of Ministers prior to submission to the Extraordinary Committee of the House of Representatives for consideration. Upon completion of consideration by the Extraordinary Committee of the House of Representatives, a report together with the Annual Expenditure Budget Bill approved by the Extraordinary Committee of the House of Representatives then submitted to the House of Representatives for a section-by-section debate in the second reading. The Bill then voted for approval in the third reading before further introduction to the Senate.

The facts in the application and supporting documents, including the statements of the applicant and related person (representative of the Budget Bureau) submitted to the Constitutional Court, stated that the Council of Ministers proposed an Annual Expenditure Budget Bill for the Fiscal Year B.E. 2552 (2009) with a prescribed budget amount of 1,835,000,000,000 baht. The House of Representatives gave its approval in principle in the first reading and appointed an Extraordinary Committee for the Bill on Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009) consisting of 63 members. The Budget Bureau sent letters notifying government agencies, state agencies and state enterprises which still required expenditure budgets to prepare expenditure budget increase requests only with respect to items which were genuinely urgent and consistent with key policies of the government under the guidelines and rules for request of annual expenditure budget increase for the fiscal year B.E. 2552 (2009) that had already been approved by the Council of Ministers.

Government agencies, state agencies and state enterprises sent the additional expenditure budget request approved by the responsible Minister to the Budget Bureau for consolidation and analysis. A summary report was then submitted to the Council of Ministers for approval. The Council of Ministers approved of the items and amounts proposed by the Budget Bureau, a total of 118,749,100,000 baht, without making changes to any item and assigned the Budget Bureau to make a submission to the Extraordinary Committee for consideration. Under the rules of the Extraordinary Committee for consideration of the additional expenditure budget increase, regard must be had to the suitability and consistency with the national administration plan and Ministerial plan that had been prepared and the opinion of the Budget Bureau in relation to the prioritization of items which gave first priority to obligations that had already been committed under the law by the government. The Extraordinary Committee approved the increase in Expenditure Budget requested by the Budget Bureau in the amount of 45,009,585,700 baht, which was equivalent to the amount reduced by the Extraordinary Committee in the Bill on Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009), and also gave its approval to the Bill on Expenditure Budget, setting the total Annual Expenditure Budget at 1,835,000,000,000 baht for further consideration in the second and third readings of the House of Representatives.

It could be seen that the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided on the Council of Ministers stating that the Prime Minister had to be a member of the House of Representatives and that Ministers could be appointed from members of the House of Representatives to form the Council of Ministers. The Constitution did not provide for the appointed member of the House of Representatives to cease membership due to his/her being a Prime Minister or Minister. A Minister appointed from members of the House of Representatives therefore also had the individually specific status of member of the House of Representatives, provided that in a sitting of the House of Representatives, a member of the House of Representatives who was also concurrently a Minister could not vote on matters relating to the holding of office, performance of functions or interests in such matters under section 177 paragraph two of the Constitution. Since the Council of Ministers had the power to introduce a Bill on Annual Expenditure Budget as well as to propose an increase in Expenditure Budget during the deliberations of the Extraordinary Committee, the proposal of such matter constituted an act by the Council of Ministers, which was an executive body with the authority of making decisions in the form of a resolution of the Council of Ministers. The decision of a Minister in the Council of Ministers was not made in the capacity of a member of the House of Representatives. Moreover, facts indicated that the Council of Minister's request for increase in Expenditure Budget that was prepared by government agencies, state agencies and state enterprises in the amount of 118,749,100,000 baht and the consideration of the Extraordinary Committee which made a cut of 45,009,585,700 baht had already been carried out in accordance with the process for preparing and approving the budget as stated above. As for the facts given in the applicant's statement to the Constitutional Court that the additional budget was a motion for the benefit of members of the House of Representatives, there was no evidence to indicate that the increase was proposed for the benefit of members of the House of Representatives in any area or party-list

members of the House of Representatives in any regional constituency, and that a member of the House of Representatives or Extraordinary Committee member involved in such additional expenditure budget in any manner, directly or indirectly. A finding therefore could not be made that there was an involvement of any member of the House of Representatives, senator or committee member in the expenditure of such requested increase, whether directly or indirectly, that would constitute a violation of the provisions of section 168 paragraph six of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that the increase in Annual Expenditure Budget for the Fiscal Year B.E. 2552 (2009) did not appear to have any proposal, motion or acts that would constitute a violation of section 168 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
