

# Summary of Constitutional Court Ruling No. 16/2551

**Dated 6<sup>th</sup> November B.E. 2551 (2008)\***

**Re: The President of the National Legislative Assembly referred the opinion of members of the National Legislative Assembly requesting a Constitutional Court ruling on whether or not the Government Lottery Office Bill (No. ..) B.E. .... had been duly enacted in accordance with the provisions of the Constitution, and whether or not it contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

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## **1. Summary of background and facts**

The President of the National Legislative Assembly referred the opinion of Squadron Leader Prasong Soonsiri and others, a total of 30 members as the applicants, to the Constitutional Court. The facts could be summarized as follows.

1. The applicants submitted an opinion to the President of the National Legislative Assembly that the Government Lottery Office Bill (No. ..) B.E. .... had not been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and contained provisions which were contrary to or inconsistent with the Constitution. It was requested that such opinion be referred to the Constitutional Court for further ruling. The opinion could be summarized as follows.

1.1 The bill had not been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) since this bill was a money bill in relation to which a member of the National Legislative Assembly was prohibited from introducing except with the endorsement of the Prime Minister. From the initial period of the introduction of this bill, the government, by the Prime Minister, had already expressed the opinion that this bill was a money bill. Thus, a letter was sent to the President of the National Legislative Assembly to challenge the introduction of such bill. Thereafter, it appeared that certain members of the National Legislative Assembly met with the Prime Minister, which was followed by a letter from the government, by the Prime Minister, withdrawing the challenge. Nonetheless, since such bill was a money bill, members of the National Legislative Assembly were prohibited from introducing the bill to the National

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Legislative Assembly except where it was first sent to the Prime Minister for consideration and endorsement. It did not appear, however, that such bill was sent to the Prime Minister for endorsement. The withdrawal of the challenge letter therefore did not have the legal effect of an endorsement by the Prime Minister. Thus, the bill was prohibited from introduction and consideration by the National Legislative Assembly.

Furthermore, in the committee stage, there were debates and amendments to the bill which added to the characteristics of a money bill with even greater clarity. Hence, proper proceedings under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had to be carried out, i.e. endorsement by the Prime Minister. However, it appeared that this process was expedited in order to avoid due proceedings under the Constitution. Therefore, the National Legislative Assembly's consideration and approval of such bill, which was a money bill, in such manner was wrongful under the provisions of the Constitution.

1.2 The Government Lottery Office Bill (No. ...) B.E. .... was inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007), viz.:

(1) This government had declared its policies to the National Assembly that it would uphold merits, virtue and ethics, as well as uphold the King's principle of sufficiency economy in the administration of the state. The government was under a duty to enact laws in accordance with the policies declared under section 75 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). This bill, however, was inconsistent with the government's policies that were applicable under section 75 of the Constitution.

(2) Section 78(1) of the Constitution provided that the state should carry out activities according to the guidelines in the state administration policies in order to develop the national society, economy and security in a sustainable manner. Implementation of the sufficiency economy philosophy should be promoted and essential regard should be given to the overall national interests. This bill, however, would result in the degradation of the national society, economy and security, causing the people to become obsessed and addicted to sins, which was inconsistent with the sufficiency economy philosophy and also damaging to the overall national interests.

(3) Section 79 of the Constitution provided that the state should patronize and protect Buddhism, as well as encourage the application of religious principles to create virtue and develop quality of life. This bill, however, would result in the state becoming a broker of lotteries and exploiter of benefits from the obsession or delusion of the people, hallucinating the people and corrupting their morals as well as devastating the people's qualities of lives throughout the country.

(4) Section 83 of the Constitution provided for the state to promote and support activities carried out in accordance with the sufficiency economy philosophy. However, by becoming the broker of overground lottery under this bill, the state would obliterate the sufficiency economy principle at its core due to the encouragement and promotion of the people's hallucination, obsession and addiction to sins without regard to sufficiency, reasonability and adequateness.

(5) Section 84(2) of the Constitution provided for the encouragement of the application of merits and ethics in the operation of businesses. In other words, the carrying out of professions which upheld merits, morals and ethics was promoted. This bill, however, would result in the state becoming a broker of lotteries, encouraging and creating delusions for the people to risk lotteries, which were devastations of merits, morals and ethics.

(6) Section 87 of the Constitution provided that the state should enable public participation in various activities. However, the government, through a state agency, violated the Constitution, connived, allowed and borrowed the efforts of certain members of the National Legislative Assembly to introduce this bill instead of the government making the introduction. There were overlapping interests as reported in the news that the Government Lottery Office paid remuneration in the form of research fees to persons close to certain members who introduced this bill. These actions represented the intent to avert public participation in the expression of opinions on activities that would affect the people of the entire nation.

(7) This bill constituted a fraud on state funds and an evasion of the expenditure of state funds by giving an unfettered discretion. This was inconsistent with general principles of law and the Constitution of the Kingdom of Thailand B.E. 2550 (2007) since all revenues of the state had to be remitted to the Ministry of Finance, and the Constitution provided that any disbursements of state funds had to be in accordance with a budget law that had been considered annually or on an ad hoc basis by the National Assembly. This bill, however, provided for the direct disbursement of state revenues without remission to the Ministry of Finance, being an evasion of compliance with the Constitution and law on budgetary procedures, allowing unfettered discretion in the expenditure of state funds without the enactment of a budget law. This bill also constituted an evasion from the National Assembly's consideration and approval of such expenditures under the Constitution, thus it was inconsistent with the Constitution by being a deception to fraudulently acquire state funds.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for a ruling under section 154 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

This case was pending trial in the Constitutional Court pursuant to section 300 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) which provided for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) to become the Constitutional Court, and paragraph four which provided that upon the appointment of Constitutional Court judges under this Constitution, all cases or matters pending proceedings would be transferred to the powers and duties of the newly appointed Constitutional Court.

Section 154 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that “after any bill has been approved by the National Assembly under section 150 or has been reaffirmed by the National Assembly under section 151, before the Prime Minister presents it to the King for signature: (1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof...” and section 293 paragraph one provided that “the National Legislative Assembly under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) shall act as the National Assembly, House of Representatives and Senate until the first meeting of the National Assembly under section 127.”

After consideration it was found that the applicants comprised a total of 30 members of the House of Representatives, which was not fewer than one-tenth of the existing members of the National Legislative Assembly (there were 250 members of the National Legislative Assembly at that time) who had entered their names in an opinion that the Government Lottery Office Bill (No. ..) B.E. .... had not been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and contained provisions contrary to or inconsistent with the Constitution. This case was therefore in accordance with section 154 paragraph one subparagraph (1) of the Constitution. Upon the President of the National Assembly’s referral of the application to the Constitutional Court for a ruling, the Constitutional Court had the power to admit the application for a ruling under section 154 paragraph one subparagraph (1) of the Constitution. The relevant persons, i.e. the President of the National Legislative Assembly, Prime Minister, Minister of Finance and Secretary-General of the Senate were directed to state their opinions, the submissions of which had already been made to the Constitutional Court.

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

The Constitutional Court determined that the following issues had to be ruled upon: (1) whether or not the Government Lottery Office Bill (No. ..) B.E. .... had been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007); and (2) whether or not the Government Lottery Office Bill (No. ..) B.E. .... contained provisions which were contrary to or inconsistent with the Constitution and whether or not it lapsed under section 154 paragraph three of the Constitution.

**On the first issue** of whether or not the Government Lottery Office Bill (No. ..) B.E. .... had been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court made the following findings.

Section 126 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that a sitting of the House of Representatives and Senate had to be attended by not less than one-half of the existing members of each House to constitute a quorum, except in the case of an agenda on questions under section 156 and section 157 which the House of Representatives or Senate could prescribe a different quorum.

Clause 18 of the Rules of Procedure of the National Legislative Assembly B.E. 2549 (2006) provided “a member shall register in the attendance book prior to every sitting and upon the opening signal, the member shall be seated in the provided place. Upon the registration of attendance of not less than one-half of the total number of members, a quorum is constituted. When the Chair takes his/her bench, all persons in the sitting shall remain standing until the Chair is seated.”

The Constitutional Court made the following findings. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Constitutional Court to have roles and powers in the safeguard of the people’s rights and liberties through the constitutional review of laws pursuant to the principles of pre-promulgation scrutiny of laws in section 141 and section 154, which constituted reviews of organic bills and other bills approved by the National Assembly to determine whether or not they had been duly enacted in accordance with the provisions of the Constitution and whether or not they contained provisions which were contrary to or inconsistent with the Constitution, as well as the post-promulgation scrutiny of laws under section 211, section 212, section 245 and section 257 of the Constitution, which provided for the court to try cases submitted by a person’s right or liberty had been violated, the ombudsman and the National Human Rights Commission to the Constitutional Court for a ruling on whether or not provisions of enacted laws contained provisions contrary to or inconsistent with the Constitution without raising constitutionality issues in the enactment process of such laws for review by the Constitutional Court.

The submission of a petition to the Constitutional Court for constitutionality review of other bills which were not organic bills prior to promulgation as law were made pursuant to the provisions of section 154 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In other words, prior to presentation of a bill to the King for Royal Assent, if members of the House of Representatives or senators or members of both Houses altogether forming the number stated by the Constitution, or the Prime Minister, found that a bill contained provisions which were contrary to or inconsistent with the Constitution, or had not been duly enacted in accordance with the provisions of the Constitution, the President of the House receiving such opinion, or the Prime Minister, should refer such opinion to the Constitutional Court for a ruling.

Such provisions provided for the Constitutional Court to carry out a constitutional review of the bill, on both the issue of whether or not the bill had been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) as the first issue, and also whether or not such bill contained provisions which were contrary to or inconsistent with the Constitution as the second issue. If the Constitutional Court ruled that such bill contained provisions which were contrary to or inconsistent with

the Constitution and such provisions constituted the essential substance of the bill, or the bill had not been duly enacted in accordance with the provisions of this Constitution, such bill would lapse under section 154 paragraph three.

**On the second issue** of whether or not the Government Lottery Office Bill (No. ...) B.E. .... had been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), a preliminary issue had to be decided on whether or not the votes of the National Legislative Assembly and the quorum of the National Legislative Assembly had been properly constituted under section 126 paragraph one in conjunction with section 293 of the Constitution.

The essential substance of section 126 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the determination of the number of members of the House that would be sufficient for the collective expression of opinions and expression of intent in the form of a meeting resolution in the consideration of bills and the performance of other functions in accordance with the provisions of the Constitution. Such rules of parliamentary procedures were commonly applied in various countries and the various Constitutions of the Kingdom of Thailand that were applied throughout this time all contained provisions on the quorum of sittings of the House of Representatives and Senate where the number of members required to constitute a quorum was provided in the Constitution. The prescription of the number of members of the House of Representatives and senators required to constitute a quorum in every Constitution was made so that sittings to consider matters in the House proceeded with prudence and be widely debated upon. This was especially the case in the performance of legislative functions by members of the House of Representatives and senators. Once a law was approved by the National Assembly, after Royal Assent by the King and publication in the Government Gazette, would be applicable on all persons in the country and needed to be considered carefully in all readings. As the Constitution provided a quorum of not fewer than one-half of the existing members of each House, the implication was that a sitting of the House of Representatives and Senate attended by members in a number deficient of the quorum would not be deemed as the exercise of legislative powers by the House of Representatives and Senate. Also, if votes were made in a sitting of the House of Representatives and Senate attended by members deficient of a quorum, the votes would not be deemed as duly made by members of the House of Representatives and senators under the provisions of the Constitution.

As for the Government Lottery Office Bill (No. ...) B.E. ...., section 293 paragraph one of the Constitution provided for the National Legislative Assembly under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) to assume the duties of the National Assembly, House of Representatives and Senate under the provisions of this Constitution until the first sitting of National Assembly. In the consideration of this bill, the National Legislative Assembly was therefore an organ exercising legislative powers on behalf of the House of Representatives and the Senate. Votes of the National Legislative Assembly therefore also had to be made in a properly constituted quorum in order to be deemed as votes duly made in accordance with the provisions of the Constitution.

Clause 18 paragraph two of the Rules of Procedure of the National Legislative Assembly B.E. 2549 (2006) which provided that “a quorum is constituted upon the registration of not less than one-half of the total number of members”, was only a provision relating to the opening of a sitting, i.e. a sitting of the National Legislative Assembly could proceed upon the registration of not less than one-half of the total number of existing members of the National Legislative Assembly. However, subsequent to the opening of the sitting, in the voting stage on any agenda which was a result of consultations in the sitting of the National Legislative Assembly, the quorum should be in accordance with section 126 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In other words, the sitting must be attended by not less than one-half of the existing members of the National Legislative Assembly at that time since a quorum did not mean merely that once the requisite members were registered the members were thereafter at liberty to remain in or leave the sitting. If that was the case, the result would be that subsequent to the opening of a sitting, even though only few members were present, a resolution could be passed by a majority vote, which was contrary to the intentions of the Constitution. And if the number of registered members was held to be the quorum of the parliamentary sitting until the conclusion of every such sitting, the events that had occurred in the House of Representatives and Senate in the past, as well as in this National Legislative Assembly, would not have happened, i.e. where a quorum count was requested by a member suspecting a deficiency of quorum during the sitting, and when it appeared that a quorum was deficient, the chairman would adjourn the sitting or postpone the sitting to a later date.

Once the facts were finally found according to the voting records of members of the National Legislative Assembly sent by the Secretary-General of the Senate together with a statement submitted to the Constitutional Court stating that in the sitting of the National Legislative Assembly No. 57/2550 on Wednesday, 10<sup>th</sup> October B.E. 2550 (2007), at 17.24 hours, which was the time of voting in the National Legislative Assembly in the first reading to approve the principle of the Government Lottery Office Bill (No. ..) B.E. ...., introduced by Mr. Sangsit Piriyaangsan and others, there were 155 members present at the sitting, which was sufficient for a quorum. Thereafter, in sitting of the National Legislative Assembly No. 61/2550 on Wednesday 31<sup>st</sup> October B.E. 2550 (2007) at 19.37 hours, which was the time of voting in the National Legislative Assembly in the first reading to approve the principle of the Government Lottery Office Bill (No. ..) B.E. ...., which was introduced by Mr. Wiriya Namsiripongpan and others, there were only 49 members present at the sitting, falling short of one-half of the total number of existing members of the National Legislative Assembly at that time, i.e. short of 125 members. Thus, a quorum was not constituted. However, the facts appeared that the National Legislative Assembly referred the bill introduced by Mr. Wiriya Namsiripongpan to the extraordinary committee that had already been appointed by the National Legislative Assembly, tasked with the consideration of the bill introduced by Mr. Sangsit Piriyaangsan, in order to consolidate both bills into one. Upon completion of consideration of the Government Lottery Office Bill (No. ..) B.E. .... introduced by Mr. Sangsit Piriyaangsan and Mr. Wiriya Namsiripongpan, the bill was submitted to the National Legislative Assembly in a special sitting number 67/2550 on

Wednesday, 28<sup>th</sup> November B.E. 2550 (2007). It appeared from votes in the second reading that during the debates on section 3, there were only 92 members present, while during the debates on section 4 there were only 93 members present, deficient of one-half of the total number of existing members of the National Legislative Assembly at that time, i.e. short of 121 members. A quorum was therefore not constituted. As for voting in the third reading at 12.07 hours, there were only 112 members present at the sitting, deficient of one-half of the total number of existing members of the National Legislative Assembly at that time, i.e. short of 121 members. A quorum was again not constituted and the votes made by the deficient quorum were votes of the National Legislative Assembly could not be deemed as made in accordance with section 126 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Thus, the enactment of the Government Lottery Office Bill (No. ..) B.E. .... was deemed as not being duly carried out in accordance with the provisions of the Constitution, resulting in the lapse of such bill under section 154 paragraph three of the Constitution, which provided that if the Constitutional Court ruled that a bill had not been duly enacted in accordance with the provisions of this Constitution, such bill would lapse. Upon ruling that the Government Lottery Office Bill (No. ..) B.E. .... lapsed under section 154 paragraph three of the Constitution, a ruling was therefore not required for other applications since the outcome of the ruling would remain unchanged.

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

By virtue of the foregoing reasons, the Constitutional Court held that the Government Lottery Office Bill B.E. (No. ..) B.E. .... was not duly enacted in accordance with the provisions of the Constitutional Court and therefore lapsed under section 154 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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