

# Summary of Constitutional Court Ruling No. 4-5/2552

Dated 18<sup>th</sup> March B.E. 2552 (2009)\*

**Re: The Civil Court referred the objection of defendants (Mr. Poowadol Songprasert, the first defendant, ASTV (Thailand) Company Limited, the second defendant, Thai Day Dotcom Company Limited, the third defendant) in Civil Case No. 4093/2551 to the Constitutional Court for a ruling on whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

**Re: The Civil Court referred the objection of defendants (Major General Chamlong Srimuang, the first defendant and others comprising 6 persons) in Civil Case No. 4396/2551 to the Constitutional Court for a ruling on whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

.....

## 1. Summary of background and facts

The Office of the Judiciary referred the application of Mr. Poowadol Songprasert and others comprising 3 persons and the application of Major General Chamlong Srimuang and others comprising 6 persons to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), comprising a total of 2 applications. The facts under the applications and documents in support of each application could be summarized as follows.

1. The facts in the application of Civil Case No. 4093/2551 between Police Lieutenant Colonel Thaksin Shinawatra, as plaintiff, and Mr. Poowadol Songprasert and others comprising 3 persons, as defendants (the applicants), could be summarized as follows. On 25 May B.E. 2551 (2008), the People's Alliance for Democracy organized an assembly in the area of the Democracy Monument, Bangkok Metropolis, and closed off

---

\* Published in the Government Gazette Vol. 126, Part 58a, dated 24<sup>th</sup> August B.E. 2552 (2009)

traffic in public ways in that vicinity. A stage was set and speakers took turns in addressing the crowd present by means of sound amplifiers, attacking the government and making defamatory comments on the plaintiff, who was a citizen, and not a holder of a political office. The gathering was moved to the area of Makkhawan Rangsan Bridge, Ratchadamnoen Nok Road, Bangkok Metropolis, and thereafter moved to the area adjacent to the Government House, Phitsanulok Road, Bangkok Metropolis. Most recently, on the date of the plaintiff's filing of this case, such group of people had returned to gather in the area of the Makkhawan Rangsan Bridge, after an interim injunction was issued by the Civil Court ordering such group of persons to open traffic ways and refrain from using sound amplifiers during the prescribed times. The second and third defendants arranged for advertisements through live broadcasts of the speeches delivered from such stage by means of the ASTV News One Satellite Television Station, through the Manager Online internet website, ASTV Dotcom website and ASTV Radio Station, in order to keep the public informed at all times. The gathering and speeches on such stage carried on continuously up to the date of filing this action. The first defendant was one of the speakers who took the stage to make defamatory remarks causing detriment to the plaintiff, i.e. stating or disseminating news containing false statements which caused damage to the plaintiff's reputation or honour as well as to his work prospects or advancement, resulting in the plaintiff suffering from hatred by the general public. The first defendant made defamatory statements on the plaintiff on different occasions. The acts of the second and third defendants were therefore apparent intentional tortuous acts committed on the plaintiff in collaboration with the first defendant.

The plaintiff thus requested for a Court order to prohibit all three defendants from committing the tortuous act on the plaintiff by restraining the first defendant from the use of the plaintiff's name or other words that would induce the people's understanding that a reference was made to the plaintiff in a detrimental way until the case was final, and to prohibit the second and third defendant from continuing the broadcast of pictures and sounds or advertisements by any other means of the first defendant's speeches in both the gathering and speeches in other places through ASTV Satellite Television Station, all internet websites and all radio broadcasting frequencies operated by the second and third defendant. The injunction was sought to relieve the plaintiff's distress and damage that could be suffered by the plaintiff as a consequence of the acts committed by the three defendants, as well as damage that could be affected upon the society and the nation, until the case was final or ordered otherwise by the Court. The plaintiff further sought compensatory damages from the tortuous acts of the three defendants pursuant to the above lawsuit in a total sum of 100,000,000 baht (one hundred million baht only), which amount the plaintiff deemed as the disputed sum in this legal action.

Mr. Nattasan Saengkaew, the plaintiff's attorney, filed a motion in the Civil Court seeking interlocutory relief pursuant to section 254(2) of the Civil Procedure Code. It was requested that the Court issue an order against the three defendants to refrain from repeating or continuing the tortuous acts, and a request for an emergency hearing was

also included in the motion for interlocutory relief. Mr. Suwat Apaipak, the defendants' attorney, filed a motion in the Civil Court requesting for a referral of the plaintiff's motion for interlocutory relief under section 254 of the Civil Procedure Code to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) prior to an order of the Court on this matter.

The Civil Court, after consideration, found that the plaintiff's application was in accordance with section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The application was therefore referred to the Constitutional Court for a ruling on whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

2. The facts in the application of Civil Case No. 4396/2551 between Mr. Surin Hiran and others comprising 6 persons, as plaintiffs, and Lieutenant General Chamlong Srimuang and others comprising 6 persons, as defendants (the applicants), could be summarized as follows.

On 7<sup>th</sup> July B.E. 2551 (2008), at nighttime, the six defendants as leaders or the key persons of the People's Alliance for Democracy and others against whom the plaintiff had not yet filed actions in this case relocated an assembly in the area of Rama V Bridge and Phitsanulok Road to the Ratchadamnoen Nok Road and sealed off Ratchadamnoen Nok Road from the Makkhawan Rangsang Bridge Junction to the Misakawan Junction, a public way in front of the Ministry of Education, and sealed off Luk Luang Road at the Ministry of Education's section from the Makkhawan Rangsang Bridge extending approximately 200 meters in length. A stage was set up and protests were made calling for the removal of the government of Mr. Samak Sundaravej from office. As a result, the Ministry of Education had to close the only entrance that was available to the six plaintiffs and other government officials, including the general public contacting the Ministry of Education on official business. The six plaintiffs, who were hired workers and government officials of the Ministry of Education, were aggrieved by the road closures which caused inconvenience to travel for the performance of their duties. Furthermore, the speeches delivered by the defendants that were broadcast on sound amplifiers interfered with the plaintiffs' performance of duties. The acts of the six defendants were therefore exercises of constitutional rights that were intended to cause detriment to the six plaintiffs, government officials and hired workers of the Ministry of Education, and the public contacting the Ministry of Education on official business, with respect to their physical well-being, sanitation, liberty, properties or any other rights. The six plaintiffs therefore had to file this case in the Court and requested for a Court order of interlocutory relief to direct the six defendants to open up traffic ways on Ratchadamnoen Road and Luk Luang Road, and to prohibit the use of sound amplifiers during the times of performances of work by the plaintiffs.

Mr. Suwat Apaipak, the defendants' attorney, filed a motion objecting the motion for an emergency hearing on the interlocutory relief. It was argued that the exercise of the right

and liberty to assemble peacefully and without arms of the six defendants and others did not constitute an intentional or negligent act on other persons that was unlawful and caused damage to the latter's life, body, sanitation, liberty, properties or any other rights. The acts were therefore not tortuous, but were instances on the exercise of constitutional rights, which was public law. In addition, the six plaintiffs exercised rights in bad faith. In other words, this case was an act of the People's Power Party which sought to disperse the assembly of the six defendants and others, and therefore entrusted Mr. Karom Poltaklang, an attorney who advocated the amendment of the Constitution and belonged to the same network as the Impoverished People's Caravan and the Thai Taxi Development Club. Allegations were once made that ASTV Station, Manager Newspaper and Thai Post violated the Constitution by obstructing traffic in the year B.E. 2549 (2006). Therefore, the motion for interlocutory relief submitted by the six plaintiffs to the Court pursuant to section 254 of the Civil Procedure Code, if accepted by the Court, would be inconsistent with section 27, section 29, section 45, section 63 and section 87(3) of the Constitution. It was thus requested that the Court refer the plaintiffs' motion for interlocutory relief to the Constitutional Court for a ruling prior to a Court order on this matter.

The Civil Court, after consideration, found that the six defendants had filed a motion stating that if the Court granted the emergency interlocutory relief, the six defendants' constitutional rights would be restricted. Such a motion therefore contained a cause for a referral of the six defendants' opinion to the Constitutional Court for a ruling. Upon a ruling of the Constitutional Court either way, a final resolution would thus be reached on whether or not this Court had the power to consider the emergency interlocutory relief motion submitted by the six plaintiffs. It was therefore deemed appropriate to refer the six defendants' motion to the Constitutional Court for a ruling.

## **2. Preliminary issue**

The Constitutional Court examined both applications and found that they were cases in accordance with section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The applications were therefore admitted for proceedings, and since in both applications the applicants objected that section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which were in the same cluster of sections, the Constitutional Court therefore issued an order on 2<sup>nd</sup> October B.E. 2551 (2008) to consolidate the two applications into one proceeding.

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

The issues in the applications which had to be considered were whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the

Kingdom of Thailand B.E. 2550 (2007).

On the issues of whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 27 and section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. Section 254 of the Civil Procedure Code was a provision relating to procedures for providing interlocutory relief to a plaintiff filing a motion in Court in request of an interlocutory relief prior to a judgment, subject to the conditions prescribed for the relief or mitigation of grievances or damage caused by the acts of a defendant in violation of the plaintiff's legal rights. In such an event, the plaintiff had exercised the right to file an action in Court with the intent of seeking the Court's protection of his/her rights and liberties which were violated, and if he/she were to wait for the conclusion of the trial proceedings extending over a substantial period of time, in the end, even if the plaintiff was successful in the action, the grievances and damages already caused might not be remediable. The interlocutory relief was therefore a necessary and appropriate legal measure which empowered the Court to prescribe any interlocutory relief as provided by law. Despite the restriction of certain rights and liberties of the defendant, the plaintiff was entitled to relief in the interest of debt enforcements or mitigation of grievances and damages of the plaintiff caused by the acts of the defendant. Also, when motioning the Court for interlocutory relief, the plaintiff had to show in the action that there was sufficient substance and cause for the application of interlocutory relief procedures in accordance with the rules set forth in section 255 of the Civil Procedure Code to the satisfaction of the Court. Moreover, section 228 of the Civil Procedure Code provided for the party's right to appeal against such order within one month as from the order date. In the event that a party found that a Court order was wrong, whether with respect to the exercise of discretion, an order exceeding the request stated in the final provisions of the suit, or even an order which violated provisions of the Constitution or other laws, such party had the right to file an appeal to the Court of Appeals or the Supreme Court, being court procedures for facilitating justice or safeguarding the rights and liberties of the people. Thus, section 254 of the Civil Procedure Code was neither contrary to nor inconsistent with the principle on the protection of the people's rights and liberties under the Constitution, and was not a provision which restricted the rights and liberties of the applicants in a way that affected the essential substances of the rights and liberties beyond necessity, being provisions of general applicability and not intended to apply to any particular case or person as provided under section 27 and section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

On the issue of whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 36, section 45 and section 63 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows.

Section 254 of the Civil Procedure Code was a provision relating to interlocutory relief prior to a judgment, empowering the Court to order the restraint of a defendant in a Civil Case from repeating an act or to continue an act that was an infringement or an act subject to proceedings, or issue any other order to mitigate the grievances or damages which

could be suffered by the plaintiff as a result of the defendant's acts. However, in the Court's consideration under this section, although the application was made by the plaintiff *ex parte*, the application remained subject to section 21(3) of the Civil Procedure Code. In other words, the Court had the power to hear the other party or other parties prior to giving an order on such matter. This was consistent with the principle of fair hearing, which was a guarantee of justice for the parties prior to the Court's determination of interlocutory relief. Furthermore, the Court's consideration in giving such an order amounted to an exercise of discretion in balancing the grievances or detriment suffered by the plaintiff as a result of the repeated or continued infringements or acts of the defendant subject to the proceedings, against the exercise of rights and liberties of the defendant that could be restricted by provisions of law. The Court order was merely a temporary safeguard for the rights and liberties of the plaintiff, and the restriction of rights and liberties were not affected absolutely. The applicants still enjoyed the liberty to communicate, express opinions and assemble peacefully without arms to the extent that the rights and liberties of others as recognized by the Constitution were not violated, and the acts were not inconsistent with the law. The Constitutional Court therefore found that section 254 of the Civil Procedure Code was neither contrary to nor inconsistent with section 36, section 45 and section 63 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

As for the issue of whether or not section 254 of the Civil Procedure Code was contrary to or inconsistent with section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. Section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was a provision relating to the directive principles of fundamental state policies with respect to public participation. The state was under a directive to promote and support public participation in the scrutiny of the exercise of state powers at all levels in the form of professional bodies or in accordance with the diversity of occupational branches or other forms. Such a provision was intended to promote and support public participation in the scrutiny of state powers, not being a provision which granted absolute rights to a person. Furthermore, the Court's application of section 254 of the Civil Procedure Code to the case did not pose any obstacle to the implementation of the directive principles of fundamental state policies, and the exercise of a persons rights under section 87(3) still remain unfettered. The Court merely had the power to apply interlocutory measures prior to a judgment to provide temporary safeguards the plaintiffs' rights in this case. The applicants could still enjoy benefits under section 87(3) of the Constitution to the extent that the plaintiffs' rights were not affected. Section 254 of the Civil Procedure Code was therefore neither contrary to nor inconsistent with section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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

The Constitutional Court held that section 254 of the Civil Procedure Code was neither contrary to nor inconsistent with section 27, section 29, section 36, section 45, section 63 and section 87(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).