

Summary of Constitutional Court Ruling No. 14/2552

Dated 3rd September B.E. 2552 (2009)*

Re: Members of the House of Representatives submitted an opinion under section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) to the Constitutional Court for a ruling on whether or not any act was committed during the consideration of the Bill on Annual Appropriations for the Fiscal Year B.E. 2553 (2010) which resulted in a direct or indirect involvement of a member of the House of Representatives, senator or committee member in the expenditure of budgetary appropriations as provided under section 168 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

Mr. Surapong Towijak-chaikul and members of the House of Representatives constituting 54 persons, submitted an application, in regard to which the facts in the application, documents in support of the application and vcd recording of debates could be summarized as follows. During the consideration of the Bill on Annual Appropriations for the Fiscal Year B.E. 2553 (2010), at the committee stage, cuts were made to the budgets of certain ministries, departments and state agencies, amounting to a total of 22,507,383,100 baht, and the said amount of budget cut was added to the annual appropriations without introduction to the House of Representatives for approval in principle. Such acts were deemed as wrongful for failing to comply with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In other words, there were no details on various projects showing clear approximations of receipts, supporting documents, objectives, activities and plans of each item as provided under section 167 and section 168 of the Constitution. In addition, as the Constitution allowed a period of up to 105 days for the consideration of the Annual Appropriations Bill, there was sufficient time for preparing details of the additional budgetary appropriations. Moreover, in the consideration of the Bill on Annual Appropriations for the Fiscal Year B.E. 2553 (2010), a prohibited act was committed by allowing a person with the authority to oversee the expenditure or to execute the expenditure of budgetary appropriations to become involved, directly or indirectly, in the expenditure of budgetary appropriations by a member of the House of Representatives, senator or committee member. Therefore, by virtue of section 168 paragraph seven of the

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Constitution, in conjunction with clause 17(9) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007), an opinion was submitted to the Constitutional Court for a ruling on whether or not the above acts constituted a violation of the provisions of section 168 paragraph six of the Constitution and thus resulting in the lapse of such acts.

2. Preliminary Issue

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for trial and adjudication under section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court found that the number of members of the House of Representatives who had entered their names in the submission of an opinion constituted not fewer than one-tenths of the total number of existing members of the House of Representatives. This case was in accordance with the rules provided in section 168 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Constitutional Court therefore admitted the application for a ruling on whether or not there was a violation of section 168 paragraph six of the Constitution. As for the issue of whether or not there was a failure to comply with section 167 paragraph one of the Constitution, the case was not within the adjudicative powers of the Constitutional Court under section 168 paragraph seven.

3. Issues considered by the Constitutional Court

The facts from the application, including the statements of the applicant and relevant persons, as well as the supporting evidence and documents could be stated as follows. The Council of Ministers introduced the Annual Appropriations Bill for the Fiscal Year B.E. 2553 (2010) in an amount of 1,700,000,000,000 baht. The House of Representatives passed a resolution approving in principle in its first reading and appointed an extraordinary committee to consider such Annual Appropriations Bill. The extraordinary committee reduced the appropriations amount by 22,505,238,100 baht. The Budget Bureau therefore sent letters to government agencies, state enterprises and other agencies which were still in need of budgetary appropriations, to submit a request for an increase of expenditure budget only with respect to genuinely urgent items that were consistent with important governmental policies in accordance with the guidelines and rules for applying for additional appropriations for the fiscal year B.E. 2553 (2010) as already approved by a resolution of the Council of Ministers. Government agencies, state enterprises and other agencies submitted requests for additional appropriations to the Budget Bureau for consolidation, analysis and summary submission to the Council of Ministers for approval. The Council of Ministers approved the items and amounts submitted by the Budget Bureau on two occasions in the sum of 88,975,330,000 baht, and assigned the Budget Bureau to make a submission to the committee for consideration. Even though the proposed appropriation exceeded the committee's resolution of appropriations reduction, the

proposal was made in order to provide alternatives to the committee in choosing the appropriate items to alleviate the grievances of the people pursuant to the important public policies of the government, and consistent with the prescribed strategies. Nonetheless, the increase should not exceed the reduced amount, and the outstanding sum should not exceed 1,700,000,000,000 baht, pursuant to the amount initially proposed by the Council of Ministers to the House of Representatives. These proceedings were made pursuant to the process for preparing and approving appropriations, as already mentioned above.

In this case, the applicant claimed that the Council of Minister's motion to increase budgetary appropriations was not accompanied by supporting documents showing clear details of plans and projects for each budgetary expenditure item, thus giving rise to a reasonable cause of suspicion of the committee's ability to undertaken consideration despite the absence of sufficient information. There was likelihood that consideration and votes of the committee were undertaken on account of an involvement in the expenditure of such additional appropriations. Such acts resulted in the committee members and members of the House of Representatives who voted in approval of the additional appropriations having a direct or indirect involvement in the expenditure of such appropriations. Nevertheless, the Constitutional Court found that such claims were only the anticipations and concerns of the applicant that such motion to increase appropriations could be a wrongdoing which allowed a member of the House of Representatives, senator or committee member to become involved in the expenditure of budgetary appropriations. The documents and evidence presented in this trial did not call for an inference of facts that an act was committed by any committee member or member of the House of Representatives which resulted in a committee member or member of the House of Representatives having an involvement in the expenditure of budgetary appropriations. Moreover, according to the statement of facts given by a representative of the applicant and representative of the Chairman of the Extraordinary Committee on the Annual Appropriations Bill for the Fiscal Year B.E. 2553 (2010), along with the documents submitted to the Constitutional Court, there was still no evidence of a proposal or approval of additional appropriations for the benefit of a member of the House of Representatives, senator or committee member in becoming involved in the expenditure of such budgetary appropriations, whether directly or indirectly. It could therefore not be established in this case that there was an act of any member of the House of Representatives, senator or committee member to become involved in the expenditure of the annual budgetary appropriations for the fiscal year B.E. 2553 (2010), whether directly or indirectly, that would constitute a violation of section 168 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

4. Ruling of the Constitutional Court

The Constitutional Court held that in the consideration of the Bill on Annual Appropriations for the Fiscal Year B.E. 2553 (2010) of the House of Representatives and committee, there was no act which constituted a violation of section 168 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).