

# Summary of Constitutional Court Ruling No. 17/2552

**Dated 11<sup>th</sup> November B.E. 2552 (2009)\***

**Re: The President of the National Assembly requested for a constitutional review by the Constitutional Court of the Organic Bill on Referendum B.E. .... under section 141 of 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 Assembly submitted the Organic Bill on Referendum B.E. .... that had been approved by the National Assembly to the Constitutional Court for a ruling on its constitutionality under section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The facts could be summarized as follows. At the sitting of the 23<sup>rd</sup> House of Representatives, Year 1, No. 2 (Extraordinary Session), on Thursday, 12<sup>th</sup> June B.E. 2551 (2008), a resolution was passed to approve in principle the Organic Bill on Referendum B.E. .... introduced by the Election Commission. Thereafter, in sitting of the 23<sup>rd</sup> House of Representatives, Year 1, No. 8 (Ordinary Legislative Session), on Thursday 28<sup>th</sup> August B.E. 2551 (2008), a resolution was passed to approve the Organic Bill on Referendum B.E. ...., and the Organic Bill was submitted to the Senate on 30<sup>th</sup> August B.E. 2551 (2008). The sitting of the Senate, No. 5 (Ordinary Legislative Session), on Friday 5<sup>th</sup> September B.E. 2551 (2008), passed a resolution to approve in principle the Organic Bill on Referendum B.E. .... that had been approved by the House of Representatives. Sitting of the Senate No. 12 (Ordinary Legislative Session), on Friday 28<sup>th</sup> November B.E. 2551 (2008) passed a resolution to amend the Organic Bill on Referendum B.E. ...., which was returned to the House of Representatives on 28<sup>th</sup> November B.E. 2551 (2008). The House of Representatives, however, did not concur with the amendments made by the Senate. A joint committee was thus appointed to consider the Organic Bill. Upon completion of the consideration by the joint committee, the Organic Bill was submitted to each House for approval. Sitting of the 23<sup>rd</sup> House of Representatives, Year 2, No. 11 (Ordinary Legislative Session), on Wednesday 23<sup>rd</sup> September B.E. 2552 (2009), passed a resolution to approve the Organic Bill on Referendum B.E. .... as proposed by the joint committee, and sitting of the Senate No. 9 (Ordinary Legislative Session), on Monday 28<sup>th</sup> September B.E. 2552 (2009) also passed a resolution to approve the Organic Bill as proposed by the joint committee. In this event, the Organic Bill on Referendum B.E. .... was deemed as having been approved

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by the National Assembly pursuant to section 140 paragraph two in conjunction with section 147 paragraph one subparagraph (3) of the Constitution. The President of the National Legislative Assembly therefore submitted the Organic Bill to the Constitutional Court for a ruling under section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

## **2. Preliminary Issue**

The preliminary issue was whether or not the Constitutional Court could admit this application of the President of the National Assembly for trial and adjudication.

After consideration, the Constitutional Court found as follows. Clause 20 paragraph two of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) provided that the President of the National Assembly should be the submitter of an application along with supporting documents in the case of a request for a constitutional review of an Organic Bill that had been approved by the National Assembly under section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As this application was submitted by the President of the National Assembly, an order was therefore given to admit the application for trial and adjudication as provided under section 141 of the Constitution and clause 17(5) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Letters were sent to the President of the National Assembly, the Prime Minister and the Chairman of the Election Commission in order to give notices that any additional statement or opinion should be submitted to the court in writing within seven days of the receipt of the letters.

The Prime Minister, President of the National Assembly and Chairman of the Election Commission gave statements which could be summarized as follows. The essential substances of this Organic Bill were in accordance with the framework provided under section 165 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Despite substances which affected the rights and liberties of the people on certain matters as recognized by the Constitution, such restriction of rights and liberties did not prejudice the essential substances of the rights and liberties of persons. Furthermore, the enactment of this Organic Bill had specified all the provisions of the Constitution which authorized the enactment of a law as provided under section 29 of the Constitution, and the substances as amended by the House of Representatives and the Senate did not alter the principles and practices under the original Organic Bill on Referendum as introduced by the Office of the Election Commission.

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

**The first issue** was whether or not the Organic Bill on Referendum B.E. .... had been duly enacted in accordance with the provisions of the Constitution.

The Constitutional Court considered the issue of whether or not the Organic Bill on Referendum B.E. .... was introduced by an authorized person under section 139 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007); whether or not in the introduction of this Organic Bill was accompanied by a memorandum of analysis of essential substances of the Organic Bill; whether or not this Organic Bill was a Money Bill which required the endorsement of the Prime Minister; whether or not this Organic Bill had proceeded in accordance with section 147 of the Constitution; whether or not the provisions of the Constitution authorizing the enactment of a law to restrict the rights and liberties of a person as provided under section 29 paragraph two of the Constitution had been specified; whether or not the consideration of this Organic Bill as undertaken by the House of Representatives and the Senate had been carried out in three readings and voting of resolutions were in accordance with section 140 of the Constitution; whether or not the members present at the sittings constituted a quorum as provided under section 126 paragraph one of the Constitution; and in the case of the Senate's amendments of the Organic Bill and submission of the amended Organic Bill to the House of Representatives, whether or not proceedings were in accordance with section 140 paragraph two in conjunction with section 147 paragraph one subparagraph (3) of the Constitution.

The Constitutional Court examined the facts under the application, supporting documents, statements of related persons, as well as the relevant evidence, and found that the Organic Bill on Referendum B.E. .... had already been duly enacted in accordance with the provisions of the Constitution.

**The second issue** was whether or not the Organic Bill on Referendum B.E. .... contained provisions that were contrary to or inconsistent with the Constitution.

The provisions of the Organic Bill on Referendum could be divided as follows:

Introduction, section 1 thru section 4, provided the name of the Act, effective date, definition of terms and the Minister having charge and control of the execution of this Organic Bill.

Chapter I General Provisions, section 5 thru section 9, provided the person having the authority to announce a referendum, the person under the duty to announcement date of referendum, referendum procedures and the determination of the number of votes required in a referendum.

Chapter II Provision of Information and Expressions of Opinions on the Matter of Referendum, section 10 thru section 11, provided for the designation of a responsible agency for providing sufficient information relating to the matter of referendum, a prescription that the Election Commission should disseminate the processes and stages of voting and expression of opinions on the matter of referendum.

Chapter III Voting Constituency and Voting Unit, section 12 thru section 14, provided for the determination of voting constituencies and provided that the Constituency

Voting Committee should be the determiner of the voting units and places of voting.

Chapter IV Eligible Voters and List of Eligible Voters, section 15 thru section 16, provided for the qualifications of an eligible voter and the persons responsible for preparing the list of eligible voters.

Chapter V Competent Officials of the Referendum, section 17 thru section 20, provided for the appointment of competent officials in the referendum and the powers and duties of the competent officials of the referendum.

Chapter VI Ballot Box and Ballot Paper, section 21, provided for the provision of a ballot box and ballot papers.

Chapter VII Voting and Vote-Counting, section 22 thru section 34, provided for voting procedures, voting period, the open and close of voting, vote-counting in cases deemed as spoilt ballot papers and reporting of voting results.

Chapter VIII Announcement of Voting Results, section 35, provided for the person authorized to announce voting results and procedures for the announcement of voting results.

Chapter IX Voting Objections, section 36 thru section 37, provided for the persons eligible to make voting objections and the persons authorized to decide on the voting objections.

Chapter X Offences and Penalties, section 38 thru section 45, provided for acts constituting offences, penalties and penal scales for violators of provisions in certain sections.

The Constitutional Court examined the substance of the provisions in the Organic Bill on Referendum B.E. .... in all 45 sections, including the preamble of such Organic Bill, and found that the provisions were consistent and there were no provision contrary to or inconsistent with the Constitution.

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

By virtue of the foregoing reasons, the Constitutional Court held that the Organic Bill on Referendum B.E. .... was consistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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