

Summary of Constitutional Court Ruling No. 20/2552

Dated 9th December B.E. 2552 (2009)*

Re: The Central Administrative Court referred the objection of the first to fourth defendants (New International School of Thailand and others) to the Constitutional Tribunal for a ruling on whether or not section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) (section 29, section 49 paragraph three and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)).

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1. Summary of background and facts

1. Master Napat Chotsorayut, by Miss Natanich Chotsorayut as the legal representative, filed a plaint against New International School of Thailand, the first defendant, Miss Panjai Jiranupab, the second defendant, Mr. Simon Leslie, the third defendant, Mr. Paul Hamlin, the fourth defendant, the Bureau for Administration of Private Education Promotion Commission, the fifth defendant, and the Director of the Bureau for Administration of Private Education Promotion Commission, the sixth defendant, in the Central Administrative Court. The first to fourth defendants submitted replies to the Central Administrative court stating that the first defendant's expulsion of the plaintiff from enrollment in the school was due to the plaintiff's behavior which violated the rules and regulations of the school over an extended period, constituting a threat to the physical, psychological, as well as the sexual welfare of other pupils. The first to fourth defendants asserted that they had acted lawfully without any infringement of clause 5 of the Rules of the Ministry of Education on Punishments of Pupils and Students B.E. 2548 (2005), and were of the further opinion that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003), which empowered the Minister of Education to issue Rules of the Ministry of Education on Punishment of Pupils and Students was contrary to or inconsistent with Thai governing conventions, constituting a restriction of the liberties of a person in academics, education and training, and instructions as provided under section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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2. The first to fourth defendants subsequently submitted a motion to the Central Administrative Court in objection that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003), which was applicable to this case by the court, was contrary to or inconsistent with Thai governing conventions under the democratic form of government with the King as Head of the State, and constituted a restriction of the rights and liberties of the people in academics, education and training and instructions as protected under the Constitution. In other words, it was asserted that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). It was requested that the Constitutional Tribunal give a ruling that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with Thai governing conventions under the democratic form of government with the King as Head of the State, and contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and thus unenforceable. In this regard, as there had not yet been a ruling of the Constitutional Court or the Constitutional Tribunal with respect to such provisions, it was therefore requested that the opinion be transmitted through official channels to the Constitutional Tribunal for trial and adjudication pursuant to section 3, section 35 and section 38 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 264 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

3. The Central Administrative Court considered the motion submitted by the first to fourth defendants and found that the first to fourth defendants had made an objection on whether or not section 65 paragraph three of the Child Protection Act B.E. 2546 (2003), which was applicable to this case by the court, was contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and there had not yet been a ruling of the Constitutional Court with respect to such provisions. This case was therefore a matter which the Central Administrative Court had to impose a temporary stay of proceedings and refer the applications of the first to fourth defendants to the Constitutional Tribunal for a ruling.

2. Preliminary Issue

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

The Constitutional Judge in charge of the case ordered the admittance of the application for trial and adjudication on 26th July B.E. 2550 (2007). The case was pending proceedings in the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) when subsequently the Constitution of the Kingdom of

Thailand B.E. 2550 (2007) was promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) and came into force as of 24th August B.E. 2550 (2007).

Section 300 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2550 (2007) to become the Constitutional Court; section 300 paragraph three provided that the provisions of section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) would continue to apply until the enactment of an Organic Act on Constitutional Court Procedures; and section 300 paragraph four provided that all cases or matters pending proceedings in the Constitutional Tribunal under paragraph one would be continued by the Constitutional Court under this section, and 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. The Constitutional Court therefore had the power to try and adjudicate this application.

During the trial of this case, the Central Administrative Court transmitted an motion of the applicants to amend their prior motion with respect to the invocation of provisions of law that were contrary to or inconsistent with the Constitution by cancelling the prior request for ruling and inserting the following new text: “a ruling is hereby requested by virtue of section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and in conjunction with section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and thus unenforceable pursuant to Thai governing conventions under the democratic form of government with the King as Head of the State, and was contrary to or inconsistent with section 29, section 49 and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and thus unenforceable under section 6 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).” After consideration, the Constitutional Court granted leave to amend the motion under clause 30 of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

The Constitutional Court found that this application constituted an application to the Constitutional Court for a ruling on whether or not the provision of section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with the Constitution of the Kingdom of Thailand B.E. 2540 (1997). As the Constitution of the Kingdom of Thailand B.E. 2550 (2007) came into force during the Constitutional Court’s trial of this case, a preliminary issue therefore arose as to whether or not this case contained any cause for ruling as raised by the issues in the application.

After consideration, the Constitutional Court found that the constitutional review of a provision of law had to take into consideration whether or not such provision of law was contrary to or inconsistent with the Constitution in force at the time of Constitutional Court ruling. This application had been admitted by the Constitutional Court for ruling prior to coming into force of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The applicants objected that a provision of law to be applied by the Central Administrative Court was contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 29 and section 42 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), in regard to which the Constitution of the Kingdom of Thailand B.E. 2550 (2007) also adopted such identical principles in section 29 and section 50. The applicants subsequently amended their motion by further stating that such provision of law was contrary to or inconsistent with section 29, section 49 and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As there had not yet been a ruling of the Constitutional Court with respect to such provision of law, the case therefore raised a reasonable cause for ruling.

The Constitutional Court considered the amendment motion of the applicants and found that the amendment motion specified only facts and circumstances with respect to section 49 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The applicants did not specify any facts and circumstances relating to section 49 paragraph one and paragraph two. Thus, under clause 18(2) and (3) of the Rules of the Constitutional Court on Procedures and Rulings, pursuant to the applicants' failure to specify the facts or circumstances relating to section 49 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in their amendment motion, the Constitutional Court did not have to make a ruling on such provisions.

3. Issues considered by the Constitutional Court

The issues considered by the Constitutional Court were therefore whether or not section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was contrary to or inconsistent with section 29, section 49 paragraph three and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court found that section 29, section 49 paragraph three and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) were provisions on the rights and liberties of the Thai people. Section 29 was a provision on guarantees for the security of rights and liberties, i.e. the enactment of a law to restrict the rights and liberties of a person could be made subject to the conditions prescribed by the Constitution, namely by virtue of specific provisions of law for the purposes prescribed by the constitution and to the extent of necessity without affecting the essential substances of such rights and liberties. In any event, such law had to be generally applicable and not directed at any particular case or person. Section 49 paragraph three was a provision which protected and promoted the rights and liberties of the provision of

educational training by professional or private bodies, alternative education for the people, self-learning and life-long learning as provided by the state. Finally, section 50 was a provision which provided a guarantee that a person enjoyed the liberty and protection with regard to academics, education and training, learning and instruction, research and the publication of research works in accordance with academic principles, to the extent that was not inconsistent with civic duties or good morals of the people.

Upon an examination of the provisions of the Child Protection Act B.E. 2546 (2003), it was found that there was an intent to promote the adherence of pupils and students to disciplinary rules of schools or educational establishments. It was therefore necessary to prescribe measures through training and instructions or punishments in order to control and prevent infringement of rules. The law authorized the Minister of Education to issue rules on the punishment of pupils or students who behaved inappropriately or acted in violation of the rules of the school or educational establishment, and the punishment of pupils or students was permitted to the extent of necessity for the benefit of the training or instruction and in order that the pupil or student would improve or alter his/her behavior and manners in a more appropriate and responsible manner to the society. As a result, pupils or students would become quality personnel of the nation in the future. The prescription of punishments in the case of violations of the rules of a school or educational establishment was therefore merely a measure for achieving the intents of such provision of law. Section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was a provision that was generally applicable and was not intended to apply to any particular case or person, and the provision was within the limits of “suitability”. The provision did not restrict the right or liberty to provide education and training by a professional or private body, alternative education of the people, self-learning and life-long learning as provided under section 49 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Furthermore, the provision was “not inconsistent with the civic duties or good morals of the people,” and did not constitute a restriction of a person’s liberties in academics, education and training, learning and instructions, research and the publication of research works in accordance with academic principles as provided under section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Moreover, the provision was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court held that section 65 paragraph three of the Child Protection Act B.E. 2546 (2003) was neither contrary to nor inconsistent with section 29, section 49 paragraph three and section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
