

Summary of Constitutional Court Ruling No. 6/2553 (2010)

Dated 21st April B.E. 2553 (2010)*

Re: The Supreme Administrative Court referred the objections of a plaintiff (Mr. Pramut Sutabutr) to the Constitutional Court for a ruling on whether or not the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunication Businesses Act B.E. 2543 (2000) was not duly enacted in accordance with section 29 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and whether or not section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunication Businesses Act B.E. 2543 (2000) was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) (which provided identical principles to section 29 paragraph two and section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)).

.....

1. Summary of background and facts

Mr. Pramut Sutabutr, the plaintiff, filed a complaint against the Office of the Permanent Secretary to the Prime Minister, the first defendant, the National Telecommunications Commission Selection Committee, the second defendant, at the Administrative Court in Case No. 58/2547 (2004) and Judgment No. 1379/2550 (2007), stating that the first defendant had issued a Notification of the Office of the Permanent Secretary to the Prime Minister Re: National Telecommunications Commission Selection Committee, dated 29th May B.E. 2546 (2003), and Notification of the Office of the Permanent Secretary to the Prime Minister Re: National Telecommunications Commission Selection Committee (No. 2), dated 5th November B.E. 2546 (2003), so as to enable the second defendant to carry out the selection of suitable persons for nomination as National Telecommunications Commissioners (NTC) for subsequent submission to the Senate. The second defendant thereafter issued a Notification of the National Telecommunications Commission Selection Committee Re: Applications, Rules and Procedures for the Selection of suitable Persons for Nomination as National Telecommunications Commissioners, dated 30th September B.E. 2546 (2003). The plaintiff applied for selection in the nomination of National Telecommunications

* Published in the Government Gazette Vol. 127, Part 68 a date 8th November B.E. 2553 (2010).

Commissioners pursuant to such Notification. The second defendant, after having proceeded with the selection in accordance with its procedures, issued Notification of the National Telecommunications Commission Selection Committee Re: 14 Suitable Persons for Nomination as National Telecommunications Commissioners, dated 20th December B.E. 2546 (2003), the names stated therein to be submitted to the Senate. The plaintiff was not selected. The plaintiff was of the opinion that the Notifications of the first and second defendants were unlawful.

The plaintiff filed a plaint in the Central Administrative Court in regard to the Notifications of the first and second defendant, claiming that they were unlawful as well as raising objections on issues of constitutionality. The Central Administrative Court dismissed the plaint.

The plaintiff appealed to the Supreme Administrative Court. The Supreme Administrative Court found that the plaintiff had filed an objection that the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) had been enacted without specification of the constitutional provisions authorizing the enactment of such a law. The objection stated that only the section numbers were specified, but the essential substances were not provided in writing. It was therefore contended that the enactment was contrary to or inconsistent with section 29 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). A further objection was raised that section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Supreme Administrative Court found that at the time of trial of this case, the Council for Democratic Reform with the King as Head of the State had declared the annulment of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). However, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was subsequently promulgated and provided for identical recognition and safeguard of personal rights and liberties under section 29 paragraph two and section 30. The Supreme Administrative Court was therefore required to proceed in accordance with section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and to impose a temporary stay of proceedings.

2. Preliminary issue

This application was a case where the Constitutional Court was asked to rule on whether or not the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) had been properly enacted under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and whether or not the provisions of such law were contrary to or inconsistent 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 at the time of trial of this case in the Constitutional Court, a preliminary issue therefore arose as to whether or not there was a case for trial and adjudication under this application.

The Constitutional Court found as follows. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) ceased to be in force as a result of the Announcement of the Council for Democratic Reform No. 3, dated 19th September B.E. 2549 (2006). The applicant, however, filed a plaint at the Central Administrative Court on 20th January B.E. 2547 (2004) during which the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was still in force. The Central Administrative Court subsequently delivered a judgment on 30th August B.E. 2550 (2007) to dismiss the plaint. The applicant appealed to the Supreme Administrative Court. Although the Supreme Administrative Court referred the plaintiff's objection to the Constitutional Court after the Constitution of the Kingdom of Thailand B.E. 2540 (1997) ceased to be in force, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had adopted the same principles in section 29 paragraph two and section 30. As there was no prior ruling of the Constitutional Court in relation to such provisions of law, the case therefore presented a reasonable cause for a ruling.

3. Issues considered by the Constitutional Court

The first issue was whether or not the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) was not duly enacted in accordance with section 29 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found as follows. The applicant had objected that the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) had been enacted without specifying the constitutional provisions authorizing the enactment of law. Although section numbers had been specified, the law failed to specify the essential substances in writing and was therefore contrary to or inconsistent with section 29 paragraph two of the Constitution. The applicant had objected that the process for enactment of such Act was not in accordance with the provisions of the Constitution. In this regard, the principle of constitutional review of promulgated laws under section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that a court trying a case could submit a matter to the Constitutional Court for trial and adjudication only where a ruling was required on whether or not the provisions of the promulgated law was contrary to or inconsistent with the Constitution. Issues on the constitutionality of the enactment process could not be raised in the Constitutional Court for ruling. The Constitutional Court therefore held that a ruling on this issue was not required.

The second issue was whether or not section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found as follows. Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the rights and liberties of the Thai people by recognizing the principle of equal safeguards for the rights and liberties of the Thai people. The principle stated that all persons were equal before the law and enjoyed equal legal protection. Men and women enjoyed equal rights. Unjust discrimination on the grounds of differences in origin, race, language, sex, age, physical or health disability, personal status, economic or social standing, religious faith, education or political views which were not inconsistent with the constitutional provisions were prohibited. However, the prohibition was not absolute. If the discrimination constituted a measure for eliminating obstacles or promoting the exercise of rights and liberties by a person commensurate to others, the measure would not be deemed as an unjust discrimination.

Section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) provided the qualifications of National Telecommunications Commissioners, one of which was to “have Thai nationality by birth”. The provision was enacted in order to achieve the objective of this Act as well as the constitutional intent which aimed to achieve the greatest benefits for the nation and the people at both national and local levels with regard to education, culture, national security and other public benefits, including free and fair competition. It was necessary to prescribe the scope of functions in terms of frequency distribution and procedures for the supervision of radio and television broadcasting and telecommunications businesses. The National Telecommunications Commission was therefore an agency which held a key role in the distribution of national resources, an important element having an impact on national security. The prescription of qualifications for National Telecommunications Commissioners should therefore take into account suitability in all aspects so as to acquire suitable persons to perform duties fairly, impartially and with due regard to the greatest benefits of the nation and the people. The provisions of section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000), which imposed such limitations on the qualifications for National Telecommunications Commissioners, constituted a limitation that was generally applicable and was neither intended to apply to any particular person nor amounted to an unjust discrimination against any person.

4. Ruling of the Constitutional Court

By virtue of the aforesaid reasons, the Constitutional Court therefore held that section 8(1) in conjunction with section 48 of the Organisation for Frequency Distribution and Supervision of Radio and Television Broadcasting and Telecommunications Businesses Act B.E. 2543 (2000) was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).