

# Summary of Constitutional Court Ruling No. 8/2553 (2010)

Dated 9<sup>th</sup> June B.E. 2553 (2010)\*

**Re: The Supreme Administrative Court referred the objections of a plaintiff (Mr. Suntorn Sinsa) to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) on whether or not section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was contrary to or inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

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## 1. Summary of background and facts

The plaintiff filed a plaint against the District Chief of Muang Khonkaen, the first defendant, Muang Gao Tambon Administrative Organisation, the second defendant, and the Chairman of Khonkaen Election Commission, the third defendant, at the Administrative Court of First Instance claiming as follows. The plaintiff had previously been elected as a member of Muang Gao Tambon Administrative Organisation Assembly. The plaintiff applied for re-election as a member of Muang Gao Tambon Administrative Organisation Assembly. The election results showed that the plaintiff was re-elected as a member of Muang Gao Tambon Administrative Organisation Assembly. Thereafter, certain members of Muang Gao Tambon Administrative Organisation Assembly filed complaints with the first defendant that the plaintiff possessed a disqualification for candidacy in the election of members of a Tambon Administrative Organisation Assembly under section 47 bis (2) in conjunction with section 9(10) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) due to a Khonkaen Provincial Court judgment that the plaintiff had committed an offence under section 149, section 162(4), section 157 in conjunction with section 83 of the Penal Code, i.e. the offence of an officer demanding, receiving or accepting properties for oneself in order to act or omit an act in the course of official functions, the offence of being an officer who conspired in the issuance of a false evidential certificate and the offence of an officer who wrongfully performed or omitted to perform duties in order to cause injury to any person or dishonestly performed or omitted to perform duties. The offences were committed on several counts. Penalties were imposed cumulatively under section 91 of the Penal Code,

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adding to a total sentence of 25 years imprisonment. The case was pending appeal. The first defendant subsequently sent a letter to the plaintiff to inform the latter of the decision on the complaint. It was ruled that there was a cause for the plaintiff's membership of the Tambon Administrative Organisation Assembly to terminate under section 47 ter paragraph one (7) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994). The first defendant relied on powers under section 47 ter paragraph two to determine that the plaintiff's membership of the Tambon Administrative Organisation terminated as from the date of the decision and the second defendant reported the first defendant's decision to terminate the plaintiff's membership of the Tambon Administrative Organisation Assembly to the third defendant to call a by-election to fill the office left vacant by the plaintiff. The plaintiff appealed against the first defendant's order, claiming the order to be unlawful, and petitioned the Administrative Court for a judgment or order to revoke the first defendant's decision. The Administrative Court of First Instance dismissed the plaint.

The plaintiff appealed against the judgment of the Administrative Court of First Instance in the Supreme Administrative Court on 4<sup>th</sup> January B.E. 2551 (2008). It was stated on appeal that the provisions of law applied in the judgment on the substance of this case, namely section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994), was contrary to or inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). If the Supreme Administrative Court affirmed the judgment of the Administrative Court of First Instance to penalize the plaintiff, the plaintiff would be disqualified from becoming a member of the Tambon Administrative Organisation Assembly. The plaintiff would be deprived of human dignity, rights, liberties, equality, and moreover such provisions of law did not provide an expiration and the means for remedying dishonest acts in spite of the intent of section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in promoting democratic governance so as to grant all Thai people with the right to participate in public governance with principal commitment to equality and human dignity. Such provisions of law were therefore subject to section 6 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). A motion was thence filed for the Supreme Administrative Court to refer the plaintiff's petition to the Constitutional Court under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Supreme Administrative Court found that section 47 ter paragraph one (7) and section 47 bis (7) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was a provision of law which the Supreme Administrative Court had to apply to this case. However, as the plaintiff objected that such provisions were contrary to or inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and there were no prior rulings of the Constitutional Court in relation to such provisions, an order was therefore given to refer the plaintiff's objection to the Constitutional Court for ruling.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for trial and adjudication under section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Constitutional Court found as follows. The application presented a case where the Supreme Administrative Court referred an opinion to the Constitutional Court for a ruling under section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) on whether or not section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was contrary to or inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As there were no prior rulings of the Constitutional Court in relation to such provisions, the case was therefore in accordance with section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with article 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of the application for trial and adjudication.

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

The issues considered by the Constitutional Court were whether or not section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was contrary to or inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

On the issue of whether or not section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was contrary to or inconsistent with section 4 and section 27 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. Section 4 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the recognition and safeguard of human dignity, rights, liberties and the equality of persons. Section 27 provided recognition for the direct binding effect of rights and liberties recognized by the Constitution. There was, however, no wording therein on the recognition of any particular right and liberty since those particular rights and liberties were already provided in other sections of the Constitution. Section 4 and section 27 did not entitle a person to raise an objection or claim that a provision of any law was contrary to or inconsistent with those constitutional sections. Therefore, section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was neither contrary to nor inconsistent with section 4 and section 27 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The remaining issue which had to be considered was whether or not section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2550 (2007) was contrary to or inconsistent with section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). After deliberations, the Constitutional Court found as follows. Section 39 paragraph three of the Constitution was intended to protect an alleged person and defendant in criminal proceedings from treatment as a criminal offender until a final conviction. On the other hand, the provisions of section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) provided for the termination of membership of a Tambon Administrative Organisation Assembly upon a member of the Tambon Administrative Organisation Assembly having a disqualification of dishonest behaviour. The provision prescribed dishonest behaviour as a disqualification for the office of member of a Tambon Administrative Organisation Assembly with the intent of ensuring that members of the Tambon Administrative Organisation Assembly, a key position in the operation of a Tambon Administrative Organisation, had appropriate qualifications and without disqualifications, especially on matters relating to dishonesty or conflicts of interests that could result in acts of conflicts between personal and collective interests in the locality. The prescription of such disqualifications provided for a preliminary screening of good people amongst applicants for election by the local people. Also, in order to provide for the subsequent protection and safeguard of local interests, the law provided for the continued application of the disqualifications for the entire tenure. If a member of a Tambon Administrative Organisation Assembly subsequently acquired a disqualification, the law provided for the effect of terminating the membership of such person. The intent behind such law was therefore the protection of local administration so as to ensure that such local administration truly responded to the collective interests and needs of the locality. This was a case of a prescription of disqualifications for members of a Tambon Administrative Organisation Assembly pursuant to the intents of the law, and not provisions of law relating to the treatment of an alleged person or defendant in criminal proceedings. Thus, section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was neither contrary to nor inconsistent with section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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

Section 47 ter paragraph one (7) in conjunction with section 47 bis (2) of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994) was neither contrary to nor inconsistent with section 4, section 27 and section 39 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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