

Summary of the Constitutional Court Ruling* No. 35-41/2554 (2011)

Dated 7th December B.E. 2554 (2011)

Re: Whether or not section 42 paragraph one in conjunction with section 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 27, section 28, section 29, section 30, section 40, section 41, section 43, section 60, section 62 and section 223 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

The Supreme Administrative Court referred the objections of plaintiffs in 7 applications to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The applications could be summarised as follows. The plaintiffs in each of the seven applications had filed complaints against defendants in the Administrative Court of First Instance and requested for a judgment or order as stated therein. The Administrative Court of First Instance found that the plaintiffs in certain cases were not direct contractual parties and did not have valid objections in relation to the contracts in the complaints and requests for court order. The court was thus unable to issue any enforcement order. In certain cases, the plaintiff was not the aggrieved or injured party, or the party whose grievance or injury could not be avoided due to the action or omission of the defendant. As a consequence, those plaintiffs were not entitled to file a complaint in the Administrative Court under section 42 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). The Administrative Court of First Instance therefore rejected the complaints and ordered the expungement of the cases from the case registry.

All seven plaintiffs appealed against the order of the Administrative Court of First Instance to the Supreme Administrative Court and filed objections, in summary, that section 42 and section 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) were contrary to or inconsistent with section 27, section 28, section 29, section 30, section 40, section 41, section 43, section 60, section 62 and section 223 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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2. Preliminary issue

The Constitutional Court admitted all seven applications for rulings under 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 cases were consolidated and decided in one ruling.

3. The issues considered by the Constitutional Court

The Constitutional Court, after examining the applications and supporting documents, held that when filing an objection that a provision of law was contrary to or inconsistent with the Constitution, the applicant had to state the objection and request specifying the intent for the Constitutional Court to take a certain action with clear reasons. If the stated intent did not specify clear supporting reasons, the application would not be in accordance with article 18 paragraph one (4) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Upon examination of the applicants' objections, it was found that the objection for a Constitutional Court ruling that section 42 paragraph two of the Act on Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999) failed to state details and clear supporting reasons. The Constitutional Court therefore rejected the application on this issue. The only issue which had to be decided by the Constitutional Court was therefore whether or not section 42 paragraph one in conjunction with section 72 of the Act on Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 27, section 28, section 29, section 30, section 40, section 41, section 43, section 60, section 62 and section 223 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found that the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was a law relating to the establishment of Administrative Courts and the prescription of powers and duties in the trial and adjudication of administrative cases, the ruling of disputes arising between an administrative agency or state official and a private party, or between administrative agencies or state officials, where the dispute arose from the administrative agency's or state official's unlawful exercise of legal powers, issuance of regulations, orders or commission of other acts, or the omission of duties mandated by law, or undue delay in the performance of such duties, or commission of a negligent act, or other liabilities arising from the exercise of legal powers, including administrative contract cases, pursuant to the principle that an administrative act had to be lawful, as part of the rule of law. The Administrative Court acted as an organ which reviewed the legality of administrative acts. The review of legality of an administrative act by the Administrative Court could be initiated by the filing of a plaint in the Administrative Court. The cause of action had to be a matter within the jurisdiction of the Administrative Court and the plaint had to satisfy the requirements provided by law in order for the Administrative Court to admit the case for consideration. If a case was not within the jurisdiction of the Administrative Court, or even if a case

was within the jurisdiction of the Administrative Court but the filing of a complaint failed to satisfy the requirements set by law, the Administrative Court would not be able to order the admission of the case for trial and adjudication. As for the requirements for filing a complaint as prescribed by law, section 42 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) provided for certain rules which could be summarized as follows. When filing a complaint in the Administrative Court, the plaintiff had to be a person having an interest in the case filed and the complaint had to be enforceable under section 72. This legal rule had been provided to protect the rights and liberties of a person that was violated as a result of an administrative act of an administrative agency or state official. In such a case, a complaint was filed at the Administrative Court for a judgment or order to remedy the grievance or injury to such person. However, if the plaintiff was not the aggrieved or injured person, or not a person who could unavoidably be aggrieved or injured as a result of an act or omission of an administrative agency or state official, there was no need or reason to grant such person the right to file a case in the Administrative Court. In such a case, there was no grievance or injury which the Administrative Court could give a judgment or order to remedy a grievance or injury to such person. Moreover, the cause of action had to be a case that was enforceable under section 72. The law provided for rules and scope of remedy or mitigation of grievance or injury to the plaintiff. In this regard, the Administrative Court had the power to determine enforcement measures commensurate to the cause of action in accordance with the type of case prescribed under section 9 in order to remedy the grievance or injury appropriately in accordance with the rules provided by law. In addition, if a person could file a case in the Administrative Court without satisfying the requirements under section 42 paragraph one, there would be an excessive amount of cases in the Administrative Court and thereby prejudicing the national administration functions carried out by administrative agencies and state officials. In such an event, a person without any interest, but merely disagreed or was dissatisfied with an administrative act executed by an administrative agency or state official, whether that might be the issuance of a regulation or administrative order, could in all cases file a complaint in the Administrative Court for a revocation of the regulation or administrative order. The rules and requirements under section 42 paragraph one in conjunction with section 72 were not provisions which restricted the rights and liberties of persons as recognized and protected by the Constitution. Hence, there was no restriction of rights and liberties of a person as provided under section 28 of the Constitution. The provision also applied generally to all persons on an equal basis pursuant to the rules and requirements prescribed by law. There was no discrimination. The provision was therefore neither contrary to nor inconsistent with section 30 of the Constitution. The provision also did not restrict the rights of a person in the judicial process as provided under section 40 of the Constitution. There was neither any restriction of a person's right in property as provided under section 41 of the Constitution nor any restriction of rights and liberties to engage in an occupation as provided under section 43 of the Constitution. On the contrary, the provision safeguarded the rights of an aggrieved or injured person to file an action against a government agency, state agency or state enterprise to take liability for the actions or omissions of a government official, employee or worker of such agency. Hence, there was no restriction of rights and liberties of a person as provided under section 60,

section 62 and section 223 of the Constitution. Section 42 paragraph one in conjunction with section 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was therefore not a provision of law which restricted the constitutional rights and liberties of a person as provided under section 29 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 42 paragraph one in conjunction with section 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was neither contrary to nor inconsistent with section 27, section 28, section 29, section 30, section 40, section 41, section 43, section 60, section 62 and section 223 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
