

# Summary of the Constitutional Court Ruling\* No. 42-43/2554 (2011)

Dated 14<sup>th</sup> December B.E. 2554 (2011)

**Re: Whether or not section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were contrary to or inconsistent with section 56, section 57, section 58, section 60, section 64, section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)?**

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## 1. Summary of background and facts

Khon Kaen Administrative Court and the Central Administrative Court referred objections of plaintiffs in a total of 2 applications which could be summarised as follows:

First Application. Mr. Inpan Krongpuak and others, a total of 55 plaintiffs, submitted a plaint against the Electricity Generating Authority of Thailand and others in Khon Kaen Administrative Court due to grievances suffered as a consequence of a notification prescribing an electricity transmission line zone which prevented the full use of land that was now subject to compliance with safety regulations applicable to the electricity transmission line zone. No opportunity was given for the plaintiffs to participate in a hearing. The notification was thus issued without a public hearing process by which the people could present their views on the project affecting the community. An objection was also raised that section 28 and section 29 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968), which were the empowering provisions of such notification, were provisions which restricted the rights of a person. The provisions only provided procedures for giving notice or publication to inform the owner or possessor in advance. There was, however, no provision on the right of the community to obtain information, express opinions and participate in proceedings as provided under the Constitution. This constituted a restriction of the right of the community to participate with the state in the management and utilization of natural resources and the environment, contrary to or inconsistent with section 56, section 57, section 60 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Second Application. Mr. Somboon Tabtimto submitted a plaint against the Governor of the Electricity Generating Authority of Thailand and others in the Central Administrative Court due to grievances suffered as a consequence of a notification prescribing electricity transmission line zones. The application also raised an objection that section 28, section 29

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and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) failed to provided for the survey of environmental conditions, the notification of people in the proximity of the high-voltage electricity transmission line of the future health and hygiene impact, the grant of opportunity to the people to express opinions relating to expropriation guidelines for the installation of high-voltage electricity transmission lines and the determination of compensation. Such provisions were therefore contrary to or inconsistent with section 56, section 57, section 58, section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Khon Kaen Administrative Court and the Central Administrative Court were of the opinion that these cases were in accordance with section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and therefore referred the opinions of the plaintiffs to the Constitutional Court for a ruling.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit these two applications for trial and adjudication. These two applications raised the issues of whether or not section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were contrary to or inconsistent with section 56, section 57, section 58, section 60, section 64, section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and there had not yet been a prior ruling of the Constitutional Court in relation to such provisions. The case was therefore in accordance with section 211 paragraph one of the Constitution 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 admitted both applications for trial and adjudication and consolidated the actions into one ruling.

## **3. The issues considered by the Constitutional Court**

The issues considered by the Constitutional Court were whether or not section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were contrary to or inconsistent with section 56, section 57, section 58, section 60, section 64, section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Section 28 and section 29 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) provided only procedures for notifying the owner or possessor of land of a notification prescribing an electricity transmission line zone. The provisions were not inconsistent with the principle of participation in the consideration process of state officials. Moreover, section 28 also provided for advance notice to the owner or possessor of immovable property of entry for use or possession of such immovable property which facilitated participation of the owner or possessor of immovable property in the consideration

process of state officials. The principle was therefore consistent with section 58 and section 60 of the Constitution. The rule did not deprive a person of rights to participate in the consideration process of state officials and to submit a case in court to make a claim in regard to the act or omission of an employee or worker of a state enterprise under section 60 of the Constitution. A person retained the right to claim compensation in the event of losses suffered.

Section 28 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) provided that notice should be given or a notification published to inform the owner or possessor of immovable property or other rights holder before entry for survey, stating that entry would be made to conduct a survey of such area. Section 29 provided that a letter should be sent to the owner or possessor of the relevant property before the installation of electricity transmission line or electricity distribution line below, above, along or across land, pitching or placing of poles, substation or other equipment on another person's land, or the removal of a building or destruction of other objects that had been constructed or built, or the destruction or chopping, cutting of trees, branches or roots of trees or plants in the electricity transmission line zone, and a right was given to submit a petition to show reasons why such actions were not appropriate to the committee for a decision. Section 30 was a provision which required EGAT to pay fair compensation to the owner or possessor of property in the event that EGAT entered the land to use or perform an act which caused damage to the property of the owner or possessor. The provisions in all three sections provided for the giving of notice, explanation and reasons from the state enterprise before undertaking a project or any act which could affect the essential interests of relevant persons. These principles were consistent with section 56 and section 57 paragraph one of the Constitution. There was no deprivation of the right to participate in the consideration process of a state official in the performance of administrative proceedings affecting rights and liberties of a person under section 58 of the Constitution. Also, a principle was provided for the cases where compensation had to be paid and if the owner or possessor of property or other rights holder was dissatisfied with the amount of compensation determined by EGAT, regardless of whether such person received or refused to receive the compensation presented or deposited by EGAT, such person had the right to file an action in court within one year as from EGAT's actions under section 30. The provision protected the right of a person to file an action in court. Section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were therefore neither contrary to nor inconsistent with section 56, section 57, section 58 and section 60 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Even though this Act was enacted prior to the constitutional provisions on the protection of people's rights by way of a public hearing, and as a result such principles were not clearly stated in section 28 and section 29, there were provisions on giving notice and notifications to interested persons before taking any action in the survey zone and electricity transmission line zone. The enforcement of such provisions therefore had to be consistent and in accordance with the principles stated in the Constitution. EGAT could exercise

measures only where necessary to restrict private property rights to the minimal extent. The exercise of powers by a state organ which affected the rights and liberties of a person should employ only necessary and proportionate measures for the case concerned in order to ensure that electricity generation activities for the benefit of the public were achieved as aimed. If EGAT intended to conduct a survey of areas for the installation of electricity transmission lines or to determine an electricity transmission line zone in a way which affected the environmental quality, health, sanitation, quality of life or other essential interests of a person or local community as provided under section 57 paragraph one of the Constitution, prior to taking such action, EGAT should hear the opinions of relevant persons in its consideration. If a case was within section 57 paragraph two, a comprehensive public hearing had to be held before action. If there was no hearing of opinions in the case of section 57 paragraph one, or if there was no comprehensive public hearing in the case of section 57 paragraph two, a person or community had the right to file a plaint in the Administrative Court for a judgment or order against a government agency or state enterprise responsible for the project or activity, so as to instruct the latter to hold a hearing of opinions from relevant persons to be taken into consideration, or to hold a comprehensive public hearing prior to implementation.

Section 64 of the Constitution protected the liberty of persons to assemble. Section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were not provisions which restricted the liberty to congregate and associate. The provisions were therefore not contrary to or inconsistent with section 64 of the Constitution.

Section 85 and section 87 of the Constitution provided directive principles of fundamental state policies on land, natural resources and environment, and public participation. The provisions of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) in all three sections did not interfere with such directive principles of fundamental state policies. Moreover, the constitutional provisions on directive principles of fundamental state policies applied to the state's enactment of laws and determination of national administration policies, and not as provisions for the direct protection of rights and liberties of the people. Section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were therefore neither contrary to nor inconsistent with section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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

The Constitutional Court held that section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act B.E. 2511 (1968) were neither contrary to nor inconsistent with section 56, section 57, section 58, section 60, section 64, section 85 and section 87 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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