

# **Summary of Constitutional Court Ruling No. 23/2555 (2012)**

**Dated 22<sup>nd</sup> August B.E. 2555 (2012)\***

**Re: Whether or not section 215 of the Penal Code and section 114, section 128, section 148 and section 152 of the Land Traffic Act B.E. 2522 (1979) were contrary to or inconsistent with section 29, section 63, section 69 and section 70 of the Constitution.**

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## **1. Summary of background and facts**

The State Attorney for Lamphun Province, the prosecution, prosecuted Mr. Prasong, or Mana Kaewlue, first defendant, and Mr. Niyom, or Peak Kaljak, second defendant, as defendants in criminal proceedings in Lamphun Provincial Court, on charges of participating in an assembly of ten or more persons for unlawful purposes, stirring public disorder, and acting as leaders in the commission of offences by jointly blocking traffic in such a way as to obstruct traffic lanes. The prosecution sought for a conviction of both defendants pursuant to section 83 and section 215 of the Penal Code and section 114, section 128, section 148 and section 152 of the Land Traffic Act B.E. 2522 (1979). The second defendant filed a motion to Lamphun Provincial Court requesting a referral to the Constitutional Court for a ruling on whether or not section 215 of the Penal Code and section 114, section 128, section 148 and section 152 of the Land Traffic Act B.E. 2522 (1979) were contrary to or inconsistent with section 29, section 63, section 69 and section 70 of the Constitution.

Lamphun Provincial Court found that there had not yet been a ruling of the Constitutional Court on such provision. The matter was therefore referred to the Constitutional Court for a ruling under section 211 of the Constitution.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 211 paragraph one of the Constitution. The Constitutional Court found that this application raised an objection on an issue in regard to a provision of law for which there had not yet been a ruling of the Constitutional Court. This case was therefore in accordance with section 211 paragraph one of the Constitution in conjunction with clause 17(13) of the Rules of the Constitutional Court on Procedures

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and Rulings B.E. 2550 (2007). An order was thus given to admit the application for consideration.

During trial, the Constitutional Court delivered ruling No. 44-45/2554 dated 14<sup>th</sup> December B.E. 2554 (2011) that section 215 of the Penal Code was neither contrary to nor inconsistent with section 29 and section 63 of the Constitution. According to section 215 of the Constitution, this issue did not have to be reconsidered.

As for the issues of whether or not section 148 and section 152 of the Land Traffic Act B.E. 2522 (1979) were contrary to or inconsistent with the Constitution, it was found that those provisions of law were penalty provisions, the substances of which could in no event be contrary to or inconsistent with any section of the Constitution.

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

The remaining issues considered by the Constitutional Court were whether or not section 215 of the Penal Code was contrary to or inconsistent with section 69 and section 70 of the Constitution, and whether or not section 114 and section 128 of the Land Traffic Act B.E. 2522 (1979) were contrary to or inconsistent with section 29, section 63, section 69 and section 70 of the Constitution.

On the first issue of whether or not section 215 of the Penal Code was contrary to or inconsistent with section 69 and section 70 of the Constitution, the Constitutional Court found as follows. Section 215 paragraph one of the Penal Code provided that any person who participated in an assembly of ten or more persons for an unlawful purpose, used force or threat of force or committed any act to cause public disorder would be liable to a term of imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both. Paragraph two provided that if any offender carried a weapon, all offenders would be liable to a term of imprisonment not exceeding two years or a fine not exceeding four thousand baht, or both. Paragraph three provided that if the offender was the leader or commander of the commission of offence, such person would be liable to a term of imprisonment not exceeding five years or a fine not exceeding ten thousand baht, or both. Section 69 of the Constitution provided the right of the Thai people to peacefully resist any act to acquire national governing powers by means which were not provided in the Constitution. The provision was intended to prevent any act which would lead to the acquisition of national governing powers by unconstitutional means. Section 70 of the Constitution provided the duty to protect the nation, religions, King and democratic form of government with the King as head of state as provided by this Constitution. Upon a review of section 215 of the Penal Code, a provision on an offence relating to public peace and order, which was intended to control the behavior of persons that could cause public unrest and disorder, i.e. protection of public peace and order, it was found that such provision did not by any means aimed at or had the characteristics of hindering the exercise of rights and liberties provided under section 69 and section 70 of the Constitution.

The second issue was whether or not section 114 and section 128 of the Land Traffic Act B.E. 2522 (1979) were contrary to or inconsistent with section 29, section 63, section 69 and section 70 of the Constitution. The Constitutional Court found as follows. The Land Traffic Act B.E. 2522 (1979) was a law governing traffics and a law necessary for the state to maintain public order on roads. Measures were provided for safety and reduction of risks to drivers and passengers to ensure the safety of traffic to lives, bodies and properties of the people. The law also provided for a prescription of acts that would constitute offences with criminal liabilities therefor. Section 114 provided for the offence of obstructing traffic, except where done with the permission of a traffic officer. Permission could be granted upon satisfying the condition of necessity and temporary state. Section 128, on the other hand, provided for an offence of acts on roads that could cause danger or loss. Both provisions prescribed the acts of obstruction or endangerment or causing loss, acts which affect public order in the common interest, as criminal offences, both these sections were therefore intended to preserve public order in order to protect the safety of the people's lives, bodies and properties. This was consistent with the protection of public convenience in the use of public space and the protection of rights and liberties of public assembly as provided under the Constitution. The liberty of peaceful assembly without arms recognised under section 63 of the Constitution, could be restricted by provisions of law only as provided by the Constitution and subject to the framework of other laws. Section 114 and section 128 of the Land Traffic Act B.E. 2522 (1979) were therefore in accordance with the conditions under section 29 of the Constitution. In other words, the provision restricted rights and liberties by virtue of provisions of law only for the purpose provided by the Constitution and enacted only to the extent necessary to achieve the objectives of the law. The law applied generally and was not intended to apply specifically to any case or person. The law did not affect the essential substances of the liberty recognised under section 63 of the Constitution. Moreover, the law neither affected the essential substance of a person's right to peacefully resist any act to acquire national governing powers by unconstitutional means nor was it contrary to the person's duty to protect the nation, religions, King and democratic form of government with the King as head of state pursuant to section 69 and section 70 of the Constitution.

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

The Constitutional Court held that section 215 of the Penal Code was neither contrary to nor inconsistent with section 69 and section 70 of the Constitution, and that section 114 and section 128 of the Land Traffic Act B.E. 2552 (1979) were neither contrary to nor inconsistent with section 29, section 63, section 69 and section 70 of the Constitution.

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