

# **Summary of Constitutional Court Ruling No. 24/2555 (2012)**

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

**Re: Whether or not section 15 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 3 of the Constitution, whether or not section 18 paragraph one (1), (2) and (5) was contrary to or inconsistent with section 34 of the Constitution, and whether or not section 23 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 58, section 59 and section 62 of the Constitution.**

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

The Civil Court referred the objections of plaintiff (Mr. Chaiwat Sinsuwong, first plaintiff, Admiral Banwit Kengrean, second plaintiff, and Mr. Tosapol Kaewtima, third plaintiff) in Case No. 663/2554 to the Constitutional Court for a ruling under section 211 of the Constitution.

## **2. Preliminary issue**

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit the application for a ruling under section 211 paragraph one of the Constitution.

After examination of the application, the Constitutional Court found that the application presented a case which the Civil Court was going to apply provisions of law to a case and there had not yet been a 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 clause 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Hence, the Constitutional Court ordered the admittance of this application for consideration.

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

On the issue of whether or not section 15 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 3 of the Constitution, the Constitutional Court

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found as follows. Section 15 of the Internal Security Act B.E. 2551 (2008) was a provision which empowered the Internal Security Operation Command (ISOC) to integrate and coordinate the operations of all government agencies to promote public participation in the protection and maintenance of security, as well as to promote security in their respective localities. The objective was to prevent harm during normal times and during events which presented security threats to a locality. The provision also provided for measures and mechanisms for controlling the exercise of powers according to the level of severity of the situation in order to enable resolution in an efficient and harmonious manner within the area and prescribed period. Since the application of such provisions did not have any impact on the provisions concerning sovereignty of the Thai people under section 3 paragraph one of the Constitution, there was no need to give a ruling on whether or not section 15 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 3 paragraph one of the Constitution.

On the issue of whether or not section 23 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 58, section 59 and section 62 of the Constitution, the Constitutional Court found as follows. Section 23 of the Internal Security Act B.E. 2551 (2008) provide that all regulations, notifications, orders or acts performed under this Chapter were not subject to the law on administrative procedures and that all proceedings arising from such regulations, notifications, orders or acts were within the jurisdiction of the Courts of Justice. The purpose of such provision was to ensure that legal proceedings were expeditious and efficient as regards the resolution of problems concerning state security pursuant to the law's objectives. However, this did not imply that the rights of the people recognised by the Constitution and affected by the application of such law were not protected. The people still had the right to commence direct legal proceedings in the Courts of Justice to enforce the state to comply with the provisions of section 58, section 59 and section 62 of the Constitution, as provided under section 28 paragraph three of the Constitution. Therefore, the objections of all three plaintiffs on this issue had no merit for a ruling under section 211 paragraph two of the Constitution.

The only remaining issues considered by the Constitutional Court were whether or not section 15 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 3 paragraph two of the Constitution and whether or not section 18 paragraph one (1), (2) and (5) of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 34 of the Constitution.

On the issue of whether or not section 15 of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 3 paragraph two of the Constitution, it was held that section 3 paragraph two of the Constitution was a provision on the performance of functions of the National Assembly, Council of Ministers, Courts as well as constitutional organs and state agencies, which had to be conducted in accordance with the rule of law. Section 15 of the Internal Security Act B.E. 2551 (2008) was by no means contrary to the rule of fairness or the rule of law. Hence, the provision was neither contrary to nor inconsistent with section 3 paragraph two of the Constitution.

As for the issue of whether or not section 18 paragraph one (1), (2) and (5) of the Internal Security Act B.E. 2551 (2008) was contrary to or inconsistent with section 34 of the Constitution, the Constitutional Court found as follows. Section 18 paragraph one (1), (2) and (5) of the Internal Security Act B.E. 2551 (2008) was a provision which restricted the liberty of travel and liberty of choosing a domicile in the Kingdom. The restriction was, however, in accordance with the conditions under section 34 in conjunction with section 29 of the Constitution. In other words, the law was enacted for the purposes of state security and public order or welfare to enable the timely protection and cessation of harm. It was necessary to empower the ISOC Director to issue prohibitions or conditions on the use of travel routes or the use of vehicles, or to prohibit entry or compel exit from an area, building or designated place during a period of operation. Such a regulation required the approval of the Council of Ministers. The provision was enacted for the purpose of preventing, suppressing, ceasing, combating and resolving or mitigating a situation in an area which affected internal security on a temporary basis until resolution of the situation. Moreover, such provisions of law applied generally and were not directed at any particular case or person. The restriction of liberty was imposed to the extent of necessity without affecting the essential substances of the liberty to travel and the liberty to choose a domicile in the Kingdom. Thus, section 18 paragraph one (1), (2) and (5) of the Internal Security Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 34 of the Constitution.

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

The Constitutional Court held that section 15 of the Internal Security Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 3 paragraph two of the Constitution, and section 18 paragraph one (1), (2) and (5) of the Internal Security Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 34 of the Constitution.

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