

Summary of Constitutional Court Ruling No. 30/2555 (2012)

Dated 24th October B.E. 2555 (2012)*

Re: Whether or not section 26(7) and section 29 of the Films and Video Recordings Act B.E. 2551 (2008) were contrary to or inconsistent with section 3, section 29 and section 45 of the Constitution.

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1. Summary of background and facts

The Central Administrative Court referred the objection of Mr. Tanwarin Sukkhapisit, first plaintiff, and Mr. Tajchai Wongkijrungrueng, second plaintiff, pursuant to section 211 of the Constitution. The application stated that both plaintiffs filed actions against the National Board of Film and Video, the first defendant, and the Film and Video Censorship Board, the second defendant. Both plaintiffs submitted an application for a licence to display, offer for rent, exchange or distribute the film “Insects in the Backyard” in the Kingdom pursuant to section 25 of the Films and Video Recordings Act B.E. 2551 (2008) but the application was declined by the second defendant. The plaintiffs appealed the decision. The first plaintiff dismissed the appeal on the grounds that the substance of this film was inconsistent with the good morals of the people. Both plaintiffs therefore applied for a judgment or order of the Central Administrative Court to revoke the resolution and order of the second defendant, to revoke the resolution of the first defendant, as well as to order both defendants to jointly pay compensation for damages. Both plaintiffs submitted an application to the Constitutional Court for a ruling that section 26(7) and section 29 of the Films and Video Recordings Act B.E. 2551 (2008) were contrary to or inconsistent with section 3, section 29 and section 45 of the Constitution. The objection stated that such provisions of law restricted freedom of expression in excess of necessity and were inconsistent with the rule of law. Hence, it was stated that such provisions of law prejudiced the essential substance of the people’s freedom of expression recognised under section 3, section 29 and section 45 of the Constitution.

2. Preliminary issue

The Constitutional Court admitted the application for a ruling under section 211 of the Constitution in conjunction with clause 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

* Published in the Government Gazette Vol. 130, Part 6a, dated 22nd January B.E. 2556 (2013).

3. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether section 26(7) and section 29 of the Films and Video Recordings Act B.E. 2551 (2008) were contrary to or inconsistent with section 3 paragraph two, section 29 and section 45 of the Constitution.

After deliberations, the Constitutional Court found as follows. The creation of a film constituted an expression of the film creator's opinions. Ideas, opinions and reflection of social woes from various perspectives were expressed by pictures and sounds as alternative means. This freedom of expression by a person was recognised under section 45 of the Constitution. However, when exercising such freedom of expression, the film creator should also appreciate the limits of the freedom provided by the Constitution. The Films and Video Recordings Act B.E. 2551 (2008) provided a legal process and measures for licensing films for display, rent, exchange or distribution in the Kingdom, which had to be reviewed and licensed by the Film and Video Censorship Board. When reviewing a film, the Film and Video Censorship Board had the power to designate a category for a film pursuant to section 26. In this regard, section 26(7) was a designation for films prohibited from display in the Kingdom. Section 29 further provided that in the event the Film and Video Censorship Board found that a film contained materials that would be detrimental, inconsistent with public order or good morals of the people, or had an impact on state security of the pride and honour of Thailand, the Film and Video Censorship Board had the power to order the licence applicant to amend or remove certain parts prior to licensing, or to deny a license. It was discernible that section 26(7) and section 29 of the Films and Video Recordings Act B.E. 2551 (2008) were legal measures which authorised a state agency to review the suitability of a film's substance prior to public display. The purpose of these provisions were to prevent the film creator from exercising the freedom of expression in an unfettered manner without bounds, which could prejudice the rights and freedom of other persons, threaten state security or moral standards of society as a whole. The Films and Video Recordings Act B.E. 2551 (2008) did not prohibit the creation of films. However, if a film creator wished to display, offer for rent, exchange or distribution in the Kingdom, the film had to be reviewed by the Film and Video Censorship Board first. Thus, the law did not restrict freedom in excess of necessity and did not prejudice the essential substances of the rights and freedoms recognised under section 45 of the Constitution. Furthermore, the law was applied generally and was not specifically directed at any particular case or person. The provisions of law prescribed the limits of powers of the Film and Video Censorship Board. Hence, the Board could exercise powers only within the limits provided by law. The exercise of powers by the state agency to review films were within the limits of discretion for the purposes of maintaining state security and public order or good morals of society as a whole, which was consistent with the rule of law. The provisions of law were therefore neither contrary to nor inconsistent with section 3 paragraph two and section 29 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 26(7) and section 29 of the Films and Video Recordings Act B.E. 2551 (2008) were neither contrary to nor inconsistent with section 3 paragraph two, section 29 and section 45 of the Constitution.
