



judgment to set aside the arbitration award and issued an order to dismiss the enforcement of such arbitration award. The reasons stated were that the complainants had issued a written notice of concession contract termination and the company received such notice on 30<sup>th</sup> January B.E. 2541 (1998), thus the company's submission of dispute to arbitration on 24<sup>th</sup> November B.E. 2547 (2004) was a submission of dispute after the expiration of the time limit under section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). The company appealed to the Supreme Administrative Court and the Supreme Administrative Court delivered a judgment in Case No. (Black) Or. 410-412/2557, Case No. (Red) Or.221-223/2562, on 21<sup>st</sup> March B.E. 2562 (2019), that in this case the contract dated 9<sup>th</sup> November B.E. 2533 (1991) did not specifically provide for a period for submission of dispute to arbitration. Therefore, a submission of dispute to arbitration could be made within the limitation period for filing a case in court. Upon finding that this case was a dispute relating to the rights and obligations of parties in a concession contract, being an administrative contract under section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), and occurred prior to the commencement of the Administrative Courts, the determination of limitation period for filing a case in the Administrative Court had to begin from the day of Administrative Court commencement, namely 9<sup>th</sup> March B.E. 2544 (2001), and the counting of limitation period had to be in accordance with section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), being the provisions of law in force at the time of trial, i.e. within five years of knowledge or imputed knowledge of the cause of action, but not exceeding ten years as from the occurrence of the cause of action. Since the company submitted the dispute to arbitration on 24<sup>th</sup> November B.E. 2547 (2004), which was a submission within the 5-year period as from the objections relating to the contract, this dispute was therefore a dispute duly submitted to arbitration within the time limit. The complainants argued that they suffered grievances or damages as a consequence of the enforcement of such arbitration award and that the resolution of the General Assembly of Judges of the Supreme Administrative Court No. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002) was inconsistent with the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) since such resolution of General Assembly of Judges of the Supreme Administrative Court determined that the limitation period commenced from the "commencement date of the Administrative Court" thus resulting in the counting of limiting period that differed from the provisions of section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542

(1999) which provided for the limitation period to commence from the date of “knowledge or imputed knowledge of the cause of action.” Such resolution of the General Assembly of Judges of the Supreme Administrative Court was therefore a rule of the General Assembly of Judges of the Supreme Administrative Court under section 44, which provided that all proceedings relating to a plaintiff, intervention, summons of person, administrative agency or state official to become a party to a case, trial process, admission of evidence and administrative case judgment, apart from the provisions in this Act, shall be in accordance with rules and procedures prescribed by a rule of the General Assembly of Judges of the Supreme Administrative Court, in regard to which actions had to be taken under section 5 and section 6 paragraph one. However, there did not appear to be any publication in the Government Gazette pursuant to section 5, and a submission to the House of Representatives for review pursuant to section 6 paragraph one was not made. Hence, the resolution of the General Assembly of Judges of the Supreme Administrative Court was unlawful and unenforceable as a rule of the General Assembly of Judges of the Supreme Administrative Court. The rule was also contrary to or inconsistent with section 3 paragraph two, section 5 paragraph one, section 25 paragraph three, section 188 and section 197 of the Constitution.

The applicant requested for a Constitutional Court ruling under section 213 of the Constitution, as follows:

(1) that the resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), violated the right or liberty of the complainants as protected under the Constitution, which was contrary to or inconsistent with section 3 paragraph two, section 5 paragraph one, section 25 paragraph three, section 188 and section 197 of the Constitution;

(2) that such resolution or action of the General Assembly of Judges of the Supreme Administrative Court be annulled.

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept the application submitted by the applicant for consideration and ruling under section 213 of the Constitution. The Constitutional Court held as follows. The applicant was of the opinion that the complainants suffered grievances or loss due to a resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), and requested for a ruling under section 213 of the Constitution that the resolution of such General Assembly of Judges of the Supreme Administrative Court was contrary to or inconsistent with section 3 paragraph two, section 5 paragraph one, section 25 paragraph three, section 188 and

section 197 of the Constitution. This case also raised the question of whether or not such resolution of the General Assembly of Judges of the Supreme Administrative Court had the characters of laying down rules on principles and procedures for filing a case. Hence, the case was in accordance with the rules, procedures and conditions under section 213 of the Constitution. The Constitutional Court therefore ordered the acceptance of the application for consideration. In the interest of proceedings, the Constitutional Court relied on powers under section 27 paragraph three of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018) to require the Supreme Administrative Court to submit minutes of the General Assembly in regard to the resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), including the relevant rules and documents, to the Constitutional Court.

The applicant later submitted a motion to amend the application dated 30<sup>th</sup> December B.E. 2563 (2020) which could be summarised as follows. The actions of the chamber of Supreme Administrative Court judges which considered the dispute between the complainants and the company, by applying the method for counting the period of filing an administrative case pursuant to such resolution of the General Assembly of Judges of the Supreme Administrative Court was an act that was not consistent with the Constitution, laws and rule of law, and was not committed for the common interest of the nation and overall well-being of the people. Thus, the act was contrary to or inconsistent with section 3 paragraph two, section 5 paragraph one, section 25 paragraph three, section 188 and section 197 of the Constitution since such resolution of the General Assembly of Judges of the Supreme Administrative Court constituted a rule issued unlawfully under section 5, section 6 paragraph one and section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Furthermore, the counting of period of filing administrative case under section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), as amended by the Act on Establishment of Administrative Courts and Administrative Court Procedure (No. 5), B.E. 2551 (2008), which came into force from 28<sup>th</sup> February B.E. 2551 (2008), was applied retroactively to the dispute arising on 27<sup>th</sup> (24<sup>th</sup> being the proper date) November B.E. 2547 (2004). The applicant requested for the Constitutional Court to rule that such resolution of the General Assembly of Judges of the Supreme Administrative Court and action of the chamber in the Supreme Administrative Court which applied the limitation period for filing an administrative case pursuant to such resolution of the General Assembly of Judges of the Supreme Administrative Court to the case of dispute between the complainants and the company were contrary to or inconsistent with section 3 paragraph two, section 5

paragraph one, section 25 paragraph three, section 188 and section 197 of the Constitution and requested that such resolution or action of the General Assembly of Judges of the Supreme Administrative Court be annulled.

The Constitutional Court considered the supplemental application submitted by the applicant and found that the trial and adjudication of judges of the Supreme Administrative Court raised by the applicant in the case between the complainants and the company was a judicial act. In addition, the submission of an application under section 213 of the Constitution had to be made in accordance with rules, procedures and conditions provided in section 46 and section 47(4) of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). Therefore, the supplemental application in relation to the judicial act of the Supreme Administrative Court was not accepted for consideration under section 55 of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). However, the supplemental application was accepted only with respect to the factual and legal issues stated in the supplemental application.

The Supreme Administrative Court submitted a total of 2 letters, namely a letter dated 14<sup>th</sup> January B.E. 2564 (2021) giving an explanation and submitting meeting minutes pursuant to the resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), as well as related documents, and a letter dated 2<sup>nd</sup> March B.E. 2564 (2021), submitting additional documents. The submissions could be summarised as follows. The General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002) considered the issue of the period for filing a case in the event that a plaintiff filed a case with a cause of action occurring prior to the commencement of operations of the Administrative Courts, where action filed in the Administrative Court was made subsequent to the commencement of operations. The matter was initiated when the President of the Supreme Administrative Court reviewed draft orders for application no. 40/2544, application no. 267/2544 and application no. 482/2545, which were submitted by the chamber of Supreme Administrative Court judges, and found that at the time the Administrative Courts commenced operations for only slightly over a year and there were cases raising questions relating to “problems on interpretation of case filing period”. Such cases involved a plaintiff filing a plaint where the cause of action occurred prior to the commencement of the Administrative Courts, filed subsequent to the commencement of the Administrative Courts, in which case there was a question as to when the counting of limitation period began. Disputes in certain cases and on certain allegations had differing limitation periods. At that time, each chamber in the Supreme Administrative Court had diverging opinions. The President

of the Supreme Administrative Court found it expedient to submit the cases pursuant to all three applications for a decision by the General Assembly of Judges of the Supreme Administrative Court in order to lay down a precedent for making judgments and orders. Such resolution of the General Assembly of Judges of the Supreme Administrative Court was not the issuance of a rule to amend provisions relating to administrative case procedures. The resolution merely decided on a question and case pursuant to those three applications as a guide for decisions by the General Assembly. The adjudicative guidance provided by the General Assembly did not have the same force as rules on administrative case procedures issued by virtue of section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) since such rules on procedures had the same force as law which had to be adhered by Administrative Court judges. Proceedings which were in violation of such rules would render the trial process unlawful and could be annulled by a chamber of judges or higher court. As for the adjudicative guidance of the General Assembly of judges of the Supreme Administrative Court, a chamber could depart from the guidance provided that reasons for the decision were stated and the President of the Supreme Administrative Court could submit for reconsideration by the General Assembly of Judges of the Supreme Administrative Court. Subsequent to decision of the General Assembly of Judges of the Supreme Administrative Court on those three applications, chambers in the Supreme Administrative Court decided such question of law in line with the decision of the resolution of the General Assembly of Judges of the Supreme Administrative Court in many other cases. Thus, it was apparent that such resolution of the General Assembly of Judges of the Supreme Administrative Court was a decision on a case by a General Assembly of Judges of the Supreme Administrative Court pursuant to section 68 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), and not the issuance of a rules of the General Assembly of Judges of the Supreme Administrative Court relating to administrative case procedures pursuant to section 44 in conjunction with section 5 and section 6 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

The Constitutional Court considered the application, supplemental application, motion to amend the application, written statement and supporting documents and found that this case was a question of law and there was sufficient evidence for a decision. The inquiry was closed pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018) and the following issues were determined for decision.

The first issue was whether or not the resolution of the General Assembly of Judges of the Supreme Administrative Court No. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), Re: Problem Relating to the Administrative Case Plaintiff Filing Period, was an issuance of a rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

The second issue was, if the resolution was an issuance of a rule, whether or not section 5 and section 6 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) had to be complied with, and whether or not the resolution was contrary to or inconsistent with section 3 paragraph two, section 25 paragraph three, section 188 and section 197 of the Constitution.

After deliberations, the Constitutional Court found that section 3 paragraph two of the Constitution was a provision in Chapter 1, General Provisions, which provided that “the National Assembly, Council of Ministers, courts, independent organs and state agencies must perform duties in accordance with the Constitution, laws and rule of law for the common interest of the nation and overall well-being of the people.”

Section 25 paragraph three was a provision in Chapter 3, Rights and Liberties of the Thai People, which provided that “a person whose right or liberty protected by the Constitution has been violated may invoke the provisions of the Constitution to exercise rights in courts or raise as a defense in a court.”

Section 188 and section 197 were provisions in Chapter 10, Courts. Section 188 paragraph one provided that “the trial and adjudication of cases are the competence of courts which shall proceed in accordance with laws and in the name of the King.” Paragraph two provided that “judges and justices are independent in the expeditious, fair and non-prejudicial trial and adjudication of cases pursuant to the Constitution and laws.” Section 197 paragraph one provided that “the Administrative Courts have the competence to try and adjudicate administrative cases due to the exercise of administrative powers under the law or due to an administrative activity, as provided by law.” Paragraph two provided that “there shall be a Supreme Administrative Court and Administrative Courts of First Instance.” Paragraph three provided that “the competence of the Administrative Courts under paragraph one does not include adjudication by independent organs which are the direct competences of such independent organs under the Constitution.” Finally, paragraph four provided that “the establishment, case procedures and operations of the Administrative Courts shall be as provided by the laws governing such matters.”

The Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) contained reasons for promulgation as stated in the

endnote to the Act that “whereas the Constitution of the Kingdom of Thailand provided for the establishment of the Administrative Courts to have the competence to try and adjudicate cases of administrative law dispute between a private party and a state agency or state official, or between a state agencies or state officials, in relation to an act or omission which a state agency or state official is required to perform by law, or due to an act or omission which a state agency or state official has responsibility for compliance with the law. Such powers and duties of the Administrative Courts are related to the issuance of a regulation or administrative order, an administrative negligence or an administrative contract, which are matters of public law. Furthermore, whereas the system for trial and adjudication necessarily requires a special process from general cases, since the outcome of a judgment may affect national administration or payment of tax collections of the public as compensation or damages to a private party, whilst the private party is in a disadvantageous position due to an inability to access information held by the state agency, a trial therefore required the application of an inquisitorial system to find facts and there must be a specialised judges who can be reviewed by the executive, legislature and general public, who will in one way or another be affected by a judgment of the Administrative Court...” From such intent in the establishment of Administrative Courts under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), there was a transition period for transfer of jurisdictional competence from the Courts of Justice to the Administrative Courts. The law on establishment of Administrative Courts and Administrative Court procedure provided for the characteristics of dispute, period for plaint filing, trial process and judgment. However, the law on establishment of Administrative Court and Administrative Court Procedures could not provide comprehensive rules and procedures. Hence, in order to enable the Administrative Courts to function during the transitional period, section 44 of the Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) provided that “all proceedings relating to the filing of a plaint, a motion for intervention, summons of a person, administrative agency or state officials to become a party to a case, trial process, admission of evidence and judgment of an administrative case, in addition to that already provided in this Act, shall be in accordance with rules and procedures provided by rules of the General Assembly of Judges of the Supreme Administrative Court.” Such provision was a delegation of authority from the legislature to the General Assembly of Judges of the Supreme Administrative Court in relation to the issuance of rules relating to proceedings not already provided by this Act. Nonetheless, this Act provided further that the Supreme Administrative Court had to act in accordance with section 6 paragraph one of the Act on Establishment of Administrative Courts and



Administrative Court Procedure, B.E. 2542 (1999), which provided that “rules of a General Assembly of Judges of the Supreme Administrative Court under section 44, section 46, section 60/1, section 66, section 70, section 75/1, section 75/2 and section 75/4 must be submitted to the House of Representatives on the date of issuance of such rules and made available for review by Members of the House of Representatives. If a motion is subsequently submitted and the House of Representatives adopts a resolution within thirty days of submission of such rules, the House of Representatives, by the votes of not less than one-half of the existing Members to repeal such rules, in whole or in part, the General Assembly of Judges of the Supreme Administrative Court must act accordingly.” The coming into force of rules of the General Assembly of Judges of the Supreme Administrative Court becomes effective upon publication in the Government Gazette as provided in section 5 that “all rules, regulations or notifications of the General Assembly of Judges of the Supreme Administrative Court, or issued by the Judicial Commission of the Administrative Courts, or by the Judicial Commission of the Administrative Courts with the approval of the General Assembly of Judges of the Supreme Administrative Court, or by the Judicial Administration Commission of the Administrative Courts or by the Commission of Administrative Court Officials, shall come into force upon publication in the Government Gazette.”

The first issue considered was whether or not the resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), Re: Problem Relating to the Counting of Administrative Case Filing Period, was an issuance of rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

The Constitutional Court found as follows. Section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) provided that the General Assembly of Judges of the Supreme Administrative Court had the power to prescribe rules and procedures for all proceedings relating to the filing of a plaint, motion for intervention, summons of a person, administrative agency or state officials to become a party to a case, trial process, admission of evidence and judgment of an administrative case where not provided by this Act. This provision enabled the Administrative Court to function during the period of transition from the jurisdictional competence of the Courts of Justice to the Administrative Courts despite the possible absence of provisions on rules and procedures under the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Therefore, the issuance of a rule under this provision was akin to the enactment of a new law. In this regard, section

6 provided that the rule issued by the General Assembly of Judges of the Supreme Administrative Court should first be submitted to the House of Representatives for review. A rule issued by the General Assembly of Judges of the Supreme Administrative Court was by nature applied generally, not applied to any particular case. This differed from the case under section 68 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) which provided that “if the President of the Supreme Administrative Court finds it expedient, a decision on a question or case may be made by a General Assembly, if where there is a law or rule of the General Assembly of Judges of the Supreme Administrative Court requiring a problem or case to be decided by a General Assembly, a decision shall be reached by a General Assembly.” The nature of a resolution of a General Assembly of Judges of the Supreme Administrative Court under this section was a decision on a question or case, which was binding only on such question or case.

Upon consideration of the facts under the application, motion to amend the application and statement of the Supreme Administrative Court relating to resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), Re: Problem Relating to the Counting of Case Filing Period, as regards the case of a plaintiff raising a cause of action which occurred prior to the commencement of the Administrative Courts in a plaint filed in the Administrative Court subsequent to the commencement of operations of the Administrative Courts, which stated that “in the case of a cause of action for filing an administrative case occurring prior to the commencement of the Administrative Courts but the plaintiff does not file the case in the Courts of Justices, being the court of competent jurisdiction at the time, after the commencement of operations of the Administrative Courts on 9<sup>th</sup> March B.E. 2544 (2001), the plaintiff files the case in the Administrative Courts, where during the time of case filing in the Administrative Court the limitation period for filing the case in the Courts of Justice has not yet expired, but the filing of case in the Administrative Courts was a filing of administrative case after the expiration of the case filing period under section 49, section 50 or section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), as the case may be, in such a case, in the interest of justice, the counting of case filing period shall commence from 9<sup>th</sup> March B.E. 2544 (2001), being the date of commencement of operations of the Administrative Courts. In the case where the plaintiff files a case in an Administrative Court subsequent to the expiration of period for filing an administrative case, the Administrative Court may reject the case for consideration and judgment due to the case being filed upon the expiration of period for filing a case in the Administrative

Courts under the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). However, if it is found that the case filed will be of common interest or there is another necessary cause, the Administrative Court may accept the case for consideration pursuant to section 52 paragraph two of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which is to be considered on a case by case basis.” The cause of matter which had to be submitted to such the General Assembly of Judges of the Supreme Administrative Court arose from a question relating to the counting of case filing period under application no. 40/2544, application no. 267/2544 and application no. 428/2545 where the causes of action occurred prior to the commencement of the Administrative Court but the plaintiffs filed cases subsequent to the commencement of the Administrative Court. Upon consideration of such resolution of the General Assembly of Judges of the Supreme Administrative Court, there was a consideration of a question relating to the period for case filing in the case where a cause of action occurred prior to the commencement of the Administrative Court. The Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) did not provide a transitory provision for counting case filing period during the transitory period for application of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). The question was therefore submitted to the General Assembly of Judges of the Supreme Administrative Court. It was requested that the General Assembly of Judges of the Supreme Administrative Court “prescribe a guideline for deciding on the question”, not just to adjudicate on a particular case. Furthermore, after considering the debate speeches of participants in the General Assembly in the minutes of the General Assembly of Judges of the Supreme Administrative Court, there was no mention of facts in any single case from those three cases, which would have been the case of deliberations on cases generally in order to reach a decision on issues of a case resulting in a judgment or specific order in such cases. Moreover, the orders in all three cases did not refer to a decision by a General Assembly of Judges of the Supreme Administrative Court in relation to the reasoning for decisions on the issues of the case. It was clear that the resolution prescribed a guideline relating to the filing of general administrative cases arising prior to the commencement of the Administrative Courts as a practice guide or uniformity of proceedings. It was intended that the trial and judgment in other cases had to be in accordance with this same guideline. The resolution of the General Assembly of Judges of the Supreme Administrative Court was therefore akin to a transitory provision prescribing rules for counting the period of case filing in the Administrative Court for all cases generally filed in the Administrative Courts, applicable for all types

of cases under section 49, section 50, section 51 and section 52. There was a change in provision of law enacted by a legislative organ without introducing an amendment to the law, but instead enacted a new law relating to administrative case procedures. Such resolution of the General Assembly of Judges of the Supreme Administrative Court was thus not a decision on a particular case, the outcome of which had to be in accordance with facts and laws of such case pursuant to section 68 paragraph one. On the other hand, this resolution prescribed procedures for all actions relating to case filing under section 44.

Therefore, the resolution of the General Assembly of Judges of the Supreme Administrative Court relating to the period for filing an administrative case constituted an issuance of a rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

The second issue was whether or not, if a rule was issued, actions should be taken under section 5 and section 6 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), and whether or not it was contrary to or inconsistent with section 3 paragraph two, section 25 paragraph three, section 188 and section 197 of the Constitution.

The Constitutional Court found as follows. An issuance of rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was a prescription of rules and procedures for all actions relating to the filing of plaint, motion for intervention, summons of a person, administrative agency or state officials to become a party to a case, trial process, admission of evidence and judgment in an administrative case not provided in the Act. The rule was equivalent to the enactment of a new law. In this regard, section 5 and section 6 of the same Act provided that the rule pursuant to the resolution of the General Assembly of Judges of the Supreme Administrative Court had to be submitted to the House of Representatives for review. If the House of Representatives did not object, a publication had to be made in the Government Gazette before the rule came into effect. In this case, even though the General Assembly of Judges of the Supreme Administrative Court had the power to issue rules to prescribe rules and procedures relating to the counting of period for filing an administrative case for fairness during the transition of court competent jurisdictions, the provisions of law in section 5 and section 6 also had to be complied with. An example was the Rules of the General Assembly of Judges of the Supreme Administrative Court on Trial Process and Judgment in Administrative Cases Transferred from Complaints under the Law on Council of State, B.E. 2544 (2001), published in the Government Gazette on 16<sup>th</sup> February B.E. 2544 (2001). Upon a decision that the resolution of the General Assembly of Judges of the Supreme

Administrative Court was the issuance of a rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which had to comply with section 5 and section 6 paragraph one, but based on the finding that such actions were not taken pursuant to section 5 and section 6 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), this issuance of rules therefore failed to comply with the steps provided by law.

A further question which had to be considered was whether or not the resolution of the General Assembly of Judges of the Supreme Administrative Court was contrary to or inconsistent with section 3 paragraph two, section 25 paragraph three, section 188 and section 197 of the Constitution.

Upon a finding that such resolution of the General Assembly of Judges of the Supreme Administrative Court was an issuance of rules pursuant to section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), but there was a failure to comply with section 5 and section 6 paragraph one, the issuance of rules was a non-compliance with the steps provided by law, and was therefore contrary to or inconsistent with section 3 paragraph two and section 197 paragraph four of the Constitution. As for other questions on whether or not it was contrary to or inconsistent with the provisions in other sections of the Constitution, there was no need to reach a decision.

By virtue of the aforesaid reasons, the Constitutional Court held that the resolution of the General Assembly of Judges of the Supreme Administrative Court no. 18/2545 on Wednesday, 27<sup>th</sup> November B.E. 2545 (2002), Re: Problem Relating to the Counting of Administrative Case Filing Period, was an issuance of rules under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) but since there was a failure to comply with section 5 and section 6 paragraph one, the rule was contrary to or inconsistent with section 3 paragraph two and section 197 paragraph four of the Constitution.

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