

The Constitutional Court
The Kingdom of Thailand

Constitutional Court Ruling

No. 10-13/2564 (2021)

Dated 7th July B.E. 2564 (2021)

Between	}	Takua Pa Provincial Court, 1 st ,	Applicants
		Nakhon Phanom Provincial Court, 2 nd ,	
		Chiang Rai Kwaeng Court, 3 rd ,	
		Buriram Provincial Court, 4 th	
		-	Respondent

Re: Whether or not section 4, with respect to the definition of “public assembly”, section 10, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution.

Takua Pa Provincial Court, Nakhon Phanom Provincial Court, Chiang Rai Kwaeng Court and Buriram Provincial Court submitted objections of defendants in a total of 4 applications (Mr. Prasert Karimkarn, defendant in criminal case no. (Black) Or 68/2563, case no. (Red) Or 258/2563, of Takua Pa Provincial Court, Mr. Pisal Bupsiri, defendant in criminal case no. (Black) Or 713/2563 of Nakhon Phanom Provincial Court, Mr. Sirawith Seritiwat, 1st defendant, and others, a total of 7 defendants in criminal case no. (Black) Or 680/2563 of Chiang Rai Kwaeng Court, Miss Isree Apisirujipas, defendant in criminal case no. (Black) Or 1839/2563 of Buriram Provincial Court) to the Constitutional Court for a ruling under section 212 of the Constitution. The facts in the submission of objections of defendants in all four applications and supporting documents could be summarised as follows.

First Application (Case No. 15/2563)

Takua Pa Provincial Public Prosecutor, the prosecution, prosecuted Mr. Prasert Karimkarn as a defendant in Takua Pa Provincial Court, seeking penalty for the defendant under section 4, section 10, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015). It was alleged that the defendant used Facebook to

create a group of Facebook users named “*Wing Lai Lung Phang Nga*” (Run to Oust Uncle, Phang Nga). The cover picture of such group contained an illustration and text stating, “we shall definitely meet on 12th January 2020,” inviting the public to participate in an assembly. A Facebook user who was a member of such group posted the text “Greetings to all those interested in participating in the Run to Oust Uncle. On behalf of the event organisers, I would like to provide the following event updates. Venue: Phra Narai Park, Takua Pa. Date/Time: 12th January, 07.00 hours...” An illustration and text stated “Run to Oust Uncle, Phang Nga, Sunday 12th January B.E. 2563 (2020), commencing 07.00 hours from the Phra Narai Lawn to Takua Pa Bus Station, a total distance of 1.5 km.” Thereafter, on 12th January B.E. 2563 (2020), the defendant organised a public assembly in the Phra Narai Lawn area, Bang Nai Si Subdistrict, Takua Pa District, Phang Nga Province, which was a public space. Texts were on display to express demands or political opinions to the general public and other persons who could participate in the assembly. Hence, this was a public assembly. The defendant organised the assembly without giving notice of assembly to the chief of the local police station in the locality where the public assembly was held at least twenty-four hours prior to the commencement of the assembly. Thus, the public assembly was unlawful.

The defendant objected that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The reasons stated could be summarised as follows.

1. Section 10 paragraph two of the Public Assembly Act, B.E. 2558 (2015) provided that a person who, by any means, invited or scheduled other persons to participate in an assembly on a stipulated day, time and place was deemed as a person who intended to organise an assembly. This provision restricted the rights and liberties of a person to express an opinion, display a text and communicate that was unreasonably disproportionate. By displaying of an invitation text or scheduling other persons to participate in an assembly without applying for a permit to use a venue or loudspeaker, or requesting for official facilitation of assembly or exhibiting any behaviour to convince to others that one was an assembly organiser, such action was deemed as the exercise of a person’s liberty. A person who displayed invitation texts or scheduled others to participate in an assembly was not a person who intended to organise an assembly under a duty to give notice of assembly to a receiving authority at least twenty-four hours prior to the commencement of an assembly pursuant to section 10 paragraph one. Moreover, section 10 paragraph two prescribed an over-inclusive definition of a person intending to organise an assembly without regard for the true intentions of a person to express an opinion or organise

an assembly. Such provision prejudiced the liberty of public assembly or liberty to express an opinion of a person who wished to set up an appointment for others to participate in an assembly since such person could have the burden of becoming a defendant in a criminal case and having to defend an action in court. There would be fear of proceedings and criminal penalty. An example was the case of the prosecution of participants in an assembly who posted invitations to others to join the assembly in Dusit Kwaeng Court to impose liabilities as an assembly organiser. Section 10 paragraph two of the Public Assembly Act, B.E. 2558 (2015) was therefore contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution.

2. Section 14 of the Public Assembly Act, B.E. 2558 (2015) provided that a public assembly held without notice of assembly pursuant to section 10 was deemed as an unlawful public assembly in all cases without exception. There was no provision on rules for an officer to exercise a discretion to give any concession to an assembly without notice of assembly. Such provision restricted the liberty to assemble that was inconsistent with the prerequisite under section 44 of the Constitution. Furthermore, the measures under such provision resulted in an implied licensing system under the law since an unlawful public assembly under section 14 could be dissolved by announcement of an officer pursuant to section 21. This provision affected a person's liberty to assemble, merely because of a failure to give notice of assembly by the assembly organiser, despite the assembly organiser who failed to give notice of assembly having a separate legal liability from the assembly. In addition, the National Human Rights Commission had delivered an opinion that the provision which stipulated that a failure to give notice of assembly or a notice given less than twenty-four hours prior to an assembly was an unlawful assembly posed a licensing requirement. The liberty to assemble should not necessarily require licensing. Also, the Constitutional Court had delivered Ruling No. 11/2549 which held that the requirement for the public to seek a license to assemble on a public highway was contrary to or inconsistent with the Constitution due to the disproportionate restriction of liberty to assemble peacefully and without arms. Therefore, section 14 of the Public Assembly Act, B.E. 2558 (2015) violated the essence of the rights and liberties to assemble peacefully and without arms in a public area, was contrary to the principle of proportionality, and was contrary to or inconsistent with section 26 and section 44 of the Constitution.

3. Section 28 of the Public Assembly Act, B.E. 2558 (2015) prescribed a criminal fine penalty in an amount not exceeding ten thousand baht in the event that an organiser of a public assembly failed to give notice of an assembly or failed to give notice of an assembly at least twenty-four hours prior to the commencement

of the assembly. Such provision, despite not prescribing an imprisonment penalty, was still detrimental on a person who had the status of a criminal offender in several ways. For instance, a suspect had to be fingerprinted, was subject to detention for a period not exceeding forty-eight hours and a conviction would result in a criminal record which would be detrimental to job applications in a state agency or applications for entry into a foreign country. Such provision of law merely had the objective of allowing a state agency to make preparations to facilitate and ensure the safety of the participants of an assembly and the public. There were other measures which had a lesser restriction on the rights and liberties of a person than a criminal penalty, namely an administrative fine. The prescription of a criminal penalty should be reserved only for a serious offence as a punishment for an evil offender and to prevent crime. The prescription of criminal penalty under section 28 caused fear and apprehension from exercising the liberty to assemble whereas the only benefit gained by society was convenience. Thus, the provision was severely detrimental on a person and unreasonably disproportionate to the public benefit enjoyed by society. Also, an instant assembly, also known as a flash mob, which was an assembly of brief duration, would be rendered utterly unfeasible since notice of the assembly could not be given at least twenty-four hours prior to the assembly. This caused an undue burden on a person who wished or organise certain types of assembly. Hence, section 28 of the Public Assembly Act, B.E. 2558 (2015) was a provision which disproportionately restricted a person's liberty to assembly that was contrary to or inconsistent with section 26 in conjunction with section 44 of the Constitution.

Takua Pa Provincial Court found that the defendant raised objections that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26 and section 44 of the Constitution. The court was going to apply such provision of law to the case and there had not yet been a ruling of the Constitutional Court relating to such provision. The objection was therefore referred to the Constitutional Court for a ruling under section 212 paragraph one of the Constitution.

Second Application (Case No. 21/2563)

Nakhon Phanom Provincial Public Prosecutor, the prosecution, filed an action against Mr. Pisal Bupasiri as a defendant in Nakhon Phanom Provincial Court. The defendant was prosecuted under section 4, section 10, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015). It was alleged that the defendant posted texts on Facebook inviting the public to participate in an assembly. The text stated "Run to Oust Uncle, 12th January 2020, Nakhon Phanom, Kalaen Nam Deaw, commencing at 06.00 hours at Phya Sri Sattanachach Lawn # Please Attend."

Thereafter, on 12th January B.E. 2563 (2020), the defendant organised public assembly at Phya Sri Sattanakrach Lawn, Nai Muang Sub-District, Muang Nakhon Phanom District, Nakhon Phanom Province, which was a public area. There were political expressions communicated to the general public, which was open to participation by other persons. Thus, the gathering constituted a public assembly. The defendant organised the assembly without giving notice of assembly to the chief of the local police station where the public assembly was held at least twenty-four hours prior to the assembly. The public assembly was therefore unlawful.

The defendant objected that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The same reasons as the first application were provided.

Nakhon Phanom Provincial Court found that the defendant raised objections that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The court had to apply such provisions of law to a case and there had not yet been a ruling of the Constitutional Court in relation to such provisions. The objection was therefore referred to the Constitutional Court for a ruling under section 212 paragraph one of the Constitution.

Third Application (Case No. 26/2563)

Chiang Rai Kwaeng Court Public Prosecutor, the prosecution, filed an action against Mr. Siriwith Seritiwat, 1st defendant, and others, a total of 7 persons, in Chiang Rai Kwaeng Court. The seven defendants were prosecuted under section 4, section 5, section 10, section 14, section 21 and section 28 of the Public Assembly Act, B.E. 2558 (2015), Announcement of the Prime Minister's Office Re: Prescription of Procedures for Notice of Public Assembly, dated 3rd November B.E. 2558 (2015), and section 83 of the Penal Code. On 16th May B.E. 2562 (2019), the seven defendants, intending to organise an assembly, held an assembly to revive the conscience of Senators installed by selection when voting for the election of a Prime Minister. The public assembly was held on the lawn in front of the Pho Khun Meng Rai the Great Monument, Wiang Sub-District, Muang District, Chiang Rai Province, without giving notice of assembly to the chief of the local police station where the public assembly was held at least twenty-four hours prior to the commencement of the assembly.

The 1st and 2nd defendants presented an outline for examination of witnesses who would testify in objection of the interpretation and application of the Public Assembly Act, B.E. 2558 (2015). It was asserted that section 4, in relation to the definition of the term public assembly, which did not specify the number of persons, and section 10 in relation to the notice of assembly by a public assembly

organiser, and the grant of powers to the executive to issue an announcement to prescribe procedures for giving notice of a public assembly, were contrary to the rule of law. The provisions disproportionately increased a burden and restricted the right or liberty of a person, which was contrary to or inconsistent with section 26 and section 44 of the Constitution.

Chiang Rai Kwaeng Court found that the presentation made by the 1st and 2nd defendants constituted a case where section 4 in relation to the definition of the term public assembly and section 10 in relation to notice of a public assembly of the Public Assembly Act, B.E. 2558 (2015) were provisions which had to be applied to a case. All seven defendants objected that section 4 and section 10 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26 and section 44 of the Constitution. Such provisions of law were to be applied to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision. The objection was therefore referred to the Constitutional Court for a ruling under section 212 paragraph one of the Constitution.

Fourth Application (Case No. 7/2564)

Buriram Provincial Public Prosecutor, the prosecution, filed an action against Miss Isree Apisirirujipas, the defendant, in Buriram Provincial Court. The defendant was prosecuted under section 4, section 10 and section 28 of the Public Assembly Act, B.E. 2558 (2015). It was alleged that on 12th January B.E. 2563 (2020), the defendant, an organiser of an assembly in a public area, organised a public assembly and invited the general public to gather in an event called “Run to Oust Uncle”. This event was held to protest against the national administration of the government led by General Prayuth Chan-o-cha, Prime Minister, at the Commemorative Park for His Majesty, Satuek Sub-District, Satuek District, Buriram Province. The event was held in a public area without notice to the chief of the local police station where the public gathering was held at a time and in the matter stated by law as a violation of the law.

The defendant objected that section 10 paragraph two and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The same reasons were stated as in the first application only with respect to the provisions of section 10 paragraph two and section 28.

Buriram Provincial Court found that the defendant raised objections that section 10 paragraph two and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The court was going to apply such provision of law to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision.

The objections were therefore referred to the Constitutional Court for a ruling under section 212 paragraph one of the Constitution.

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept the written referrals of all four objections for a ruling under section 212 paragraph one of the Constitution. The Constitutional Court found as follows. The first application (Case No. 15/2563) requested for a Constitutional Court ruling that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26 and section 44 of the Constitution. The second application (Case No. 21/2563) requested for a Constitutional Court ruling that section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. The third application (Case No. 26/2563) requested for a Constitutional Court Ruling that section 4 and section 10 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26 and section 44 of the Constitution. The fourth application (Case No. 7/2564) requested for a Constitutional Court ruling that section 10 paragraph two and section 28 of the Public Assembly Act, B.E. 2558 (2015) were contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution. Takua Pa Provincial Court, Nakhon Phanom Provincial Court, Chiang Rai Kwaeng Court and Buriram Provincial Court were going to apply such provisions of law to cases and there had not yet been a ruling of the Constitutional Court in relation to such provisions. These cases were in accordance with section 212 paragraph one of the Constitution. The Constitutional Court therefore ordered the acceptance of the applications for consideration.

All four applications raised the same issues for consideration. The Constitutional Court consolidated the cases into one proceedings, designating Case No. 21/2563 as the principal case. In the interest of the proceedings, the relevant agencies were directed to submit opinions and documents or evidence to the Constitutional Court.

The Prime Minister was of the opinion that the Announcement of the Prime Minister's Office Re: Prescription of Procedures for Notice of Public Assembly dated 3rd November B.E. 2558 (2015) provided details relating to procedures for giving notice of a public assembly and application for concession in the event of an inability to give notice of an assembly within the period stipulated by law, for the convenience of the person giving notice and to provide information to the person receiving the notice. Such prescription of procedures for giving notice of public assembly pursuant to the Announcement of the Prime Minister's Office relied on powers under the Public Assembly Act, B.E. 2558 (2015), which was a provision of law

enacted for the preservation of state security, public safety, public order or good morals of the people or to protect the right or liberty of other persons. The case was in accordance with the prerequisites provided under section 44 of the Constitution.

The Secretary-General of the Council of State was of the opinion that the International Covenant on Civil and Political Rights, to which Thailand was a party, recognised in article 21 the right of peaceful and arms free assembly as a fundamental right which could be restricted by a law enacted by the state in the interest of national security, public safety, public order, the protection of public health or good morals of the people, as well as the protection of rights and liberties of others. An assembly in public would have the effect of encroaching the rights and liberties of others using the public space and posed a risk of causing disorder. An assembly organiser, participants and state agency charged with the duty of maintaining order had the implied duty to jointly manage the potential risks arising from such public assembly. Section 10 paragraph two of the Public Assembly Act B.E. 2558 (2015) provided that a person wishing to organise an assembly had the duty to give notice of assembly for the benefit of facilitating the participants and other persons who could be affected by the public assembly. A person wishing to organise an assembly included a person who by any means invited or scheduled other another person to participate in an assembly on a stated day, time and place, including a person who requested permission to use a place or sound amplifier or requested for an official authority to facilitate an assembly since the action of such person amounted to an invitation to other persons to participate in an assembly. Such person therefore had a duty to give notice and manage a peaceful and arms free assembly. Section 14 was enacted to give clarity to the kind of public assembly that was lawful or unlawful and provided the extent of discretion that could be exercised by an officer when taking legal steps for the participants of an assembly to end an assembly. Section 28 provided a fine penalty of not exceeding ten thousand baht with no imprisonment term, since the offence was not serious enough to warrant an imprisonment penalty. The act of a failure to give notice of public assembly or holding a public assembly after receiving a written notice of a lack of reasons for concession of time limits also carried the same penalty. Such penalty was appropriate and proportional to other offences under this Act.

The Commissioner General of the Royal Thai Police was of the opinion that the Royal Thai Police had prepared a handbook on public assembly management plan pursuant to the Public Assembly Act, B.E. 2558 (2015) which served as a guide for operating agencies in the control and oversight of public assemblies. According to the procedures or practices under section 10 paragraph two of the Public

Assembly Act B.E. 2558 (2015), an assembly organiser had the duty to give notice of an assembly. Failure to give notice of an assembly resulted in a liability to a fine not exceeding ten thousand baht pursuant to section 28. In the case where an accused consented to payment of a fine, an inquiry official had the competence to settle the case, or in the case where an accused did not consent to payment of a fine, proceedings had to be taken under the Criminal Procedure Code by issuing a warrant to summon the accused to acknowledge the allegations and further investigations taken. As for procedures or practices under section 14 in the case of an unlawful public assembly, an officer in charge of a public assembly would take action under section 21, section 22, section 23 and section 24. The Royal Thai Police would avoid using force. If necessary, force would only be applied as needed, appropriate and proportional to the situation. Proceedings would then be undertaken under the Criminal Procedure Code. Once the inquiry official received a complaint and gathered evidence and found that the suspect had committed an offence, the inquiry official would apply for a court warrant for the arrest of the suspect. If the court dismissed an application for arrest warrant, the inquiry official would issue a warrant to summon the suspect for further investigation. There had been no reports of problems encountered by operating agencies in the enforcement of section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015).

The Secretary-General of the Senate submitted copies of evidence relating to deliberations on the enactment of section 10 paragraph two, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) which could be summarised as follows. Section 4, as regards the definition of “public assembly” did not prescribe a minimum number of assembly participants since it was generally understood that an “assembly” referred to a gathering of persons. Thus, whenever persons gather regardless of the number, there had to be limits to the exercise of such rights and liberties. Section 10, which prescribed a duty on a person wishing to organise a public assembly to give notice of assembly to a receiving authority at least twenty-four hours prior to the commencement of an assembly merely in order to inform the receiving authority, the head of local police station charged with the oversight of public assembly and safeguard of public convenience. Such notice was not an application for license for public assembly. Furthermore, it was stipulated that the procedure for giving notice of public assembly prescribed by notification of the Minister had to be convenient for the person giving notice and could be submitted via information technology system. Section 14, which provided that in a case deemed to be an unlawful public assembly, including a public assembly without prior notice pursuant to section 10, provided for the scope of functions of an officer

in announcing the dissolution of an assembly or applying to a court for an injunction to dissolve an assembly pursuant to section 21. Section 28, which provided a lenient criminal penalties in the form of a fine not exceeding ten thousand baht, was intended to enable the effective management of public assemblies and ensured that relevant parties in a public assembly jointly managed the risks of public assemblies as well as took responsibility and respected the rights and liberties of other persons.

The Constitutional Court considered the objections of the defendants in all four applications, opinions and information of relevant agencies and supporting documents and found that this case raised a legal question and there was sufficient evidence to reach a decision. Therefore, the inquisitorial proceedings were concluded pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). The issue determined for consideration was whether or not section 4, as regards the definition of “public assembly”, section 10, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) was contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 26, section 34 and section 44 of the Constitution were provisions in Chapter 3, Rights and Liberties of the Thai People. Section 26 paragraph one provided that “the enactment of a law which results in a restriction of right or liberty of a person must be in accordance with the prerequisites provided in the Constitution. In the case where the Constitution does not provide a prerequisite, such law must not be contrary to the rule of law, does not increase a burden or disproportionately restrict a right or liberty of a person, and shall not prejudice a person’s human dignity. The reasons of necessity for restriction of rights and liberties must also be specified.” Paragraph two provided that “a law under paragraph one must be generally applicable and not specifically intended for application to a particular case or person.” Section 34 paragraph one provided that “a person shall have the liberty of expression of opinion, speech, writing, printing, advertising and communication by other means. The restriction of such liberty is prohibited, except by virtue of a provision of law specifically enacted in the interest of state security, the protection of right or liberty of other persons, the preservation of public order or good morals or the protection of public health.” Paragraph two provided that “academic liberty shall be protected. However, the exercise of such liberty must not be contrary to the duties of the Thai people or good morals of the public and must respect and not hinder the differing views of others.” Section 44 paragraph one provided that “a person shall have the liberty to assemble peacefully and without arms.” Paragraph two provided that “the restriction of liberty under paragraph one shall be prohibited,

except by virtue of a provision of law enacted for the purpose of maintaining security of the State, public safety, public order or good morals or the protection of a right or liberty of other persons.”

The Public Assembly Act, B.E. 2558 (2015) was enacted to prescribe clear rules for the exercise of right to hold a public assembly and was consistent with the International Covenant on Civil and Political Rights, to which Thailand is a party. The intent was to ensure that public assemblies were held in an orderly manner without affecting national security, public safety, public order or good morals, as well as public health or convenience of the people’s access to public spaces, and without prejudice to the rights and liberties and human dignity of others. Section 4 provided that “in this Act, “public assembly” meant an assembly of person in a public space to demand, support, oppose or express an opinion on a matter, by expressing to the general public and allowing participation of other persons, regardless of whether or not such assembly involved a march or movement.” Section 10 paragraph one provided that “a person who wishes to organise a public assembly shall give notice of assembly to a receiving authority at least twenty-four hours prior to the commencement of the assembly.” Paragraph two provided that “a person who by any means invites or schedules other persons to participate in an assembly on a stipulated day, time and place, including a person who requests for permission to use a place or sound amplifier, or requests an official authority to facilitate an assembly shall be deemed as a person who wishes to organise a public assembly pursuant to paragraph one.” Paragraph three provided that “a notice of public assembly must specify the objectives and day, duration and place of public assembly in accordance with procedures prescribed by Notification of the Minister, which procedures must be convenient for the person giving notice and must allow the giving of notice via an information technology system.” Section 14 provided that “a public assembly which does not comply with section 6, or failed to give notice of assembly under section 10, or the person giving notice failed to comply with an order of the receiving authority or the receiving authority ordered the prohibition of assembly under section 11, or held after the applicant receives a written notification that there is no reasonable cause for the grant of concession to the prescribed period under section 12, shall be deemed as an unlawful public assembly.” Section 28 provided that “a person who violates section 10, section 12, section 17 or section 18 shall be liable to a fine not exceeding ten thousand baht.”

The liberty of assembly was a fundamental principle of the democratic regime of government. The liberty of an individual to express an opinion was developed and expanded to the expression of opinion by a group of persons, and had become an important channel or tool for communicating political, social and

cultural opinions. The public was able to express needs and demands or reflect personal problems or grievances to the government and society, being the basis of a democratic society which recognised the expression of opinion by a person. Therefore, the liberty of assembly provided a guarantee that a person could freely determine the objectives, day, duration, place and method of assembly and undertake various activities in an assembly, such as preparation, assembling, participation and self-organisation of the assembly. Nevertheless, the liberty of assembly had similar parameters and limitations to other liberties which, at the same time, had to take into account the liberties of the people and common interests of society, since granting unrestricted liberty could also affect the liberties of other persons. The Constitution recognised and protected the liberty to assemble peacefully and without arms in section 44. An exception was provided for the state to restrict such liberty to assemble by enacting a law which had to satisfy the prerequisite provided under the Constitution, namely to preserve state security, public safety, public order and good morals, as well as to protect the rights and liberties of other persons. This provision was consistent with article 21 of the International Covenant on Civil and Political Rights which stated that “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” In addition, the enactment of a law to restrict the liberty to assemble had to be in accordance with section 26 of the Constitution. In other words, the law should not be contrary to the rule of law, not increase a burden or disproportionately restrict a right or liberty of a person, and should not prejudice the human dignity of a person.

As regards the objection on whether or not section 4 of the Public Assembly Act, B.E. 2558 (2015), with respect to the definition of “public assembly”, was contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution, the Constitutional Court found as follows. The definition of “public assembly” merely prescribed rules to determine the type of assembly of persons which constituted a public assembly subject to the application of the Public Assembly Act, B.E. 2558 (2015), consistent with the spirit or objectives of the law. The provision did not prescribe rules and conditions relating to a public assembly which would affect the rights and liberties of a person. Even though such definition did not prescribe the number of participants in an assembly, it was generally understood by nature or characteristics of an assembly that “an assembly” meant a gathering of persons, or defined generally as a meeting of a group of persons with

the objective of achieving a common interest. Moreover, an assembly was not dependent upon the minimum number of persons participating in the assembly. It was merely a gathering of persons in a public space with a common objective to demand, support, oppose or express an opinion on any particular issue to the general public and open to participation by other persons. The provision did not lay down rules and conditions relating to a public assembly which would affect the rights and liberties of a person. Section 4 of the Public Assembly Act, B.E. 2558 (2015) with respect to the definition of “public assembly” was therefore neither contrary to nor inconsistent with section 26, section 34 and section 44 of the Constitution.

As for the objection on whether or not section 10 of the Public Assembly Act, B.E. 2558 (2015) was contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution, the Constitutional Court found as follows. Section 10 paragraph one was a provision relating to notice of public assembly. It was provided that a person who wished to organise a public assembly had to give notice of assembly to a receiving authority at least twenty-four hours prior to the commencement of the assembly. The intent was for the benefit of safeguarding the convenience of the public who could be affected by the public assembly, oversight of the public assembly and the preservation of public peace and order, as well as for the benefit of facilitating and protecting the participants of the assembly. The section provided that the chief of police station in the locality of the public assembly, as the receiving authority of notice of assembly, was the officer in charge of the public assembly charged with important duties, namely (1) facilitation of public access to the public space used for assembly; (2) maintain safety, convenience or mitigate the grievances or nuisance to others within the vicinity of the place of assembly; (3) maintain the safety or convenience of participants at the place of assembly; (4) facilitate traffic and public transport in the area of assembly and its vicinity to minimise the impact on the public from the assembly; and (5) prescribe conditions or order the assembly organiser, participants in an assembly or a person in the place of assembly to comply with a direction in the interest of the discharge of functions under (1), (2), (3) or (4). The provisions of section 10 paragraph one prescribed rules relating to the management of a public assembly at least twenty-four hours prior to the commence of an assembly. This was not a licensing system, but an advance notice system to allow an official of the executive to comply with section 19 and section 20, provide facilitation and manage an orderly assembly. Such objectives were evident in section 11, which provided steps and procedures for giving notice of an assembly. Upon receiving a notice, the receiving authority would send a summary of essential information for the public assembly to

the person giving notice within twenty-four hours of receiving the notice. The receiving authority had the power to issue an order to direct the person giving notice to make an amendment within a prescribed period or had the power to order the prohibition of assembly only in the case where the notified public assembly could be contrary to section 7 or section 8. A person giving notice of assembly had the right to appeal in writing to a commanding authority one level above the receiving authority. In the case where the person intending to organise a public assembly was unable to give notice of assembly within the period stipulated, section 12 provided that a notice of assembly could be given together with a request for concession of such time limit. The stipulation of a period for advance notice of assembly by at least twenty-four hours was only intended to allow the relevant state officials to make preparations and make plans for the safeguard of public convenience and the appropriate and effective oversight of the public assembly, lower risks of civil unrest or disorder, or preserve state security, protect public safety and public order or good morals, or protect a right or liberty of others. In particular, information should be disseminated to the public on the place used for assembly and time of assembly, as well as advice concerning traffic routes or public transport systems to minimise the impact of the assembly on the public, being the objectives of this law. The prescription of such legal measures was appropriate for the case and proportionate as regards the legal measure and the opportunity for persons to exercise the liberty of expressing opinions and liberty to assemble peacefully and without arms.

Section 10 paragraph two of the Public Assembly Act, B.E. 2558 (2015) was a provision intended to prescribe the description or clear meaning of the term “person who wishes to organise a public assembly” since the actions of such person amounted to an invitation to others to participate in an assembly. Such person had information on the public assembly and therefore had the duty to give notice to the receiving authority merely twenty-four hours prior to the commencement of the assembly. The prescription of a duty on a person wishing to organise a public assembly to give prompt advance notice of an assembly would allow the relevant officials to make preparations and plan for safeguards of public convenience and public assembly oversight. If no person clearly represented oneself as a person wishing to organise a public assembly by giving notice to a receiving authority, a state official could not know who to contact or coordinate other than the person making such representation or behaviour so as to ensure that the assembly was peaceful and without arms. A concealment of a public assembly to be held at a certain place and time from a state official could imply a public assembly that enjoyed protection under the Constitution. Moreover, the procedures for giving notice of a public assembly could be conveniently given as provided under section 10 paragraph three.

There was no unreasonably disproportionate increase in burden or restriction or a right or liberty of the person extending the invitation or scheduling others to participate in an assembly on a stipulated day, period and place by any means.

Section 10 paragraph three of the Public Assembly Act, B.E. 2558 (2015) was a provision relating to the procedures for giving notice of a public assembly, which had to specify the objectives, day, period and place of public assembly pursuant to the procedures prescribed by Notification of the Prime Minister. The prescribed procedures had to be convenient to the person giving notice, and notice via information technology system should also be allowed. In this case, the legislature had delegated powers to the executive to enact subordinate legislation to prescribe a more complete and comprehensive details on procedures of notice and procedures for actions of relevant officials. The executive could exercise a discretion to make amendments or changes in details in accordance with the circumstances. Article 3 of the Notification of the Prime Minister's Office Re: Determination of Means of Notification of Public Assembly, dated 3rd November B.E. 2558 (2015) provided that a notice of wish to organise a public assembly could be submitted by any one of the following means, namely (1) direct submission to the receiving authority; (2) submission by facsimile; (3) submission by electronic mail. Such procedures were convenient and did not unreasonably increase the burden of a person having the duty to give notice of an assembly.

Therefore, even though section 10 restricted the liberty to express an opinion and the liberty to assemble peacefully and without arms to a certain extent, it was in accordance with the constitutional prerequisites, not contrary to the rule of law, did not disproportionately increase a burden or restricted the liberty of a person and did not prejudice human dignity. Furthermore, the law was generally applicable and was not directed at any particular case or person. Hence, the provision was neither contrary to nor inconsistent with section 26, section 34 and section 44 of the Constitution.

As for the objection on whether or not section 14 of the Public Assembly Act, B.E. 2558 (2015) was contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution, the Constitutional Court found as follows. The provision of section 14, which provided that an unlawful public assembly included a public assembly without notice under section 10, had the objective of allowing an officer in charge of a public assembly to take action under section 21. An announcement could be made to direct participants in an unlawful public assembly under section 14 to cease the assembly within a stated time limit. If a participant failed to comply with such an order, the officer in charge of the public assembly would apply to the Civil Court or provincial court having competent jurisdiction over

the place of public assembly to order the participants to cease the public assembly. Such provision of section 14 was intended to prescribe the description of an unlawful public assembly to enable a state official to take effective action under the law in overseeing the convenience and safety of such assembly. Such action could affect the effectiveness of various measures taken by a state official when discharging functions with respect to the preservation of civil peace and order. Moreover, a failure by an assembly participant to give notice of assembly would prevent a state official to initiate actions pursuant to duties and powers provided by law to safeguard public convenience as well as to give public notice in order to avoid impact from the assembly. The relevant officials needed sufficient time to plan or make preparations to prevent public grievances and harm that would be subsequently irremediable. A public assembly held without knowledge of a state official could cause public inconvenience, or cause grievances or harm to the participant from lack of safety. It was therefore necessary to require declare that a public assembly without notice under section 10 was an unlawful public assembly. Even though the provision of section 14 with respect to notice of a public assembly under section 10 imposed certain restrictions to the liberty to express an opinion and the liberty to assemble peacefully and without arms, such restrictions were in accordance with constitutional prerequisites, not contrary to the rule of law, did not disproportionately increase a burden or restricted a person's liberty, and did not prejudice human dignity. Furthermore, the law was generally applicable and was not directed to any particular case or person. Hence, the provision was neither contrary to nor inconsistent with section 26, section 34 and section 44 of the Constitution.

As regards the objection on whether or not section 28 of the Public Assembly Act, B.E. 2558 (2015) was contrary to or inconsistent with section 26, section 34 and section 44 of the Constitution, the Constitutional Court found as follows. Section 28 provided a criminal penalty, which included the case of organising an assembly without notice under section 10, being a liability to a fine not exceeding ten thousand baht. The purpose was to provide a criminal penalty measure for a criminal wrongdoer. The penalty fine imposed on the wrongdoer was a measure to secure the effective enforcement of the law pursuant to its purpose of preserving public peace and order as well as the protection of a right or liberty of other persons, including the participants in an assembly. The prescription of such penalty was a penalty which was reasonably proportionate to the non-serious nature of the offence. The non-prescription of minimum penalty gave the court a discretion to deliver a sentence that was appropriate to the circumstances of each case. Such penalty level was proportionate to the seriousness of the offence. Even though section 28 with respect to the punishment of a violator under section 10, to a certain

extent, restricted the liberty to express an opinion and liberty to assemble peacefully and without arms, such restriction was in accordance with the constitutional prerequisites. The restriction was not contrary to the rule of law, did not increase a burden or disproportionately restricted the right or liberty of a person. Also, the restriction did not prejudice human dignity. The law was generally applicable and was not directed to any particular case or person. Hence, the provision was neither contrary to nor inconsistent with section 26, section 34 and section 44 of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court held that section 4, with respect to the definition of “public assembly”, section 10, section 14 and section 28 of the Public Assembly Act, B.E. 2558 (2015) were neither contrary to nor inconsistent with section 26, section 34 and section 44 of the Constitution.
