

## Important Rulings of the Constitutional Court of Thailand

Nantapol Khaimuk

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On September 28, the Constitutional Court of Thailand held a seminar on the topic “Rulings from the Constitutional Court that develop good standards in politics, business, and the society”. Interesting examples that were discussed touched upon business practices in two important issues.

### **Quorum in the National Legislative Assembly**

The first important issue deals with Ruling 2/2551 of the Constitutional Court in which the President of the National Legislative Assembly asked the Constitutional Court to rule on its right to pass an Organic Act related to the Office of the Ombudsman. As a required procedure based on Article 141 which says “After a bill of the organic law has been approved by the National Assembly, and prior to present it to the King for signature, the National Assembly shall refer it to the Constitutional Court for consideration of its constitutionality which shall be completed within thirty days as from the date of receiving such a bill”.

The key issue was the quorum in passing the Organic Act as the law (based on Article 126) states that “At a sitting of the House of Representatives or the Senate, the presence of not less than one-half of the total number of the existing members of the House is required to constitute a chamber...”. There were 212 members who signed in at the beginning of the session out of 242, but as the vote was counted to pass the Act, there were only 86 who passed it out of 86 members remaining in the chamber.

The Constitutional Court commented on the case that the purpose of a quorum is to have a sufficient number of representatives to show their opinion and cast a ballot to pass an Act that fulfills its constitutionality. A quorum is not to have

members sign their names to mark their presence at the beginning of the chamber sitting but to sit through the session and complete the voting procedure. The Constitutional Court further commented that a quorum applies not only to judicial proceedings, meetings of the members of the parliament, and the cabinet but also commercial and corporate dealings. Events such as shareholder meetings and voting in companies also fall under the implications of this Constitutional Court ruling.

As for Ruling 2/2551 of the Constitutional Court, the passing of the Organic Act related to the Office of the Ombudsman with a signing in of 212 members but a voting of only 86 members deems unconstitutional and therefore did not pass.

### **Selling food past midnight**

Recently, on a street in Saraburi province, a rice soup vendor was detained and accused of selling food and beverages past midnight by the police. The police cited Issue number 45 of the Announcement of the Revolutionary Council dated 17 January 1972 and its revision through Issue number 252 dated 16 November 1972. The announcement stated that no restaurant owners or operators shall be allowed to sell food and beverages between 0100 to 0500 hours. The vendor objected and claimed that the announcement is a violation of Article 43 of the 2007 Constitution that states "A person shall enjoy the liberties to engage in an enterprise or an occupation and undertake fair and free competition.

The opinion of the Constitutional Court through Ruling number 12/2552 referred that the announcement during the coup d'état in 1972 is outdated and was originally be aimed to maintain a safe environment despite the state of martial law. However, in today's peaceful environment, the announcement is no longer applicable and infringes on the freedom and liberty of the vendor.

It was therefore declared that the announcement was unconstitutional and is against Article 43 and Article 29 which states "The restriction of such rights and

liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substance of such rights and liberties.”

The Constitutional Court’s rulings have a wide repercussion not only on government proceedings but also social and economic transactions. A quorum is needed both at the registration and voting of any assembly- private or government. As for the discontinuation of the . Announcement of the Revolutionary Council in 1972, vendors are free to sell their food and beverages without any time restrictions.