



The Constitutional Court considered the application, statements of relevant persons and supporting documents and determined that the issue which required a ruling was whether or not section 5, section 8 and section 13 of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011) raised constitutional questions pertaining to section 129 of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 129 paragraph one of the Constitution provided that “the House of Representatives and Senate has the power to select members of their respective Houses for appointment of a standing committee, and has the power to select a person who is or is not a member for the appointment of an ad hoc committee or joint committee under section 137 in order to attend a business, inquire facts or study any matter, and to report to the House within the period set by the House.” Paragraph two provided that “the performance of a business, inquiry of facts or study under paragraph one must be a matter within the duties and powers of the House, and the duties and powers specified in the establishment of the parliamentary committee or operations of the parliamentary committee must not involve an overlapping matter. In the event that businesses, factual inquiries or studies on any matter are related, it shall be the duty of the President of the House to direct all relevant parliament committees to jointly undertake proceedings.” Paragraph three provided that “in the conduct of a factual inquiry, a parliamentary committee may not delegate or entrust a person or group of persons to act on its behalf.” Paragraph four provided that “a parliamentary committee under paragraph one has the power to summon a document from any person or summon a person to give facts or express opinions on a business performed or on a matter of the factual inquiry or study, provided that such summons shall not apply to a judge or judicial officer performing duties or exercising powers in the judicial process or personnel administration of each court, and shall not apply to an office holder in an independent organ with regard to the performance of direct duties and powers of each organ pursuant to provisions in the Constitution or organic law, as the case may be.” Paragraph five provided that “it shall be the duty of the minister responsible for the business subject to factual inquiry or study of the committee to order a state official under command or supervision to give facts, submit documents or express an opinion as required by the committee.” Paragraph six provided that “the House of Representatives and Senate shall disclose the meeting minutes, report of proceedings, factual inquiry report or study report, as the case may be, undertaken by the committee to the public, except where the House of Representatives or Senate, as the case may be, passes a resolution to withhold disclosure.” Paragraph seven provided that “privileges

provided under section 124 shall extend to a person performing duties and complying with a summons under this section.” Paragraph eight provided that “all standing committee members appointed from Members of the House of Representatives must comprise a number in accordance with or in close proximity to the proportion of Members of the House of Representatives of each political party represented in the House of Representatives.” And paragraph nine provided that “while the rules of procedures of the House of Representatives under section 128 has not yet been published, the President of the House of Representatives shall determine the proportion under paragraph eight.”

The reasons for promulgating the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011) were stated in the endnote of the Act, as follows, “whereas the provisions of the Constitution provides that a standing or ad hoc committee of the House of Representatives and Senate shall have the power to issue an order to subpoena a document from any person or summon a person to give facts or opinions in a business performed or matter subject to a factual inquiry or study, and such summons shall have mandatory force, which will be of benefit to proceedings of the parliamentary committee leading to efficiency and the collection of complete facts.” Section 5 paragraph one provided that “a committee has the power to issue an order to subpoena a document from any person or summon a person to give facts or opinions in a business performed or matter subject to a factual inquiry or study at any moment.” Paragraph two provided that “a subpoena order under paragraph one shall not apply to a judge or judicial officer performing functions in a judicial process or personnel administration of a court, and shall not apply to an Ombudsman or member of an independent organ under the Constitution performing direct functions of the respective constitutional organ pursuant to provisions of the Constitution or organic law, as the case may be.” And paragraph three provided that “in the case where a person under paragraph one is a government official, employee or worker of a governing agency, state agency, state enterprise or local government, the chairman of the parliamentary committee shall notify the commanding or supervising minister of the agency to which such person is affiliated, and such person shall be ordered to act in accordance with paragraph one, except in a case relating to the safety or important interest of the nation which shall be deemed as an exception of performance under paragraph one.” Section 8 paragraph one provided that “where a person who receives a letter requiring the submission of a document or an invitation to give facts or opinions and fails to submit documents or appear to give facts or opinions, the parliamentary committee shall issue an order to subpoena documents from such person or summon such person to give facts or opinions in

person to the committee, and may also direct such person to bring supporting documents or related materials.” Paragraph two provided that “a subpoena order under paragraph one must be approved by the votes of not less than one-half of the existing committee members.” Paragraph three provided that “when issuing a subpoena order under paragraph one, the cause for summons, relevant questions of inquiry and penalties for violation of summons shall be specified.” Section 13 paragraph one provided that “a person who violates or fails to comply with section 8 shall be liable to a term of imprisonment not exceeding three months or a fine not exceeding five thousand baht, or both.” And paragraph two provided that “if an offender under paragraph one is a government official, employee or worker of a government agency, state agency, state enterprise or local government, such person shall also be deemed to have committed a disciplinary offence.”

Thailand was ruled under the democratic form of government with the King as Head of State. There was a division of organs exercising sovereign powers into 3 branches, namely the legislature, executive and judiciary. All three branches were interrelated under a system of checks and balances. The National Assembly, which was the exerciser of legislative powers, apart from having legislative duties and powers to deliberate and approve laws, also had the duties and powers to scrutinize and oversee the national administration undertaken by the executive. For example, there may be interpellations, a general debate for vote of no confidence of the executive, general debate without a vote of no confidence and reviews of budgetary expenditures. Proceedings by committees were deemed as a mechanism of the legislature for exercising scrutiny over the national administration of the executive. A committee had the duty and power to conduct an inquiry or study any matter within the duties and powers of the House of Representatives or Senate and report to the House of Representatives or Senate. Such tool was deemed to be essential for a parliamentary committee to exercise effective scrutiny over national administration of the executive. An inquiry or study any matter of such committee necessarily required the submission of information by an agency or person in possession of or keeping such information, or the summons of a person to give facts or express opinions on a business performed or matter under inquiry or study. Constitutions prior to the promulgation of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for a committee to have the power to summon a document or invite a person to give facts or opinions on a business performed or a matter under inquiry. However, the summons of document or invitation of person to give facts or opinions to a parliamentary committee was a request for cooperation without any mandatory legal force. As a consequence, the committee did not receive cooperation of the agency or relevant person. Subsequently, the Constitution of the

Kingdom of Thailand B.E. 2540 (1997) changed the terms in the provisions relating to the powers of the parliamentary committee from “the power to summon” or “may summon” to “power to issue a subpoena order” but did not provide for the mandatory legal force of the subpoena order issued by a parliamentary committee. As a consequence, parliamentary committees still did not receive cooperation from persons invited to give facts or opinions or to submit documents. Upon the promulgation of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), a new principle was added in section 135 so as to give the parliamentary committee summons mandatory legal force by adding the terms “as provided by law”, forming the basis for the enactment of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011).

In order to achieve the objective of enabling parliamentary committee access to complete facts and to give mandatory legal force to a subpoena order issued by a parliamentary committee, section 5 paragraph one of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011) provided that a parliamentary committee had the power to issue an order to subpoena a document from any person or summon any person to give facts or opinions on a business performed or on a matter under inquiry or study. Section 8 paragraph one provided procedures for the issuance of a subpoena order, where a person who received a letter requesting for a document or an invitation to give facts or opinions and failed to submit the document or failed to appear to give facts or opinions, the parliamentary committee could issue an order to subpoena the document from such person or summon such person to give facts or opinions in person to the parliamentary committee and request such person to bring documents or other related materials to the parliamentary committee. Section 13 paragraph one provided a penalty for any person who violated or failed to comply with a subpoena order issued by a parliamentary committee under paragraph 8, whereby such person would be liable to a term of imprisonment not exceeding three months or a fine not exceeding five thousand baht, or both. Furthermore, section 13 paragraph two provided that an offender under section 13 paragraph one who was a government official, employee or worker of a government agency, state agency, state enterprise or local government should also be deemed to have committed a disciplinary offence.

Section 129 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), however, had a clear intent to change the principle and essence of proceedings of parliamentary committees. The principle under section 135 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was amended for greater clarity and consistency with the principle of scrutiny of the executive by the legislature, by

amending the powers of the parliamentary committee to summon a document or person to give facts or opinions by the use of the term “have the power to summon” instead. The duties of a parliamentary committee were also clarified by amending the term “inquiry” to “inquiry of facts”, which the parliamentary committee could not delegate powers or entrust a person or group of persons to perform on its behalf. Also included was the duty of the responsible minister with regard to a business under factual inquiry or study by the parliamentary committee to order an state official under command or supervision to give facts, submit documents or express opinions as summoned by the parliamentary committee, which was enforceable instead of imposing a criminal penalty, as seen by the deletion of the terms “and such subpoena order shall be enforceable as provided by law.”

By providing new principles and essential substances relating to duties and powers of the parliamentary committee different from section 135 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), it was apparent that the Constitution intended to alter the tool of the parliamentary committee, which could be seen in the difference of wording pertaining to duties and powers, as well as the legal effect. In other words, section 129 paragraph four of the Constitution provided on the powers of the parliamentary committee as having the power to “summon” instead of the power to “issue a subpoena order”. The power to summon would be executed by invitation or request for cooperation from a person to submit a document or to give facts or opinions to a parliamentary committee. As for the power to issue a subpoena order, which was the term used under the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the Constitution of the Kingdom of Thailand B.E. 2550 (2007), constituted an order intended to have legal effect. In addition, there was a change in principle on the duties of the parliamentary committee under section 129 from “inquiry” to “inquiry of facts” since the functions of a parliamentary committee was to find facts, not being an investigation or inquiry conducted under the Criminal Procedure Code. As for the penalty for violation or failure to comply with the exercise of powers by a parliamentary committee, section 13 of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011) provided that a person who violated a subpoena order issued by a parliamentary committee committed an offence and was liable to a fine or term of imprisonment, which were criminal penalties. However, once the Constitution provided a new principle and essential substance on the exercise of powers by the parliamentary committee, by providing its legal force in section 129 paragraph five, being a mandatory provision which enabled a parliamentary committee to obtain facts as needed, and that the minister

responsible for the business under factual inquiry or study of the committee had the duty to order a state official under command or supervision to give facts, submit documents or give opinions as summoned by the parliamentary committee in order to achieve the objectives of the parliamentary committee in effectively supporting the functions of the National Assembly, the prescription of criminal penalties under such provision of law on a violator of a subpoena order issued by the parliamentary committee under section 129 of the Constitution was therefore inconsistent with the purposes of imposing a criminal penalty upon a person and the seriousness of the offence. A violation of a subpoena order or failure to give facts or submit documents to a parliamentary committee did not constitute a serious offence or caused harm which would affect the outcome of the matter under factual inquiry, as opposed to criminal proceedings. Furthermore, such violation of exercise of powers by a parliamentary committee did not prejudice overall public order or the good morals of the people. Section 129 paragraph five of the Constitution was also available to the parliamentary committee for reaching the objectives of finding facts or studying any matter.

Section 129 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) provided a different principle and essential substance from section 135 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), being the provision relied upon when enacting the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011). Hence, section 5 of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011), which provided for the power of a parliamentary committee to issue an order to subpoena a document from any person or to summon a person to give facts or opinions on a business performed or on a matter under inquiry or study, section 8 which provided for procedures for issuing a summons and section 13 which provided criminal penalties for a person who violated or failed to comply with a summons of the parliamentary committee, affected the rights and liberties of a person, unreasonably imposed a burden or restricted a right or liberty of a person and constituted a provision that was inconsistent with the principle under section 129 of the Constitution, was therefore contrary to or inconsistent with section 129 of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court held that section 5, section 8 and section 13 of the Subpoena Order of a Parliamentary Committee of the House of Representatives and Senate Act B.E. 2554 (2011) was contrary to or inconsistent with the Constitution, raising constitutionality issues under section 129 of the Constitution.

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