

## Rights to Public Hearing and Access to Information in Adversarial-Environmental Project\*

Supreme Administrative Court Judgment No. A. 49/2554, dated 16<sup>th</sup> March B.E. 2554 (2011)

*Community Committee of Saranrom Village (P) v. District Director of Bueng Kum District (D1)  
and Bangkok Metropolitan Administration (D2)*

According to Sections 56 and 59 of Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the organization of the public hearing, the dissemination of environmental information to the affected people, and Environmental Impact Assessment (EIA) with advisory opinions from independent organization shall be provided, prior to the operation of adversarial-environmental project. Although there is no specific law prescribing standard of the public hearing, the dissemination of environmental information, and EIA process, there is Regulation of the Office of the Prime Minister on Public Hearing Process, B. E. 2548 (2005) prescribing that information, explanation or reasons and the public hearing shall be provided to the public before the operation of adversarial-environmental project begins. When the Defendants did not perform their duties under such Regulation, the project became unlawful act in a manner inconsistent with the law.

Legal Principles : *Rights to Public Hearing, Rights to Access to Information, Principle of Proportionality*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B. E. 2542 (1999) : Article 9 paragraph one (1)*

Legal Provisions : *Constitution of the Kingdom of Thailand, B. E. 2540 (1997) : Section 56 paragraph 2, and Section 59*

*Bangkok Metropolitan Administration Act, B.E. 2528 (1985) : Section 6,  
Section 69 and Section 90*

*Regulation of the Office of the Prime Minister on Public Hearing Process, B. E. 2548  
(2005)*

---

\* Summarized by Sukchawee Raktaprachit, Bachelor of Laws (LL.B., 2<sup>nd</sup> Class Honour), Chulalongkorn University, Master of Laws (LL.M.), University of Alberta, Canada, Administrative Case Official Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts

### **Judgment (Summary)**

The Plaintiff and the residents of Saranrom Village claimed that they were inevitably aggrieved or injured from the project of concrete bridge construction under the responsibility of the Defendant No.1 and the Defendant No.2. The project was against Constitution of the Kingdom of Thailand, B.E. 2540 (1997) since being commenced without public hearing to the residents living in Saranrom Village and neighborhood. In addition, the construction project destroyed the ambient scenery and could lead crime upheavals against life and property to the residents. Only few people may use the bridge because there was another way nearer and more convenient than the bridge. The Plaintiff requested the Court that the bridge shall be revoked.

The Supreme Administrative Court held that the Defendants had to recognize rights of people under Section 56 paragraph 2 of Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stating that the project which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law. Moreover, the project permitted by the Defendant without giving information, explanation or reasons, nor public hearing to affected people in neighborhood prior to the construction operation was against Section 59 of the Constitution, B.E. 2540 (1997). The lack of law, rectified under the Constitution provisions to prescribe the standard of the public hearing, the dissemination of environmental information, and Environmental Impact Assessment (EIA), could not be raised to exempt the State from liability to protect people for the right to a healthful and decent environment. There is Regulation of the Office of the Prime Minister on Public Hearing Process, B. E. 2548 (2005) stating that information, explanation or reasons and the public hearing shall be provided to the public prior to the operation of adversarial-environmental project. Besides, the project may cause severe effect to the rights of the Plaintiff to live in the healthy and sanitary environment. When the Defendants did not perform their duties under such Regulation, the construction project became unlawful act in a manner inconsistent with the law. Such unlawful act, however, shall be fixed by providing public hearing according to Regulation of the Office of the Prime Minister on Public Hearing Process, B. E. 2548 (2005). If the public disagrees with the construction project, the project shall be revoked.