

## The Legality of the Royal Pardon Decree<sup>\*</sup>

Supreme Administrative Court Judgment No. D.PA. 45/2564, dated 30<sup>th</sup> December B.E. 2564 (2021)

*Mr. S. (P)*

v.

*Prime Minister (D1)*

*Council of Ministers (D2)*

*Minister of Justice (D3)*

The Plaintiff was sentenced to death for committing an offense under Section 289 (4) of the Criminal Code. He had previously received the Royal Pardon twice. According to Section 13 (1) and (5) of the Royal Pardon Decree on the occasion of the Birthday Anniversary of His Majesty King Bhumibol Adulyadej the Great, National day of the Kingdom of Thailand and Thai Father's Day, B.E. 2563 (2020), the Plaintiff was not eligible for a Royal Pardon under this Decree. The Plaintiff argued that the said provisions were enacted in violation of legal principles and inconsistent with the provision of the Constitution of the Kingdom of Thailand regarding human dignity, rights, liberties, and equality of the people. The Plaintiff then filed a plaint with the Supreme Administrative Court, requesting the Court to revoke Section 13 (1) and (5) of the Royal Pardon Decree.

The Supreme Administrative Court held that a Royal Decree issued by the King's Royal Prerogative as the Head of State as stipulated in Section 179 of the Constitution of the Kingdom of Thailand is the exercise of Royal Prerogative power, which does not the exercise of administrative power as an administrative agency or a State official under Section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) that falls within the jurisdiction of the Administrative Court.

**Legal Principles:** *Court Jurisdiction, Royal Decree*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999):  
Section 11 (2)*

**Legal Provisions:** *Constitution of the Kingdom of Thailand: Sections 175 and 179*

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<sup>\*</sup> Summarized by Patchanat Chainuwat, Administrative Case Official, Professional Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

*Criminal Procedure Code: Section 261 bis*

*Royal Pardon Decree on the occasion of the Birthday Anniversary of His Majesty King Bhumibol Adulyadej the Great, National day of the Kingdom of Thailand and Thai Father's Day, B.E. 2563 (2020): Section 13 (1) and (5)*

### **Judgment (Summary)**

The Plaintiff claimed that he was a convict, excellent prisoner class at zone 6, Bangkok Central Prison. The Plaintiff was sentenced to death for a criminal offense under Section 289 (4) of the Criminal Code. He had previously received the Royal Pardon twice and had served his sentence for seven years and four months. The time remaining on his sentence was thirty-two years and eight months. According to Section 13 (1) and (5) of the Royal Pardon Decree on the occasion of the Birthday Anniversary of His Majesty King Bhumibol Adulyadej the Great, National Day of the Kingdom of Thailand and Thai Father's Day, B.E. 2563 (2020), the Plaintiff was not eligible for a Royal Pardon under this Decree. The Plaintiff argued that the said provisions were enacted in violation of legal principles and inconsistent with the provision of the Constitution of the Kingdom of Thailand regarding human dignity, rights, liberties, and equality of the people. In addition, the Plaintiff made an effort to behave in a good manner for the eligibility of a Royal Pardon; however, the three Defendants did not take it into consideration. Therefore, Section 13 (1) and (5) of the said Royal Pardon Decree was an illegality and unfair discrimination. As a result, the Plaintiff filed a plaint with the Supreme Administrative Court, requesting the Court to revoke Section 13 (1) and (5) of the Royal Pardon Decree on the occasion of the Birthday Anniversary of His Majesty King Bhumibol Adulyadej the Great, National Day of the Kingdom of Thailand and Thai Father's Day, B.E. 2563 (2020).

The Supreme Administrative Court held that this case was a case involving a dispute in relation to the legality of a Royal Pardon Decree, signed by the Prime Minister with the advice of the Council of Ministers under Section 261 bis of the Criminal Procedure Code. Thus, the said Decree was under the jurisdiction of the Supreme Administrative Court according to Section 11 (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). However, there are two types of a Royal Decree as follows:

First, a Royal Decree issued by the King by virtue of Section 175 of the Constitution of the Kingdom of Thailand, in accordance with the enabling legislation. This type of Royal Decree is an exercise of government power as an administrative authority.

Second, a Royal Decree issued by the King's Royal Prerogative as the Head of State as stipulated in the Constitution of the Kingdom of Thailand such as a Royal Pardon

Decree on the auspicious occasions by virtue of Section 179 of the Constitution of the Kingdom of Thailand, which the King's Royal Prerogative is not the exercise of administrative power as an administrative agency or a State official under Section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) that falls within the jurisdiction of the Administrative Court.

The fact appeared that the Royal Pardon Decree on the occasion of the Birthday Anniversary of His Majesty King Bhumibol Adulyadej the Great, National Day of the Kingdom of Thailand and Thai Father's Day, B.E. 2563 (2020) was a Royal Decree issued by the King's Royal Prerogative as the Head of State under Section 179 of the Constitution of the Kingdom of Thailand. Therefore, it did not fall within the jurisdiction of the Administrative Court. The Supreme Administrative Court has no competence to try and adjudicate this case.

Accordingly, the Court issued an order rejecting the plaint and striking the case out of the Case-List.

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