

# Summary of the Constitutional Court Ruling No. 2/2546

Dated 6<sup>th</sup> February B.E. 2546 (2003)\*

**Re : The National Counter Corruption Commission requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the powers and duties of organs under the Constitution.**

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## 1. Background and summarized facts

The National Counter Corruption Commission, by the President of the National Counter Corruption Commission, sent a letter to the President of the Constitutional Court requesting for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the powers and duties of organs under the Constitution. A summary can be stated as follows.

The National Counter Corruption Commission, an organ under the Constitution, had conducted an inquiry and passed a ruling that Mr. Weeraphol Duangsoongneun, while in office as Deputy Director-General of the Department of Information, had committed a disciplinary offence on the grounds of misfeasance of official duties and severe malevolent behavior and was also prosecuted by an order of the Attorney-General for criminal offences committed under section 151, section 157, section 161, section 264, section 265, section 268 in conjunction with section 83 and section 90 of the Penal Code.

As for the disciplinary offence, the Permanent Secretary of the Office of the Prime Minister, Mr. Weeraphol Duangsoongneun's superior official, had already issued a punitive order dismissing Mr. Weeraphol Duangsoongneun from the official service. However, the punished official exercised his right to appeal the punitive order to the Civil Service Commission under section 96 of the Organic Act on Counter Corruption, B.E. 2542 (1999). In its determination, the Civil Service Commission held that the alleged official had only committed a minor disciplinary offence and the Council of Ministers passed a resolution reinstating Mr. Weeraphol Duangsoongneun to the official service.

The National Counter Corruption Commission requested the Constitutional Court to make a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) that according to the National Counter Corruption Commission's powers and duties in conducting an inquiry and ruling that a State official had committed an offence of

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corruption in office or misfeasance of official duties under section 301(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 19(3) of the Organic Act on Counter Corruption B.E. 2542 (1999), when the National Counter Corruption Commission had conducted an inquiry and passed a ruling, such procedures were final under section 301(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Civil Service Commission's reversal of the ruling to a minor disciplinary offence and the Council of Minister's resolution, also that of an organ under the Constitution, reinstating Mr. Weeraphol Duangsoongneun to the official service, were therefore problems on the powers and duties of the National Counter Corruption Commission.

## **2. Preliminary issue**

The preliminary issue considered was whether or not the Constitutional Court had the power to accept the application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. The National Counter Corruption Commission, the applicant, was an organ established by the Constitution and the Constitution had also provided for its powers and duties. The applicant had requested for a Constitutional Court ruling on the powers and duties of the National Counter Corruption Commission regarding the issues raised by the following facts. Pursuant to its exercise of powers to conduct an inquiry and rule that a State official had committed an offence on the grounds corruption of office or misfeasance of official duties under section 301 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 19(3) of the Organic Act on Counter Corruption, B.E. 2542 (1999), the National Counter Corruption Commission had conducted an inquiry and ruled that the alleged person had committed a severe disciplinary offence on the grounds of corruption in office and exhibiting severely malevolent behavior. Subsequently, however, the Civil Service Commission, after considering the alleged person's appeal, amended the determination of the grounds of the alleged person's offence to a minor disciplinary offence and the Council of Ministers passed a resolution to allow the alleged person to be reinstated in the official service pursuant to the Civil Service Commission's determination. As a result, the Organic Act on Counter Corruption, B.E. 2542 (1999), could not be effectively implemented. The proceedings of the Civil Service Commission and the Council of Ministers were therefore contrary to the powers and duties of the National Counter Corruption Commission. The National Counter Corruption Commission's request for a Constitutional Court ruling on whether or not the performance of duties by the National Counter Corruption Commission was final, was a request for a ruling on the matters in which the National Counter Corruption Commission, which was an organ under the Constitution, had powers to act and the extent of such powers, could be considered as a case where problems relating to the powers and duties of the National Counter Corruption Commission, a constitutional organ, had already arisen.

### **3. The issue considered by the Constitutional Court**

The issue considered by the Constitutional Court was whether or not the exercise of powers and duties to conduct an inquiry and pass a ruling, pursuant to its powers to inquire and rule that an official had committed a misfeasance in office under section 301 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) with the purpose of undertaking further proceedings under the organic law on counter corruption, was final.

The Constitutional Court held as follows. There was a difference in an appeal under the Organic Act on Counter Corruption, B.E. 2542 (1999), and an appeal under the Rules of the Civil Service Act, B.E. 2535 (1992). The provisions of the Organic Act on Counter Corruption, B.E. 2542 (1999), employed the words “appeal of the exercise of discretion in the issue of a punitive order”. On the other hand, the Rules of the Civil Service Act, B.E. 2535 (1992), employed the words “appeal of the punitive order”. The exercise of appeal rights by the alleged person as a consequence of the disciplinary sanctions imposed by his superior on the basis of the offence determined by the resolution of the National Counter Corruption Commission, and not an offence determined by disciplinary investigations undertaken by the alleged’s superior himself, also not being a case where the alleged was sanctioned under the Rules of the Civil Service Act, B.E. 2535 (1992), must have been an appeal within the scope of the provisions of the Organic Act on Counter Corruption, B.E. 2542 (1999). In such a case, the appeal was exercisable only on the sentencing discretion of the superior. In other words, an appeal could only be made of the sentencing level under the offence determined by the resolution of the National Counter Corruption Commission. The alleged’s central administration organisation (the Civil Service Commission), and the appellate organisation of the alleged person pursuant to the stages subsequent to the procedures completed by the National Counter Corruption Commission, therefore had powers to consider an appeal which were restricted only to the consideration of the exercise of sentencing discretion by the superior official or by the person vested with the power to appoint or remove the official based on the offence determined by the resolution of the National Counter Corruption Commission. The exercise of powers in excess or in a manner which affected the powers and duties recognised by the Constitution, in particular those involving the reconsideration of factual issues and alteration of offence determination, being the exclusive powers and duties of the National Counter Corruption Commission, was therefore contrary to the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the Organic Act on Counter Corruption, B.E. 2542 (1999).

### **4. Ruling of the Constitutional Court**

The Constitutional Court held that the exercise of powers and duties of the National Counter Corruption Commission in undertaking an inquiry and ruling under section 301 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), prior to further proceedings under the organic law on counter corruption, once the

National Counter Corruption Commission had investigated and ruled that a State official had committed an offence of misfeasance, was final. Therefore, the appellate body could not in any manner alter the determination of the disciplinary offence which had been conclusively determined by the National Counter Corruption Commission.

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