

# Summary of Constitutional Court Ruling

No. 44/2547

Dated 3<sup>rd</sup> June B.E. 2547 (2004)\*

**Re: The President of the National Assembly requested the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of a problem relating to the selection process of members of the National Counter Corruption Commission undertaken by the Selection Committee for the National Counter Corruption Commission.**

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## 1. Background and summarized facts

The President of the National Assembly referred the matter together with an opinion to the Constitutional Court for a ruling under section 266 of the Constitution in a case where there was a problem relating to the selection process of members of the National Counter Corruption Commission (NCCC) undertaken by the Selection Committee for the National Counter Corruption Commission. The facts could be summarized as follows. The standing committee established by the Senate for examining the biography and conduct of nominees for the position of NCCC members to fill vacant positions had discovered that in the meeting of the Selection Committee for the NCCC on 6<sup>th</sup> November B.E. 2546 (2003), the Selection Committee considered the preliminary qualifications of the applicants for the NCCC member position as provided by section 297 paragraph two in conjunction with section 256 of the Constitution. With respect to the qualification in section 256(3), which stated that a candidate should “[have] been, in the past, a Minister, an Election Commissioner, an Ombudsman, a member of the National Human Rights Commission, a member of the National Counter Corruption Commission or a member of the State Audit Commission, or having served, in the past, in a position of not lower than Deputy Prosecutor General, Director-General or its equivalent, or holding a position of not lower than Professor”, the opinion of the Selection Committee was divided into two approaches. The Selection Committee adopted the approach that the dispositive factor of being a “Director-General or its equivalent” was being or having been a government official in a position not lower than level 10, without regard to whether or not such person was also a holder of an administrative position equivalent to a Director-General. Thereafter, the Selection Committee proceeded to select 14 qualified candidates for nomination as NCCC members. The standing committee reported the selection to a meeting of the Senate. After consideration, the Senate passed

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a resolution selecting 7 members of the NCCC. In this regard, Mr. Jermsak Pinthong, a senator, and others totaling 54 persons considered that there was likelihood that the selection and resolution to select certain members of the NCCC faced problems of constitutionality under section 256(3) of the Constitution. Such problem related to the ideological conflicts of the Selection Committee of the NCCC, the standing committee for examining the biography and conduct of nominees for the position of NCCC members and the Senate. It was therefore requested that the President of the National Assembly refer the matter together with an opinion to the Constitutional Court for a ruling.

The President of the National Assembly considered that this was a case of a problem relating to the selection process, which could be deemed as a problem relating to the performance of duties by various organs, namely the Selection Committee for NCCC, whose performance of duties affected the exercise of Senate functions. In this instance, section 266 of the Constitution conferred powers on the President of the National Assembly to refer the matter together with an opinion to the Constitutional Court for a ruling. Therefore, the matter and an opinion were referred to the Constitutional Court for a ruling on the following issues:

1. whether or not the resolution of the Selection Committee which ruled that the words “Director-General or its equivalent” meant a person who was or used to be a government official in a position not lower than level 10, without regard to whether or not he or she was in an administrative position equivalent to a Director-General, was consistent with section 256(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

2. If such resolution of the Selection Committee was unconstitutional without rendering the entire selection process invalid, whether or not there had to be another selection and nomination process for NCCC members to replace nominees having such qualifications who were subsequently disqualified.

## **2. Preliminary issue**

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

In the case under this application, the President of the National Assembly was the submitter of the matter together with an opinion to the Constitutional Court for a ruling in the case of a problem relating to the selection process of members of the NCCC undertaken by the Selection Committee for NCCC. The submitter of the application was therefore in accordance with section 266 of the Constitution. However, an application which could be accepted by the Constitutional Court for consideration under section 266 of the Constitution had to be an application where a problem had arisen on the powers and duties of organs under the Constitution. In this respect, it was held that the Selection Committee for NCCC members, which was an organ under the Constitution since its establishment as well as its powers and duties were provided by section 297 of the Constitution, had undertaken the

selection process for members of the NCCC and had already reached a resolution on the preliminary qualifications of applicants and nominees as regards holding the position of Director-General or its equivalent under section 256(3) of the Constitution. The case under this application requested the Constitutional Court to interpret the provisions of section 256(3) of the Constitution on the qualifications of applicants and nominees who held the position of Director-General or its equivalent, a task which had been completed by the Selection Committee pursuant to its powers and duties that were evident from the Constitution without instigating any problems on the powers and duties of the Selection Committee for NCCC. The Senate, as the relevant agency receiving the nomination of selected persons from the Selection Committee for further selection, and the applicants and nominees all did not have any doubts on the relevant powers and duties of the organs under the Constitution that resulted in the nomination of such persons. Moreover, the Senate had already completed all the proceedings in this regard. Therefore, such application by the President of the National Assembly was not a case where there was a problem on the powers and duties of the Selection Committee for NCCC or the Senate that was related to the selection process of NCCC members which the Constitutional Court could accept for consideration.

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

The Constitutional Court, by unanimous decision, dismissed the application of the President of the National Assembly for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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