

Summary of the Constitutional Court Ruling No. 63/2547

Dated 21st October B.E. 2547 (2004)*

Re: The National Counter Corruption Commission requested the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in a case on problems relating to the powers and duties of the National Counter Corruption Commission in the issuance of Rules of the National Counter Corruption Commission on Remuneration for the Chairman and Members of the National Counter Corruption Commission, B.E. 2547 (2004).

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) filed an application dated 6th October B.E. 2547 (2004) requesting the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the powers and duties of the NCCC in the issuance of the Rules of the NCCC on Remuneration for the Chairman and Members of the NCCC, B.E. 2547 (2004). The issuance was made pursuant to the NCCC's powers and duties under section 301(6) and section 302 last paragraph of the Constitution in conjunction with section 5 and section 107 of the Organic Act on Counter Corruption, B.E. 2542 (1999), pertaining to general administration, personnel administration, budgeting, finance and properties and other operations of the Office of the NCCC. The performance of such duties by the Chairman and members of the NCCC was deemed as the administration and performance of duties for the Office of the NCCC pursuant to the powers and duties provided by the Constitution and Organic Act on Counter Corruption, B.E. 2542 (1999). Since section 75 paragraph two of the Constitution provided that the State should make sufficient budgetary appropriations for the independent administration of the NCCC, the issuance of Rules of the NCCC on Remuneration for the Chairman and Members of the NCCC, B.E. 2547 (2004), was therefore made in good faith and with the belief that there was authority under the law consistent with section 75 paragraph two, section 301(6) and section 302 last paragraph of the Constitution in conjunction with section 5 and section 107 of the Organic Act on Counter Corruption, B.E. 2542 (1999). Moreover, the issuance was made openly and published to the general public in the government gazette. The petition filed by a number of senators and members of the House of Representatives to the President of the Senate for submission of such petition to the Division for Criminal Cases of Political Office Holders,

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the Supreme Court, in order to initiate proceedings against the Chairman and members of the NCCC for offences in their official capacities under section 300 of the Constitution was therefore an objection on the powers of the NCCC, which was a constitutional organ, in the issuance of the Rules of the NCCC on Remuneration for the Chairman and Members of the NCCC, B.E. 2547 (2004). The NCCC therefore requested the Constitutional Court to rule on whether or not the NCCC was authorized by the provisions of the Constitution to issue the Rules of the NCCC on Remuneration for the Chairman and Members of the NCCC, B.E. 2547 (2004), as remuneration for performing duties for the NCCC.

2. Preliminary issue

The preliminary issue which had to be considered by the Constitutional Court was whether or not the Constitutional Court could accept the NCCC's 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 NCCC was an organ established by section 297 of the Constitution. It had powers and duties under section 301 of the Constitution. Hence, the NCCC was an organ under the Constitution. In order for the NCCC to be eligible to refer a matter and an opinion to the Constitutional Court for a ruling under section 266 of the Constitution, it must be a case on the powers and duties of the NCCC as an organ under the Constitution. After considering the facts in this application and documents supporting the application, the Constitutional Court found that the NCCC relied on powers under section 301(6) and section 302 paragraph three of the Constitution in conjunction with section 5 and section 107 of the Organic Act on Counter Corruption, B.E. 2542 (1999), in issuing the Rules of the National Counter Corruption Commission on Remuneration for the Chairman and Members of the National Counter Corruption Commission, B.E. 2547 (2003), which had already been in force pursuant to an open publication in the government gazette. Therefore, it was apparent that the NCCC did not have any doubts on its powers nor was there any conflicts between members of the NCCC on such problem. The petition filed by senators and members of the House of Representatives to the President of the Senate for a submission of the petition to the Division for Criminal Cases of Political Office Holders, the Supreme Court, alleging that the NCCC lacked the authority to issue such rules, was a matter which the senators and members of the House of Representatives proceeded according to their powers and duties under section 300 of the Constitution. However, such group of senators and members of the House of Representatives did not constitute an organ under the Constitution. Thus, this was not an objection on a conflict between the powers and duties of organs under the Constitution.

In this case where the NCCC submitted a matter to the Constitutional Court for a ruling on whether or not the NCCC was authorized under section 301(6) and section 302 paragraph three of the Constitution in conjunction with section 5 and section 107 of the Organic Act on Counter Corruption, B.E. 2542 (1999), to issue the Rules of the National Counter Corruption Commission on Remuneration of the Chairman and Members of the

National Counter Corruption Commission, B.E. 2547 (2003), where a problem on the powers and duties of the NCCC in issuing such rules had not yet arisen and nor was there a problem on the exercise of such powers, there was a resemblance of a discussion. The Constitutional Court was therefore not able to accept this matter for consideration as it was not in accordance with section 266 of the Constitution.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court did not accept the NCCC's application for consideration.
