

# Summary of Constitutional Court Ruling No. 2/2561 (2018)

**Dated 23<sup>rd</sup> May B.E. 2561 (2018)\***

**Re: The President of the National Legislative Assembly referred the opinion of Members of the National Legislative Assembly to the Constitutional Court for a ruling under section 148 paragraph one (1) in conjunction with section 263 of the Constitution on whether or not section 91, section 92, section 93, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... were contrary to or inconsistent with section 107 in conjunction with section 269 of the Constitution.**

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## **1. Summary of background and facts**

The President of the National Legislative Assembly, applicant, referred the opinions of Mr. Kitti Wasinondh, Member of the National Legislative Assembly, and others, a total of 30 persons, to the Constitutional Court for a ruling under section 148 paragraph one (1) in conjunction with section 263 of the Constitution with respect to section 91, section 92, section 93, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... It was stated that the provisions on installation of Senators in the initial period pursuant to section 269 of the Constitution from applications in ten different groups, combining several groups, would deprive the people of the opportunity to be selected as Senators and impinged upon the guarantee that the Senate would truly be a House composed of people from all sectors of society. There were two methods of applications, namely, an application submitted in person and application submitted in person together with a reference in writing from an organ under section 93. This method provided screening of applicants by various organs prior to application. Other applicants would not be involved in this screening process. As a consequence, the people would not have the ability to freely apply to all groups and selection from amongst all applicants would not be possible. On the other hand, there was a quota between independent applicants and applicants recommended by organs. Furthermore, the selection process at district, provincial and national levels which would be done solely by mutual selection, as opposed to the principal provisions which provided for direct selection and cross-selection, increased the risk of collusion, thus potentially leading to dishonesty and unfairness. Therefore, section 91, section 92, section 93, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... were contrary to or inconsistent with section 107 of the Constitution.

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## **2. The preliminary issue considered by the Constitutional Court**

The preliminary issue was whether or not the Constitutional Court had the competence to accept this application for a ruling under section 148 paragraph one (1) in conjunction with section 263 of the Constitution.

After deliberations, the Constitutional Court found as follows. Upon a finding of facts that Members of the National Legislative Assembly constituting not less than one-tenth of the total number of existing Members of the National Legislative Assembly submitted an opinion to the applicant, and the applicant referred the opinion to the Constitutional Court for a ruling, the case was therefore in accordance with section 148 paragraph one (1) in conjunction with section 263 of the Constitution and section 50 of the Organic Act on Constitutional Court Procedures B.E. 2561 (2018). Hence, the Constitutional Court had the competence to accept this application for consideration. An order to accept the application for consideration was thereby issued.

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

The issues considered by the Constitutional Court were whether or not section 91, section 92, section 93, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... were contrary to or inconsistent with section 107 in conjunction with section 269 of the Constitution.

On the question of whether or not section 91 of the Organic Bill on Installation of Senators B.E. ...., which provided for ten groups as opposed to the principal provision in section 11, was contrary to or inconsistent with section 107 in conjunction with section 269 of the Constitution, the Constitutional Court held as follows. Section 107 paragraph one of the Constitution did not provide for a specific number of groups of applications for candidacy. The provision merely stated a principle for division of groups that the division should enable an eligible person to apply for any one group. Section 91, which provided for the division of candidates into ten groups, combining similar groups of the twenty groups provided in section 11 into new groups without removing any particular group, had retained the diversity of professional groups and did not deprive a candidate of any right. A candidate still had the right to apply to a merged group in accordance with one's knowledge, expertise, experience, profession, qualities or common interests, or working or having worked in various areas as provided under section 107 of the Constitution. In addition, there was a group for others under section 91 paragraph one (10) which provided a guarantee than a candidate with qualifications under section 13 and without a disqualification under section 14 who could not participate in (1) to (9) to still have the right to apply to the group of others. Moreover, section 91 was merely a transitory provision which only applied to the initial period. Upon the lapse of the initial period, the group of candidates would be as provided under the principal provision in section 11. Therefore, section 91 of the Organic Bill on Installation of Senators B.E. .... was neither contrary to nor inconsistent with section 107 in conjunction with section 269 of the Constitution.

On the question of whether the prescription of application procedures and acceptance of applications under section 92 and section 93 of the Organic Bill on Installation of Senators B.E. ...., which provided that a candidacy applicant could submit an application under two procedures, was contrary to or inconsistent with section 107 in conjunction with section 269 of the Constitution, the Constitutional Court found as follows. Section 107 paragraph two of the Constitution provided that the procedures for the submission of application and acceptance of applications would be as provided by an Organic Act on Installation of Senators. There could be a screening process of candidates by any other means which included the participation of candidates. Section 92 of the Organic Bill on Installation of Senators B.E. .... Provided that an applicant for candidacy in each group under section 91 could submit an application by two methods. Both methods of application involved the applicant submitting an application in person. The recommendation of an applicant by an organ under section 93 did not constitute a screening process for senatorial candidacy applicants pursuant to section 107 paragraph two of the Constitution. Moreover, section 92 provided that an applicant for candidacy could only choose one method of application. Once an application had been submitted under one method, such application could not be withdrawn. As a consequence, all applicants could only choose one method of application. Such procedure for applications and acceptance of application neither abrogated the right to apply for candidacy nor unfairly discriminated a person, but merely allowed the installation of suitable candidates for selection to become Senators to perform functions of the Senate in the initial period. This could be deemed as an additional channel for applications from a diverse pool for the performance of functions in accordance with the additional duties and powers under the transitory provisions of the Constitution, which did not prejudice the principle of mutual selection. Hence, section 92 and section 93 of the Organic Bill on Installation of Senators B.E. .... were neither contrary to nor inconsistent with section 107 in conjunction with section 269 of the Constitution.

On the question of whether or not the selection process at district level, provincial level and national level, which provided for only one selection process by mutual selection pursuant to section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. ...., differing from the principal provisions under section 40, section 41 and section 42 which provided for cross-selections between groups, were contrary to or inconsistent with section 107 in conjunction with section 269 of the Constitution, the Constitutional Court held as follows. Section 107 paragraph one and paragraph two of the Constitution aimed to achieve an honest and fair selection of Senators. For this reason, it was prescribed that Senators should be selected by other candidates. A candidate in one group could not select a person in the same group, i.e. cross-selection, or there could be screening of candidates by other methods which involved the participation of candidates. This provision was not absolute. A general principle was only provided that such method could be used or a candidate screening procedure could be prescribed whereby candidates could participate in the screening. Thus, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. ...., which prescribed for selection at district level, provincial level, and national level to be effected by mutual selection within the same group as the only method

could be deemed as a prescription of candidate screening procedure which allowed candidates to select from amongst themselves and candidates had participated in screening pursuant to section 107 of the Constitution. The provision did not cause the selection of Senators to become dishonest and unfair by any means. Therefore, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... were neither contrary to nor inconsistent with section 107 in conjunction with section 269 of the Constitution.

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

The Constitutional Court held that section 91, section 92, section 93, section 94, section 95 and section 96 of the Organic Bill on Installation of Senators B.E. .... were neither contrary to nor inconsistent with section 107 in conjunction with section 269 of the Constitution.

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