

Summary of Constitutional Court Ruling*

No. 14/2556 (2013)

Dated 4th October B.E. 2556 (2013)

Re: The President of the National Assembly referred the opinions of Members of the National Assembly to the Constitutional Court for a ruling under section 154 paragraph one (1) of the Constitution on whether or not the Budgetary Appropriations Bill for Fiscal Year B.E. 2557 (2014), in section 27 in regard to the budgets for the Office of the Judiciary and the Office of the Administrative Courts, and section 28 in regard to the budget for the Office of the National Anti-Corruption Commission, contained provisions which were contrary to or inconsistent with or had been enacted in accordance with the provisions of section 168 paragraph eight and paragraph nine of the Constitution.

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1. Summary of background and facts

The President of the National Assembly referred the opinions of Mr. Paiboon Nititawan, Senator, and others, comprising of 50 senators, and Mr. Wirat Kalayasiri, Member of the House of Representatives, and others, comprising of 62 members, a total of 112 persons, applicant, to the Constitutional Court for a ruling under section 154 paragraph one (1) of the Constitution. The facts under the application and supporting documents could be summarized as follows.

The applicant was of the opinion that section 168 paragraph eight and paragraph nine of the Constitution were intended to ensure that the state made sufficient appropriations for the independent administration of the National Assembly, courts and constitutional organs. Each agency was allowed to submit a motion directly to the parliamentary committee as a guarantee of independence from the Council of Ministers in regard to administration of sufficient budgets for independent administration. Upon an examination of the budgetary appropriation pursuant to section 27 of the Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014), in section 27 in regard to the Office of the Judiciary and the Office of the Administrative Courts, and section 28 in regard to the Office of the National Anti-Corruption Commission (NAAC), it was found that all three agencies had submitted budget proposals for the fiscal year of B.E. 2557 (2014) to the Council of Ministers, but the Council of Ministers reduced the amount of appropriations before introduction to the

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House of Representatives. Thereafter, during the amendment proposal stage, the three agencies submitted motions for increased appropriations in order to meet the needs of administration. The select committee, however, did not invite the agencies to participate in the deliberations and unilaterally exercised the discretion to deny the increase in budgetary appropriations.

The applicants therefore requested for a Constitutional Court ruling on whether or not the Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014), in section 27 in regard to the budget of the Office of the Judiciary and the Office of the Administrative Courts, and section 28 in regard to the budget of the Office of the NACC, contained provisions which were contrary to or inconsistent with, or had not been enacted in accordance with section 168 paragraph eight and paragraph nine of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 154 paragraph one (1) of the Constitution.

The Constitutional Court found as follows. The President of the National Assembly referred the opinions of 112 Members of the National Assembly, which were not less than one-tenth of the existing number of members of both Houses. The opinion stated that section 27 and section 28 of the Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014) contained provisions which were contrary to or inconsistent with or had not been enacted in accordance with section 168 paragraph eight and paragraph nine of the Constitution. The case was in accordance with section 154 paragraph one (1) of the Constitution in conjunction with clause 17(7) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore admitted this application for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014), in section 27 in regard to the budgets for the Office of the Judiciary and the Office of the Administrative Courts, and section 28 in regard to the budget of the Office of the NACC, contained provisions which were contrary to or inconsistent with, or had not been enacted in accordance with section 168 paragraph eight and paragraph nine of the Constitution.

The Constitutional Court found as follows. Section 168 paragraph eight of the Constitution provided that the state had to appropriate sufficient budget for the independent administration of the National Assembly, the Constitutional Court, the Courts of Justice, the Administrative Courts, and constitutional organs. Paragraph nine provided that in the budgetary deliberations for the National Assembly, courts and organs under paragraph eight,

if any of such agency was of the opinion that the appropriated budget was still insufficient, an amendment proposal could be submitted directly to the parliamentary committee. This provision stated the procedures for deliberating expenditure budgets for the National Assembly and organs under paragraph eight. This provided a safeguard for such agencies that the exercise of powers by the Council of Ministers would be scrutinized by the parliamentary committee as representatives of the House of Representatives and the Senate, which performed the duties of reviewing the budgetary appropriations of the executive to determine whether or not they were consistent with the Constitution. The Constitution's intent was to ensure sufficient appropriations for the independent performance of functions by the National Assembly, courts and constitutional organs, as well as to ensure the efficient performance of duties by such agencies without undue influence from the executive. The Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014) was a law intended to appropriate expenditure budgets for government agencies, state enterprises and other agencies for the fiscal year B.E. 2557 (2014). Section 27 was a provision on the expenditure budget of court organizations and section 28 was a provision on expenditure budgets for constitutional organs and independent constitutional organs.

Section 222 paragraph three, section 227 paragraph three and section 251 paragraph three of the Constitution provided that the Courts of Justice, the Administrative Courts and the NACC shall have independent administrative agencies for the administration of personnel, budgetary and other operational affairs. Subject to this independence, the process for preparing and approving the expenditure budget under the Constitution and budgetary procedure law of the executive was equally important. The general rules for the preparation and appropriation of budget to government agencies, state enterprises and other agencies shall be consistent with state spending and spending under existing obligations. Nevertheless, in order to ensure suitability and fairness in the appropriation of budget pursuant to the country's undertakings, as well as having regard to the limited revenues available to allocation in each fiscal year, it was necessary and reasonable that government agencies, state enterprises and other agencies would not receive the full amount of appropriations requested. Reductions or additions could be made to the budgetary appropriations of government agencies, state enterprises and other agencies in accordance with the priorities and necessities of public administration.

As for the applicant's arguments that the Office of the Judiciary, the Office of the Administrative Courts and the Office of the NACC were not granted an opportunity to present an explanation in the amendment proposal stage of the select committee, the Constitutional Court found as follows. Section 168 paragraph nine of the Constitution provided only that the appropriations to the National Assembly, courts and organs under paragraph eight, if such agencies were of the opinion that the appropriations were insufficient, they could submit a motion directly to the select committee. The provision did not impose an absolute obligation on the parliamentary committee to call any person to give statements of facts or opinions in the motions deliberations. Even though section 168 paragraph nine of the Constitution did not provide that the parliamentary committee had to

hear the statements of facts or opinions of the National Assembly, courts and organs under paragraph eight in the motions deliberations stage, such provisions were intended to ensure that the parliamentary committee gave fair treatment to the agencies pursuant to section 168 paragraph eight of the Constitution. Therefore, an opportunity should be given to those agencies to show reasons and necessities directly to the parliamentary committee in line with the principles of the rule of law and good governance. However, the facts found in this case showed that all three agencies already had an opportunity to present reasons for budgetary requests to the parliamentary subcommittee appointed by the select committee, and that the select committee had received the report made by the subcommittee, and had taken those reasons and necessities into consideration, this case did not reach the extent of an exercise of powers without rule and reason that would cause the legislative process for this Bill to be contrary to or inconsistent with the rule of law or good public governance.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, section 27 of the Budgetary Appropriations Bill for the Fiscal Year B.E. 2557 (2014), in regard to the budgets for the Office of the Judiciary and the Office of the Administrative Courts, and section 28 in regard to the budget of the Office of the NACC, were neither contrary to nor inconsistent with, nor enacted inconsistently with section 168 paragraph eight and paragraph nine of the Constitution.
