

# **Summary of Constitutional Court Ruling\* No. 21/2556 (2013)**

**Dated 18<sup>th</sup> December B.E. 2556 (2013)**

**Re: The National Human Rights Commission requested a Constitutional Court ruling under section 257 paragraph one (2) of the Constitution on whether or not section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) affected human rights and raised questions of consistency with section 30 of the Constitution.**

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

The National Human Rights Commission, applicant, requested a Constitutional Court ruling under section 257 paragraph one (2). The facts in the application and supporting documents could be summarized as follows.

The applicant received a complaint from Khunying Thipawadee Meksawan, complainant, that the National Anti-Corruption Commission (NACC) passed a resolution that the complainant had committed a serious disciplinary offence. The complainant therefore requested the applicant to refer the matter to the Constitutional Court for a ruling that section 92 paragraph one of the Organic Act on Counter Corruption B.E. 2542 (1999) was inconsistent with section 40(3) and (4) of the Constitution due to the restriction of right to appeal an order to a supervisor. It was stated further that section 92 paragraph two was inconsistent with section 30 of the Constitution. The provision stipulated a special disciplinary procedure for persons holding the positions of judges of the courts of justice, justice of the Administrative Courts and public prosecutors. As a consequence, the determination of disciplinary wrongdoings was within the authority of such organs. The situation was different for other government officials who were subject to disciplinary wrongdoing determinations by the National Anti-Corruption Commission (NACC). This difference was an unjust discrimination. The applicant therefore referred the matter to the Constitutional Court for a ruling on whether or not section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) was a provision which affected human rights and raised questions of consistency with section 30 of the Constitution.

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## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling. The Constitutional Court found that this application was a case where the National Human Rights Commission referred a matter together with an opinion to the Constitutional Court after concurring with a complainant that section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) affected human rights and raised questions of consistency with section 30 of the Constitution. The case was in accordance with section 257 paragraph one (2) of the Constitution in conjunction with clause 17(19) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of this application for consideration.

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

The issue considered by the Constitutional Court was whether or not section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) was contrary to or inconsistent with section 30 of the Constitution.

Section 92 of the Organic Act on Counter Corruption B.E. 2542 (1999) was a provision in Chapter 8 on investigations of state officials who were not persons holding political positions. Rules were provided on disciplinary procedures for supervisor or persons with the authority of appointments and removals after a factual finding by the NACC that a state official had committed a wrongdoing of corrupt performance of duties, misfeasance of official functions or misfeasance of judicial functions, and a resolution had been passed that there were grounds for a finding of a disciplinary wrongdoing. Section 92 paragraph one provided that the President of the NACC shall submit a report and available documents to the supervisor or person with the authority to appoint or remove such alleged person to determine a disciplinary penalty in pursuant to the wrongdoing found by resolution of the NACC without an appointment of a disciplinary investigation committee. The report, documents and opinion of the NACC would be deemed as the investigation dossier of a disciplinary investigation committee under the law or regulation or rules on personnel administration governing such alleged person, as the case may be. Section 92 paragraph two provided that in the event of an alleged person who was a judicial official or public prosecutor, the President of the NACC shall submit the report and available documents together with an opinion to the Chairman of the Judicial Commission, or the Chairman of the Public Prosecutor Commission, as the case may be, for further legal proceedings. The report and documents of the NACC would also be deemed to form part of the investigation dossier.

After deliberations, the Constitutional Court found as follows. Section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) was a provision applicable to judicial officials or public prosecutors. Although the rules may be different from state

officials under section 92 paragraph one, the provisions were still intended to ensure that disciplinary proceedings, being a part of personnel administration of judicial officials and public prosecutors, remained independent in accordance with the characteristics of the tasks as well as the necessities and suitability therefore. In other words, the provisions ensured that judicial officials could try and adjudicate cases independently and consistently with section 220 and section 224 of the Constitution, which provided that a punishment to be imposed on judges of the Courts of Justice and justices of the Administrative Courts required the consent of the Judicial Commission or the Judicial Commission of the Administrative Courts, as the case may be. This principle guarantees the independence of judges and justices, as well as guarantees the independent performance of public prosecutors in commencing legal action and impartial discharge of duties as provided under section 255 of the Constitution. Furthermore, section 97 of the Organic Act on Counter Corruption B.E. 2542 (1999) provided for independence in the conduct of criminal proceedings between the Attorney-General and the NACC. In the case of an allegation of a crime pursuant to a resolution of the NACC, the report of the NACC would be deemed to be an investigation dossier under the Criminal Procedure Code. If the Attorney-General found that the report, documents and opinion of the NACC were not sufficiently complete for an indictment, the NACC and the Attorney-General shall appoint a working group to compile complete evidence and submit the dossier to the Attorney-General for further prosecution. For these reasons, as regards disciplinary proceedings against a public prosecutor under section 92 paragraph two, if the provision stated that the report, document and opinion of the NACC were regarded as the disciplinary investigation dossier of the public prosecutor, the exercise of discretion by the public prosecutor in taking criminal proceedings would lack independence, especially in the consideration of allegations pursuant to a resolution of the NACC of a criminal wrongdoing under section 97 of the Organic Act on Counter Corruption B.E. 2542 (1999). Moreover, the scrutiny and balance between the public prosecutor and NACC could also be lost. Therefore, section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) was a provision which was intended to ensure that disciplinary proceedings, as part of the personnel administration of judicial officials of the Courts of Justice, judicial officials of the Administrative Courts and public prosecutors, remained independent pursuant to the nature of their tasks as provided by the Constitution. This provision was neither inconsistent with the principle of equality nor constituted an unjust discrimination on a person as stated under section 30 of the Constitution.

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

The Constitutional Court held that section 92 paragraph two of the Organic Act on Counter Corruption B.E. 2542 (1999) was neither contrary to nor inconsistent with section 30 of the Constitution.

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