

# **Summary of the Constitutional Court Ruling No. 16/2545**

**Dated 30<sup>th</sup> April B.E. 2545 (2002)\***

**Re : The Ombudsman requests for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the constitutionality of section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000).**

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## **1. Background and summarized facts**

Mr. Sirimitr Bunmul and Miss Bunjuti Glabprasit were candidates in the 43<sup>rd</sup> examinations for the selection and recruitment of judicial officials in the position of assistant judges for the year B.E. 2542 (1999). Both candidates underwent physical and psychological examinations with the medical committee prescribed by the Judicial Committee. The results revealed that Mr. Sirimitr suffered from polio while Miss Bunjuti's vertebrae, also due to polio, hunched to such a degree that she could only walk short distances unaided. Consequently, the Judicial Committee and the Sub-Committee for the Examination of Qualifications considered that both candidates had deficient physical conditions under section 27(11) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2521 (1978) and their applications were thus declined. Both candidates considered that this was an unjust discrimination on the grounds of difference in physical conditions and that sections 27(11) and (12) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2521 (1978) and sections 26(10) and (11) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 were contrary to or inconsistent with section 30 paragraph three of the Constitution. The candidates therefore petitioned to the Ombudsman to submit the case with an opinion to the Constitutional Court under section 198 of the Constitution.

## **2. Preliminary issue.**

After consideration, the Constitutional Court held that section 198 paragraph one of the Constitution provided for the examination of the constitutionality of provisions of the law, rules, regulations or any act of any person under section 197(1) of the Constitution with the Ombudsman as the submitter of the case and an opinion for a ruling of the Constitutional Court. According to the application, there was a question of constitutionality under section 198 of the Constitution within the jurisdiction of the Constitutional Court. The Constitutional Court therefore had the power to consider this case.

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

Was there a question of constitutionality regarding section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000) and the execution of functions of the Judicial Committee and the Sub-Committee for the Examination of Qualifications in the 43<sup>rd</sup> recruitment of candidates as judicial officials in the positions of assistant judges for the year B.E. 2542 (1999) ?

The Constitutional Court held the following opinion:

Section 26 of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000) stated that, “an applicant for selection, an applicant for examination or an applicant for special selection for recruitment as judicial official and appointment as assistant judge shall have the qualifications and not have the prohibited qualities as follows... (10) not being an incompetent, a quasi-incompetent, an insane or mentally disordered person or having physical or psychological conditions unsuitable for a judicial official or having a disease specified in the rules of the Judicial Committee and (11) having passed the physical and psychological examinations of a medical committee of not less than three persons prescribed by the Judicial Committee and the Judicial Committee has considered the report of the medical committee and held appropriate that the application be accepted.” Section 26 paragraph two stated that, “the rules and procedure for the examination of qualifications of the applicant for selection, applicant for examination and applicant for special selection shall be in accordance with the rules prescribed by the Judicial Committee and published in the Government Gazette.”

Section 30 of the Constitution laid down the principle that all persons are equal before the law and shall enjoy equal protection under the law; that men and women shall enjoy equal rights; and that unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political views, shall not be permitted.

However, it had to be accepted that for an agency to recruit any person into any position, regard must be had to his or her knowledge, ability and suitability for the execution of such duties. On certain occasions, necessity might call for the execution of duties outside the office or the court. In this application, Mr. Sirimitr and Miss Bunjuti applied for selection as judicial officials and appointment as assistant judges. Different measures were therefore applied, which were more stringent than that for the selection of persons for other positions. Section 29 paragraph one of the Constitution laid down the exception that the restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

Section 29 paragraph two provided that the law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two applied *mutatis mutandis* to rules or regulations issued by virtue of the provisions of the law.

According to section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000), the words “having physical [conditions]... unsuitable for a judicial official” were read together with section 26(11) which provided that the applicant must “[have] passed the physical and psychological examinations of a medical committee of not less than three persons prescribed by the Judicial Committee and the Judicial Committee has considered the report of the medical committee and held appropriate that the application be accepted.” The provisions of section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000) were in accordance with the necessity and suitability of judicial officials. It was therefore held that the provisions of section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000) were in accordance with the exception under section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and did not affect the essential substances of rights and liberties. Such provisions were of general application and were not intended to apply to any particular case or person. The provisions were therefore in no manner an unjust discrimination under section 30 of the Constitution.

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

By virtue of the reasons above, the Constitutional Court, by a majority of 8 votes to 3 votes, held that section 26(10) of the Rules on Judicial Officials of the Courts of Justice Act, B.E. 2543 (2000) was not contrary to or inconsistent with section 30 of the Constitution and there were no questions regarding constitutionality.

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