Summary of the Constitutional Court Ruling No. 44/2545

Dated 1ˢᵗ August B.E. 2545 (2002)*

Re : **The Central Administrative Court submitted the objection of the parties (between Mr. Sirimitr Bunmul, the plaintiff, and the Committee of State Attorneys, the defendant) in Case No. 4119/2544 requesting that the Constitutional Court make a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) contained provisions which were contrary to or inconsistent with the Constitution.**

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1. Background and summarized facts

Mr. Sirimitr Bunmul (the plaintiff in the Administrative Court) applied for the selection examinations and appointment of State Attorney officials for the position of assistant State Attorney for the year B.E. 2544 (2001). The plaintiff's name, however, did not appear on the announced list of eligible examinees. The Sub-committee for the Consideration of Examination Candidate Qualifications explained that a report on the result of medical examinations was received from the medical committee which stated that the plaintiff had physical deformities. It was stated that the plaintiff limped, that his arm muscles had contracted all the way to the fingertips of both sides, his leg muscles had contracted to the tip of both toes, his backbone was bent and he had undergone surgery to insert a metal support for the backbone in order to maintain equal lengths in both shoulders. The Sub-committee therefore resolved that the plaintiff's application was not accepted by reason that the plaintiff possessed a personality and physical traits which were unsuitable for a State attorney official under section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978). As a result, the plaintiff filed an application against the Committee of State Attorneys at the Central Administrative Court claiming that the reasons given by the respondent constituted an unjust discrimination on the grounds of differences in physical conditions. Section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) was therefore contrary to or inconsistent with section 30 of the Constitution.

The Central Administrative Court stayed its consideration and referred the objection to the Constitutional Court for a ruling.

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2. Preliminary issue

The Constitutional Court held that, whereas the Central Administrative Court considered that the plaintiff objected that section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) was contrary to or inconsistent with section 30 of the Constitution and imposed a temporary stay on the case as well as referred the objection to the Constitutional Court for a ruling under section 264 of the Constitution, the case was in accordance with section 264 of the Constitution. The Constitutional Court therefore had the power to consider the issue in the application referred to it by the Central Administrative Court.

3. The issues considered by the Constitutional Court

Was section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) contrary to or inconsistent with section 30 of the Constitution?

The Constitutional Court held as follows. Section 30 of the Constitution laid down the principle that all people were equal before the law and should enjoy equal protection under the law. Men and women should enjoy equal rights. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally consistent political view should not be permitted. Yet, it had to be accepted that when an agency accepted a person to perform duties in any position, regard must also be had to the knowledge, ability and suitability of such person for the performance of duties. On certain occasions, performance of duties might be required outside the office or the court. In the case under the application, Mr. Sirimitr Bunmul applied for the selection examinations and appointment of State Attorney officials for the position of assistant State attorney. Different measures were therefore applied which were more stringent than usual for the selection of persons for other positions. Section 29 paragraph one of the Constitution provided the exception that the restriction of such rights and liberties as recognized by the Constitution should not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties. Section 29 paragraph two provided the safeguard that the law under section 29 paragraph one should be of general application and should not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment should also be mentioned therein. The provisions of section 29 paragraph one and paragraph two applied *mutatis mutandis* to rules or regulations issued by virtue of the provisions of the law.

After consideration of the Constitutional Court was of the opinion that section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) fell under the exception in section 29 of the Constitution. The provision did not affect the essential substance of rights and liberties, had a general application and was not intended to apply to any particular case or

person and was not in any 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 the majority votes of 12 Constitutional Court judges to 3 judges, held that section 33(11) of the Rules of State Attorney Officials Act, B.E. 2521 (1978) was neither contrary to nor inconsistent with section 30 of the Constitution.

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