

# Summary of Constitutional Court Ruling No. 8/2552

**Dated 30<sup>th</sup> March B.E. 2552 (2009)\***

**Re: The President of the House of Representatives requested for a Constitutional Court review on the constitutionality of the Organic Bill on Ombudsmen B.E. .... pursuant to section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

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## 1. Summary of background and facts

The President of the House of Representatives referred the Organic Bill on Ombudsmen B.E. ...., which had already been approved by the National Assembly, to the Constitutional Court for a constitutional review under section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The referral could be summarized as follows. A sitting of the House of Representatives passed a resolution to approve in principle the Organic Bill on Ombudsmen B.E. .... as introduced by the Ombudsman and Mr. Nipit Intarasombat and others. Thereafter, the House of Representatives approved such Organic Bill on Ombudsmen B.E. .... introduced by the Ombudsmen and Members of the House of Representatives, which was then submitted to the Senate. The Senate passed a resolution approving in principle the Organic Bill on Ombudsmen B.E. .... as approved by the House of Representatives, with amendments, which was returned to the House of Representatives. The House of Representatives then passed a resolution to approve the Organic Bill on Ombudsmen B.E. .... as amended by the Senate. The Organic Bill was therefore deemed as approved by the National Assembly under section 140 paragraph two in conjunction with section 147 paragraph one (3) of the Constitution. The President of the House of Representatives thus referred the Organic Bill to the Constitutional Court for a ruling under section 141 of the Constitution.

## 2. Issues considered by the Constitutional Court

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the power to admit the application made by the President of the House of Representatives for a ruling.

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After consideration, it was found that clause 20 paragraph two of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) provided for the President of the National Assembly to be the submitter of an application together with supporting documents in a case on the constitutional review of an Organic Bill approved by the National Assembly under section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). This application, however, was submitted by the President of the House of Representatives. As section 89 of the Constitution provided for the President of the House of Representatives to be the President of the National Assembly, it was discernable that this application was submitted by the President of the National Assembly. An order was therefore made to admit this application for a ruling under section 141 of the Constitution and clause 17(5) in conjunction with clause 25 of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Letters of notification were sent to the President of the National Assembly, Prime Minister and Chief Ombudsman. The President of the National Assembly submitted a letter stating that a detailed explanation on every state of the legislative procedures with respect to the Organic Bill on Ombudsman B.E. .... had already been provided, and that documents pertaining to every stage of the procedures had already been sent to the Constitutional Court for consideration. The Prime Minister and Chief Ombudsman submitted letters stating that they had already considered the Organic Bill on Ombudsmen B.E. .... and did not wish to make any additional statements or opinions.

### **3. Issues considered by the Constitutional Court**

**First issue:** whether or not the Organic Bill on Ombudsmen B.E. .... was duly enacted in accordance with the constitutional provisions.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007), in Chapter VI, Part 6 The Enactment of Organic Acts, provided for persons authorized to introduce an Organic Bill and the consideration of an Organic Bill, including the *mutatis mutandis* application of the provisions in Chapter VI, Part 7 The Enactment of an Act, to the consideration of an Organic Bill. The issues which required consideration were therefore whether or not the Organic Bill on Ombudsmen B.E. .... was introduced by an authorized person; whether or not the introduction of this Organic Bill was accompanied by a memorandum on the analysis of the Organic Bill's essential substance; whether or not the Organic Bill was a money Bill which required the endorsement of the Prime Minister; whether or not the Organic Bill had proceeded according to section 147 of the Constitution; whether or not specifications were made of the provisions of the Constitution authorizing the enactment of a law to restrict the rights and liberties of a person pursuant to section 29 of the Constitution; and whether or not the consideration of this Organic Bill in the House of Representatives and the Senate were carried out in three readings and resolutions were voted upon in accordance with section 140 of the Constitution.

The Constitutional Court examined the facts in the application, documents in support of the application, statements of related parties, including the relevant evidence, and found

that the Organic Bill on Ombudsman B.E. .... had already been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

**Second issue:** whether or not the Organic Bill on Ombudsmen B.E. .... contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Organic Bill on Ombudsmen B.E. .... contained provisions which could be divided as follows.

General Provisions: section 1 to section 5 provided the Act's title, effective date, repeal provisions, definitions and Minister having charge and control of the execution of this Organic Act.

Chapter I The Ombudsman: section 6 to section 22 provided on the composition, selection, election, endorsement, qualifications and prohibited qualities, retirement from office, powers and duties, performance of functions, and the determination of monthly salaries and remunerations of the Ombudsmen.

Chapter II Complaints and Fact-Finding Investigations, divided into two parts:

Part 1 Complaints: section 23 to section 27 provided on the persons entitled to file complaints, complaint procedures and the submission of a matter by a parliamentary committee to the Ombudsman for proceedings.

Part 2 Fact-Finding Investigation: section 28 to section 34 provided on matters admissible by the Ombudsman for consideration, opportunities for the complainant and related persons to give statements and present evidence, preparation of opinion reports, and the discretion to notify an authorized agency to carry out investigations where there was reasonable cause to suspect a corrupt act.

Chapter III Inspection of Constitutional Organs and Judicial Organs: section 35 provided for the application of the provisions in Chapter II Complaints and Fact-Finding Investigations *mutatis mutandis*.

Chapter IV Ethics for Political Position Holders and State Officials: section 36 to section 39 provided on proceedings relating to the ethics of political position holders and state officials, considerations and fact-finding investigations, hearings and the public disclosure of hearing outcomes.

Chapter V Monitoring, Assessments and Suggestions for Constitutional Compliance: section 40 to section 42 provided for procedures for monitoring and assessing compliance with the Constitution, including the preparation of suggestions for constitutional compliance.

Chapter VI Annual Report: section 43 to section 44 provided for the preparation

of an annual report for submission to the Council of Ministers, House of Representatives and Senate, including the disclosure of the annual report.

Chapter VII Penalties: section 45 to section 47 provided for penalties and penal scales for violations or non-compliance.

Transitory Provisions: section 48 to section 51 provided for proceedings relating to pending complaints, the application of rules, regulations, notifications or orders issued under the prior Organic Act, office terms of Ombudsmen in office on the promulgation date of this Organic Act, and the provisional capacity of the Office of the Parliamentary Ombudsman as the Office of the Ombudsman.

The Constitutional Court examined the text of the provisions in the Organic Bill on Ombudsmen B.E. ...., with respect to all 51 sections, including the introductory texts (preamble) of such Organic Bill and found that they were consistent and did not contain any provision that was contrary to or inconsistent with the Constitution.

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

By virtue of the foregoing reasons, the Constitutional Court held that the Organic Bill on Ombudsmen B.E. .... did not raise any issues of constitutionality under the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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