

# Summary of the Constitutional Court Ruling\* No. 1/2554 (2011)

Dated 5<sup>th</sup> January B.E. 2554 (2011)

**Re: The President of the National Assembly requested the Constitutional Court to review the constitutionality of the Organic Bill on Anti-Corruption (No...) 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 National Assembly submitted the Organic Bill on Anti-Corruption (No...) B.E. ...., which had 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 submission could be summarized as follows. The sitting of the House of Representatives on Wednesday, 29<sup>th</sup> April B.E. 2552 (2009) passed a resolution to approve in principle the five Organic Bills introduced and to appoint an extraordinary committee to carry out deliberations. The Organic Bill introduced by the National Anti-Corruption Commission was regarded as the primary text for the deliberations. Subsequently, the sitting of the House of Representatives on Wednesday, 23<sup>rd</sup> September B.E. 2552 (2009) passed a resolution to approve the Organic Act, which was then submitted to the Senate for deliberations on 28<sup>th</sup> September B.E. 2552 (2009). The sitting of the Senate passed a resolution to amend the Organic Bill on Anti-Corruption (No...) B.E. ...., which was then returned to the House of Representatives on 26<sup>th</sup> November B.E. 2552 (2009). The House of Representatives, however, did not concur with the amendments made by the Senate. A joint committee was formed. Upon completion of deliberations by the joint committee, the Organic Bill was referred to each House for approval. The sittings of the House of Representatives and Senate each passed a resolution to approve the Organic Bill proposed by the joint committee. The Organic Bill on Anti-Corruption (No...) B.E. .... was thus deemed to have received the approval of the National Assembly pursuant to section 140 paragraph two in conjunction with section 147 paragraph one (3) of the Constitution. The President of the National Assembly therefore submitted the Organic Bill to the Constitutional Court for a constitutional review under section 141 of the Constitution.

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## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court could admit the application of the President of the National Assembly for consideration.

After deliberations, the Constitutional Court found that article 20 paragraph two of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) provided that the President of the National Assembly should submit an application along with supporting documents in a case concerning a request for constitutional review of an Organic Bill approved by the National Assembly pursuant to section 141 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As this application was submitted by the President of the National Assembly, the Constitutional Court therefore ordered the admittance of the application for consideration under section 141 of the Constitution and article 17(5) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

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

The first issue was whether or not the Organic Bill on Anti-Corruption (No...) B.E. .... had been properly enacted in accordance with provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court considered the facts stated in the application, supporting documents, statements made by relevant persons, as well as examined relevant evidence, and found by a majority vote (8 to 1), as follows. The Organic Act on Anti-Corruption (No...) B.E. .... was a draft amendment to the Organic Act on Anti-Corruption B.E. 2542 (1999) introduced by the Chairman of the National Anti-Corruption Commission and members of the House of Representatives constituting not less than one-tenth of the existing members of the House of Representatives, duly constituting the persons under section 302 paragraph three in conjunction with section 139(3) and section 139(2) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Organic Bill introduced by the Chairman of the National Anti-Corruption Commission was regarded as the primary text for deliberations. The Organic Bill was deliberated by the House of Representatives and Senate in three readings. The deliberations were conducted in properly constituted quorums and votes, and the time periods of deliberations were in accordance with the constitutional provisions. Even though the deliberations in the House of Representatives exceeded one hundred and twenty days as provided under section 302 paragraph four of the Constitution, nevertheless, there was no provision to enforce such time limits which would affect this Organic Bill. The time limits therefore applied only as an expediting measure, without any prejudice to the validity this Organic Bill. Hence, the Organic Bill on Anti-Corruption (No...) B.E. .... was properly enacted in accordance with constitutional provisions.

The second issue was whether or not the Organic Bill on Anti-Corruption (No...) B.E. .... contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court considered the provisions of the Organic Bill on Anti-Corruption (No...) B.E. .... in all 74 sections, including the preamble of the Organic Bill, and held unanimously that the preamble and 73 sections did not contain any provision which was contrary to or inconsistent with the Constitution, except section 64.

The Constitutional Court, by a majority (5 to 4), held as follows. The intent behind the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was stated in its preamble, i.e. to provide a mechanism to ensure that political institutions in both the Legislative and Executive Branches were balanced and efficient under the parliamentary norms of governance, as well as to enable judicial institutions and other independent organs to function in an honest and fair manner. Chapter 11 on Constitutional Organs, Part 1 Independent Constitutional Organs contained provisions on the Election Commission, Ombudsman, National Anti-Corruption Commission and State Audit Commission, and Part 2 Other Constitutional Organs contained provisions on the State Attorney, National Human Rights Commission and National Economic and Social Advisory Council. The Constitution provided for the composition, qualifications or disqualifications, tenure, functions, reviews of the exercise of powers and removal from office. These provisions were enacted in both Constitution and laws, as the case may be. The Constitution also provided that constitutional organs should have independent secretariats to administer matters pertaining to personnel, budgeting and other operations, as provided by law. Salaries, position allowances and other benefits for holders of offices in independent constitutional organs and other constitutional organs under the Constitution, including the State Attorney, were provided under section 202 and section 255 paragraph seven of the Constitution, which stated that they should be as provided by law and that the schedule of salaries and positional allowances of civil servant should not apply. It was apparent from those provisions that the Constitution had clearly provided a system of salaries, position allowances and other benefits of holders of offices in independent constitutional organs and other constitutional organs, especially the State Attorney, which were to be as provided by law and that the schedule of salaries and position allowances of civil servants should not apply. The provisions provided a guarantee for independence in the performance of constitutional functions. However, as regards the secretariat of such constitutional organs, the Constitution similarly provided that the secretariat of these organs be independent agencies for the administration of personnel, budgeting and other operations, as provided by law. The extent of application also included the Office of the National Anti-Corruption Commission as provided under section 251 paragraph three of the Constitution, being a delegation of powers to the legislature to enact a law as stipulated by the Constitution. Nevertheless, there was no prohibition against the application of the schedule of salaries and position allowances of civil servants as with the case of holders of offices in constitutional organs. Moreover, there was an essential principle governing the prescription of schedule of salaries and position allowances of officials, regardless of the branch of government, that they should be implemented through the enactment of a legislative act. Any subsequent adjustments to the salary scale and position allowances to correspond to changes in economic conditions may be implemented by the enactment of a Royal Decree by the Council of Ministers, but only for instances that had already been provided in the

schedule of salaries and position allowances in the Act. The salary scale and position allowances of state attorneys also followed the same rule.

Draft section 64 provided for the repeal of section 111 of the Organic Act on Anti-Corruption B.E. 2552 (2009) and the replacement by new provisions. It was provided that the National Anti-Corruption Commission, whose status was the central personal administration body of the Office of the NACC, should have the power to prescribe and prepare a schedule of salaries and position allowance for officials of the Office of the NACC. In this regard, the schedule of salaries and position allowances under the law on civil service applied *mutatis mutandis* to other types of officials, whereas officials in the judicial process would receive rates not exceeding the schedule of salaries and position allowances of state attorneys without any requirement of prior review by the National Assembly. Such a provision was discriminatory as between officials of the Office of the NACC and other officials. Moreover, the prescription of positions and qualifications of officials in the judicial process stipulated rules constituting the basis for the prescription of a schedule of salaries and position allowances in draft section 63, which added provisions as section 110/1 paragraph one, “when prescribing an official position in the Office of the NCCC as a position in the judicial process, a qualifying person must possess the basic education qualification of a barrister-at-law or hold of a law degree, and such person must have knowledge and experience in conducting inquiries and case adjudication, or giving legal opinions in accordance with the rules and procedures prescribed by the NACC,” constituted merely general qualifications. As there was no provision in this Organic Bill which provided for a difference between an official in the judicial process and other officials, or similar qualifications to state attorneys, the provisions represented a discriminatory treatment in the essential substance. Therefore, draft section 64, which provided for the repeal of section 111 and replacement by new provisions, was inconsistent with section 251 paragraph three in conjunction with section 202 and section 255 paragraph seven of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and constituted an unfair discrimination against a person on the basis of a difference in personal statuses of officials, which was contrary to or inconsistent with section 30 paragraph one and paragraph three of the Constitution. The Constitutional Court, however, held unanimously that draft section 64, the provision which was contrary to or inconsistent with the Constitution, did not constitute an essential substance of the Organic Bill.

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

By virtue of the foregoing reasons, the Constitutional Court held that the Organic Bill on Anti-Corruption (No...) B.E. .... was consistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007), except for section 64, a provision contrary to or inconsistent with the Constitution, which lapsed under section 141 paragraph two. The Organic Bill on Anti-Corruption (No...) B.E. .... was returned to the House of Representatives and Senate respectively pursuant to section 141 paragraph three.

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