

Summary of Constitutional Court Ruling* No. 46/2554 (2011)

Dated 21st December B.E. 2554 (2011)

Re: Whether or not section 9 paragraph two (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures was contrary to or inconsistent with section 30 of the Constitution.

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1. Summary of background and facts

The Central Administrative Court referred the objection of a plaintiff (Mr. Prayut Neerapol) to the Constitutional Court for a ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The facts in the application and supporting documents could be summarised as follows.

The plaintiff, a judge of the Thonburi Criminal Court, filed an action against the Office of the Judiciary, the 1st defendant, and the Judicial Commission of the Courts of Justice (J.C.), the 2nd defendant, in the Central Administrative Court seeking a judgment or order to revoke the resolution of the Judicial Commission of the Courts of Justice (J.C.) and order of the Office of the Judiciary which imposed the punishment of salary increase suspension for a period of 1 year on the plaintiff, and to revoke the reprimand, as well as letter of the Office of the Judiciary No. Sor Yor 003/Wor 192, dated 22nd May B.E. 2550 (2007) which had been relied upon as a cause for imposing the disciplinary punishment on the plaintiff. The punishment was imposed for acts which prejudiced the performance of duties and brought dishonor to the official position committed while holding the position of judge of Northern Bangkok Kwaeng Court pursuant to allegations that the plaintiff failed to comply with orders of a superior and provided legal training without proper authorisation. The plaintiff argued that section 9 paragraph two (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) caused judges who were judicial officials under the law on administration of judicial officials to receive a lesser protection than other types of officials. Such discrepancies resulted in an unfair discrimination due to different personal capacities which was contrary to or inconsistent with section 30 of the Constitution. An application was therefore submitted to the Central Administrative Court for a referral of the opinion to the Constitutional Court for ruling.

The Central Administrative Court found that section 9 paragraph two (2) of the Act on Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999)

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was applicable to this case and there had not yet been a ruling of the Constitutional Court in relation to such provision of law. A temporary stay was therefore imposed on the case and the plaintiff's objection referred to the Constitutional Court for a ruling under section 211 of the Constitution.

2. Preliminary issue

The Constitutional Court admitted the application for adjudication pursuant to section 211 paragraph one of the Constitution in conjunction with article 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 9 paragraph two (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 30 of the Constitution.

The Constitutional Court, after consideration, found as follows. Section 30 of the Constitution was a provision which recognized the equality of persons under the law and equal protection provided by law. Men and women enjoyed equal rights. Unfair discrimination against a person for the causes stated by the Constitution was prohibited. In regard to section 36 of the Administration of Judicial Officials of the Courts of Justice Act B.E. 2543 (2000), provided for a Judicial Commission (J.C.) of the Courts of Justice to act as a central organ to perform the duties of overseeing the personnel administration of all judicial officials of the Courts of Justice. Section 9 paragraph two (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999), on the other hand, was a provision which excluded the actions of the Judicial Commission of the Courts of Justice under the Administration of Judicial Officials of the Courts of Justice Act B.E. 2543 (2000) from the review jurisdiction of the Administrative Courts in order to ensure the independence of personnel administration of judicial officials pursuant to the essential nature of tasks as well as to meet the specific needs of such organ. The exclusion of acts of the Judicial Commission of the Courts of Justice from the jurisdiction of the Administrative Courts under section 9 paragraph two (2) of the Act on Establishment of the Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) did not mean that a person affected by an administrative act could not resort to other means of exercising rights. If a person was of the opinion that he or she was affected by an administrative act, such a person was still entitled to exercise rights under the Constitution or under the law. Section 9 paragraph two (2) was therefore a provision which applied to all judicial officials of the Courts of Justice equally. There was no unfair discrimination on judicial officials of the Courts of Justice.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 9 paragraph two (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
