

Summary of Constitutional Court Ruling No. 15/2555 (2012)

Dated 13th June B.E. 2555 (2012)*

Re: The Ombudsman requested the Constitutional Court for a ruling under section 245(1) of the Constitution on whether or not section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) presented a question of constitutionality under section 30 of the Constitution.

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1. Summary of background and facts

The Ombudsman, applicant, requested the Constitutional Court for a ruling under section 245(1) of the Constitution in connection with a written complaint from Mr. Sirimitr Boonmool, who had applied for qualifying examinations for recruitment as a judicial official but was informed by the Office of the Judiciary that the Judicial Committee had resolved to deny the application due to physical and mental unfitness for the performance of duties pertinent to a judicial official pursuant to section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000). The complainant and applicant were of the opinion that the disqualification of a person from examination for the said reason constituted an unjust discrimination on the basis of differences in physical condition or disability. It was thus argued that such a provision of law was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

2. Preliminary issue

The Constitutional Court had stated in Ruling No. 16/2545 that section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) did not raise a question of unconstitutionality under section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). However, section 30 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) added the term “disability”, which was a key principle different from the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Thus, upon the applicant’s request for a ruling that section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) raised a question of constitutionality under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) only in relation to the principle of unjust discrimination against a person

* Published in the Government Gazette Vol. 129, Part 100a, dated 18th October B.E. 2555 (2012).

on the basis of a difference relating to a disability pursuant to section 30 paragraph three, the case was a matter or issue which the Constitutional Court had never given a ruling under section 215 of the Constitution. The Constitutional Court therefore admitted this application for consideration.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) was contrary to or inconsistent with section 30 of the Constitution.

After consideration, the Constitutional Court found as follows. After the Constitutional Court had given Ruling No. 16/2545, which stated that section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) did not raise a constitutionality question under section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Thailand ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 29th July B.E. 2551 (2008). The obligations stipulated under the Convention were effective on Thailand as from 28th August B.E. 2551 (2008). As a consequence, state agencies were under an obligation to comply with Article 27(a), which prohibited discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions, and (g), which imposed an obligation to employ disabled person in the public sector. Therefore, when a state agency purported to prescribe rules pertaining to the recruitment of a person to a certain post, regard should also be given to the obligations under such Convention.

Section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) provided that a selective examination candidate, knowledge examination candidate or special selection candidate for recruitment as a judicial official and appointment as an assistant judge must have the qualifications and not have the disqualifications "...having physical or mental attributes unfit for a judicial official..." The terms "unfit physical or mental attributes" were within the scope of the term "disabled person" under the Promotion and Improvements of the Quality of Life of Disabled Persons Act B.E. 2550 (2007), consistent with the United Nations Convention on the Rights of Persons with Disabilities. The provision prescribed sweeping physical and mental attributes which were unfit for judicial officials, without clear limits, leading to an exercise of discretion that could ultimately result in an unjust discrimination. A law which restricted the rights and liberties of a person should have clear limits. For instance, the provision could state the extent to which a physical or mental attribute would hinder the performance of duties of a judicial official. Such a provision should inform the public of the particular rights and liberties, and be consistent with the principle of proportionality, with greater regard for public benefits and collective benefits of society than the benefits of the organisation.

Section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000) was thus a provision which allowed the exercise of an unnecessarily wide discretion which could result in an unjust discrimination against a disabled person. The prescription of qualifications and disqualifications which had the characteristics of an unjust discrimination against persons with disabilities at the application stage for qualifying examinations of judicial officials, granting a discretion to the Judicial Committee to determine whether or not a person was fit to take qualifying examinations of judicial officials, amounted to a disentanglement of persons with disabilities from the initial stage. Persons with disabilities would be deprived of an opportunity to sit the qualifying examinations on an equal standing with others generally, as well as the opportunity to actually show knowledge and competence relating to such post. The primary function of a judge of the Courts of the Justice was the fair trial and adjudication of cases in accordance with the Constitution and laws, and the trial had to be presided by a quorum. A disability would therefore not hinder the performance of duties of prospective judicial official such that would prejudice fairness to the parties or related persons. Section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000), in regard to the provision on qualifications and disqualifications of a candidate for selective examinations for recruitment of judicial officials, which stated “having physical or mental attributes unfit for a judicial official”, was therefore inconsistent with the rights of persons with disabilities to engage in work on an equal basis with other persons generally, pursuant to the United Nations Convention on the Rights of Persons with Disabilities. The provision also amounted to an unjust discrimination against a person on the basis of a disability as provided under section 30 paragraph three of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration Act B.E. 2543 (2000), only in regard to the provision stating “...having a physical or mental attribute unfit for a judicial official...” was contrary to or inconsistent with section 30 paragraph three of the Constitution.
