

Summary of Constitutional Court Ruling No. 16/2555 (2012)

Dated 27th June B.E. 2555 (2012)*

Re: The Ombudsman requested for a Constitutional Court ruling under section 245(1) on whether or not section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008) was consistent with section 230 paragraph two in conjunction with section 207 paragraph one (2) of the Constitution.

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1. Summary of background and facts

The Ombudsman received a complaint letter from the Secretary-General of King Prajadhipok's Institute stating that the Office of the Political Development Council had communicated to the Election Commission seeking for a delegation of one Election Commissioner to perform duties as a member in the Selection Committee for Political Development Councillors pursuant to section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008). The Election Commission replied that section 230 paragraph two and section 207 paragraph one (2) of the Constitution provided qualifications and disqualifications for an Election Commissioner, that he/she must not be an employee or worker of a state agency, state enterprise or local government, or not be a board member or advisor to a state enterprise or state agency. However, as the Office of the Political Development Council was an agency established by law, having the characteristics of a state agency, it was therefore possible that the performance of duties of a member of the Selection Committee for Political Development Councillors could constitute a cause for lack of qualifications or disqualification of an Election Commissioner, thus constituting a cause for vacation of office pursuant to section 232 paragraph three, section 230 paragraph two and section 207 paragraph one (2) of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for ruling under section 245(1) of the Constitution. The Constitutional Court found that the issue in the application was a case where the Ombudsman submitted a matter together with an opinion to the Constitutional Court for a ruling that section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008) raised a

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question of constitutionality. The case was thus in accordance with section 245(1) of the Constitution in conjunction with clause 17(18) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of the application for ruling.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008) was contrary to or inconsistent with section 230 paragraph two in conjunction with section 207 paragraph one (2) of the Constitution.

After deliberation, the Constitutional Court found that section 207 paragraph one of the Constitution provided that “the President of the Constitutional Court and justices of the Constitutional Court must... (2) not be an employee or worker of a state agency, state enterprise or local government, or not be a director or advisor of a state enterprise or state agency...” Section 230 paragraph two provided that “the provisions of section 207 shall apply to Election Commissioners *mutatis mutandis*.” Thus, it was found that the disqualifications provided by the Constitution for Election Commissioners were intended to prevent conflicts of interests or conflicts of functions in order to avoid any doubts to independence and impartiality.

The Political Development Council Act B.E. 2551 (2008) was a law enacted with the intent of constructing a political development plan. Section 5 provided for the establishment of a Political Development Council with the objective of developing politics under the democratic form of government with the King as Head of State, promoting fairness and ethics of political office holders and state officials, etc. The Political Development Council consisted of councillors from several sectors as provided under section 7. Section 11 further provided for the establishment of a Selection Committee to perform the duties of selecting Political Development Councillors under section 7(2) and (7), namely sixteen members representing civil society organisations and ten other qualified councillors. The Selection Committee under section 11 paragraph one (1) was therefore entrusted with only duties of selecting Political Development Councillors under section 7(2) and (7). The Election Commissioner was only one of seven members of the Selection Committee entrusted with the ad hoc task of recruiting Political Development Councillors to ensure that the composition of the Political Development Council was in accordance with the provisions of law, as well as to enable the Political Development Council to function in accordance with the intent of the Constitution and objectives of the law as provided under section 6 paragraph one. This function was consistent with the powers and duties of the Election Commission under section 236 paragraph one (8) of the Constitution. Even though the law provided that the Office of Political Development Council was an independent agency under King Prajadhipok’s Institute, the Selection Committee for Political Development Councillors was not a committee established by the Office of the Political Development

Council or King Prajadhipok's Institute in the exercise of their respective powers and duties to perform functions pertaining to the tasks of the Office of the Political Development Council or King Prajadhipok's Institute. This committee was thus not a committee of a state agency. It was a statutory committee appointed to perform the ad hoc function of recruiting Political Development Councillors. Upon the completion of each selection, the tasks of the Selection Committee on such an occasion would lapse, and as a consequence, the functions of the Election Commissioner would also lapse. In any event, section 11 paragraph two prohibited a member of the Selection Committee from nominating oneself or from being selected as a Political Development Councillor on that occasion, and section 22 provided for a member of the Selection Committee for a Political Development Councillor's meeting allowances, expenses and other benefits in consideration for the performance of duties as provided by Royal Decree, but without receiving a monthly salary or position remuneration. Furthermore, there was no other provision which entrusted any administrative duties on a member of the Selection Committee, or any interference with the performance of duties of the Political Development Council and the Office of the Political Development Council, King Prajadhipok's Institute. Hence, a member of the Selection Committee for Political Development Councillors under section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008) was therefore neither a conflict of interests nor within the definition of a committee member of a state agency which was a disqualification under section 230 paragraph two in conjunction with section 207 paragraph one (2) of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 11 paragraph one (1) of the Political Development Council Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 230 paragraph two in conjunction with section 207 paragraph one (2) of the Constitution and there was no issue of unconstitutionality.
