

# Summary of Constitutional Court Ruling No. 17/2555 (2012)

Dated 4<sup>th</sup> July B.E. 2555 (2012)\*

**Re: The Ombudsman requested for a Constitutional Court ruling under section 245(1) on whether or not section 40(2), (3), (4), (5), (6), (7) and (8) in conjunction with section 57 ter and section 57 quinque of the Revenue Code were consistent with section 43 in conjunction with section 29 and section 30 of the Constitution.**

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## 1. Summary of background and facts

The Ombudsman, the applicant, was of the opinion that section 40(2), (3), (4), (5), (6), (7) and (8) in conjunction with section 57 ter of the Revenue Code, which provided that a wife's assessable income should be included as the husband's income, and as a consequence the husband and wife would have to pay more tax as compared to the separate filing of tax returns prior to marriage, and that section 57 quinque, which provided that only a wife with assessable income under section 40(1) was entitled to file a separate tax return from the husband, and not regarded as the husband's income under section 57 ter, were inconsistent with section 43 of the Constitution. These provisions caused an unfair tax burden and prejudiced or restricted the liberty of occupation of a married woman. The provisions also imposed an unnecessary restriction of rights and liberty of a person recognised under section 29 of the Constitution, and an unjust discrimination on the basis of a person's status. The measures were not imposed by the state to eliminate an obstacle or to promote a person's ability to exercise rights and liberties in parity with other persons pursuant to section 30 paragraph four of the Constitution.

## 2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 245(1) of the Constitution. The Constitutional Court found that a previous decision in Ruling No. 48/2545 dated 12<sup>th</sup> September B.E. 2545 (2002) held that section 57 ter and section 57 quinque of the Revenue Code was neither contrary to nor inconsistent with section 29, section 30 and section 80 of the Constitution. However, if the applicant sought a retrial on the basis of significant new facts and issues raised other than those deliberated in the prior ruling of the Constitutional Court, the Constitutional Court would have the

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competence to admit the matter or issue for retrial. This application contained facts and issues which differed from the issues decided by the Constitutional Court. Thus, the case was in accordance with section 245(1) of the Constitution. The Constitutional Court therefore ordered the admittance of this application for consideration.

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

The issue considered by the Constitutional Court was whether or not section 40(2), (3), (4), (5), (6), (7) and (8) in conjunction with section 57 ter and section 57 quinque of the Revenue Code were contrary to or inconsistent with section 43 in conjunction with section 29 and section 30 of the Constitution.

After deliberation, the Constitutional Court found as follows. Section 40(2), (3), (4), (5), (6), (7) and (8) of the Revenue Code were provisions which categorised the different types of assessable incomes for the benefit of personal income tax collection. There was no provision which prejudiced or restricted a person's liberty to engage in an enterprise or occupation, and the provisions neither prejudiced the essential substance of the rights and liberties of a person as recognised under the Constitution nor constituted an unjust discrimination against a person. The provisions were therefore neither contrary to nor inconsistent with section 43, section 29 and section 30 of the Constitution.

Section 57 ter of the Revenue Code provided for a husband and wife living together for the entire preceding tax year to include the wife's assessable income in the husband's income. The husband was under a duty and responsibility to file a tax return and pay taxes, but if there was an outstanding tax liability and the wife was notified at least 7 days in advance, the wife would also be jointly liable for the payment of such outstanding tax. This was unfair for the wife because the wife might not be privy to the tax return filing, and the husband and wife would be liable to more taxes than the case of separate tax returns prior to marriage. Moreover, section 57 quinque provided that only a wife with assessable income under section 40(1) was entitled to file a tax return and pay taxes separately from the husband without being regarded as the husband's income under section 57 ter. The provisions were thus contrary to the promotion of equality between men and women and constituted an unjust discrimination against a person on the basis of a difference in personal status after marriage, as provided under section 30 of the Constitution.

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

For the foregoing reasons, the Constitutional Court held that section 57 ter and section 57 quinque of the Revenue Code were contrary to or inconsistent with section 30 of the Constitution. Upon finding that section 57 ter and section 57 quinque of the Revenue Code were contrary to or inconsistent with section 30 of the Constitution, it was no longer necessary to rule on whether or not section 57 ter and section 57 quinque of the Revenue Code were contrary to or inconsistent with the other sections of the Constitution as any ruling would not alter the outcome of the case.