

Summary of Constitutional Court Ruling No. 25-27/2555 (2012)

Dated 29th August B.E. 2555 (2012)*

Re: Whether or not section 14 paragraph one (1) of the Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010) was contrary to or inconsistent with section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution.

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1. Summary of background and facts

Case No. 37/2554 and Case No. 38/2554 were cases which the Central Administrative Court referred objections of plaintiffs to the Constitutional Court for a ruling under section 211 of the Constitution. The cases could be summarised as follows. Mr. Ratchasap Nichida and Mr. Natasilp Jongsagnuan commenced proceedings against the Secretariat of the Senate, first defendant, and the National Broadcasting and Telecommunications Commissioners Nomination Committee, second defendant. Both plaintiffs applied for nomination as National Broadcasting and Telecommunications Commissioners, but were not nominated. The plaintiffs were of the opinion that the selection and voting processes of the second defendant were unlawful. The plaintiff therefore sought an order of the Central Administrative Court to revoke the resolution of the second defendant and the Secretariat of the Senate Regulation on Rules and Procedures for Selection of Suitable Candidates for Election of National Broadcasting and Telecommunications Commissioners B.E. 2553 (2010). The plaintiffs further objected that section 14 paragraph one (1) of the Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010), which provided for the Chairperson of the National Human Rights Commission to act as a member of the National Broadcasting and Telecommunications Commissioners Nomination Committee was contrary to or inconsistent with section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution, which prohibited a National Human Rights Commissioner from being a committee member in a state agency. As a consequence, the composition of such Nomination Committee was not duly constituted as required by law. Thus, the nominations of National Broadcasting and Telecommunications Commissioners on this occasion were unlawful.

Case No. 15/2555 was a case where the Ombudsman received a complaint from Professor Amara Pongsapich that the provision of section 14 paragraph one (1) of the

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Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010), which provided for the Chairperson of the National Human Rights Commission to act as a member of the National Broadcasting and Telecommunications Commissioners Nomination Committee, was contrary to or inconsistent with section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution. Thus, there was a question relating to the performance of duties of the Chairperson of the National Human Rights Commission with respect to the role of a member of the National Broadcasting and Telecommunications Commissioners Nomination Committee. The Ombudsman therefore referred the matter together with an opinion to the Constitutional Court for a ruling under section 245(1) of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit the application for a ruling under section 211 and section 245(1) of the Constitution and clause 17(13) and (18) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The applications were consolidated into one ruling.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 14 paragraph one (1) of the Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010) was contrary to or inconsistent with section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 256 paragraph five of the Constitution provided for the *mutatis mutandis* application of section 207, prohibitions for President of the Constitutional Court and Constitutional Court Justices, to National Human Rights Commissioners. The provision was intended to avoid suspicion on independence and impartiality.

The Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010) was a law enacted pursuant to section 47 of the Constitution to establish an independent state body to perform the functions of allocating frequencies and supervising radio, television and telecommunications businesses, which were deemed as communications resources of the state reserved for the benefit of the public. Section 6 paragraph one provided for a National Broadcasting and Telecommunications Commission, abbreviated as NBTC, comprising 11 Commissioners who had performed works or possessed knowledge and expertise or experiences in various fields. The process for obtaining the NBTC was provided in section 9 to section 18. Section 14 paragraph one provided for a Nomination Committee consisting of fifteen members representing a variety of organisations, with the intent of involving persons having knowledge

and competence, and who were independent and politically impartial, to participate in the screening of suitable persons to the office of National Broadcasting and Telecommunications Commissioners pursuant to the purposes of the law. The Nomination Committee would be constituted only when there was a cause for nomination of suitable persons to the Senate for a vote of selection together with a list of suitable persons obtained by way of self-selection amongst associations, institutes or other registered agencies. The Nomination Committee did not have the function of directly selecting National Broadcasting and Telecommunications Commissioners. Upon completion of nominations, the functions of the Nomination Committee came to an end. Furthermore, there was no provision on the Nomination Committee's powers and duties in regard to executive or advisory functions, or any intervention in the performance of duties of the NBTC or Office of the NBTC. The Nomination Committee did not receive any income or remuneration in the form of a salary or position allowance, or any compensation in the capacity of an NBTC Commissioner. Therefore, membership of the National Broadcasting and Telecommunications Commissioner Nomination Committee pursuant to section 14 paragraph one (1) of the Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010) was not within the scope of an act constituting a conflict of interests and not within the definition of committee member of a state agency that was prohibited under section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 14 paragraph one (1) of the Frequencies Allocation and Radio, Television and Telecommunications Broadcasting Supervisory Agency Act B.E. 2553 (2010) was neither contrary to nor inconsistent with section 256 paragraph five in conjunction with section 207 paragraph one (2) of the Constitution.
