

**Constitutional Court Ruling No. 7/2564 (2021)**

Ombudsman

Applicant

National Human Rights Commissioners Respondent

Recruitment Committee

Constitution (Interim), B.E. 2557 (2014), section 6;

Constitution, section 27 and section 263 paragraph one;

Organic Act on National Human Rights Commission, B.E. 2560 (2017), section 10(18).

Section 6 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) provided for the National Legislative Assembly to perform the duties of the House of Representatives, Senate and National Assembly. Subsequently, after the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 263 paragraph one provided that while the House of Representatives and the Senate did not exist, the National Legislative Assembly established under the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) would continue to perform the duties of the National Assembly, House of Representatives and Senate, and that Members of the National Legislative Assembly holding office on the day prior to the promulgation date of this Constitution would perform the duties of Members of the House of Representatives or Senators. The performance of duties by a Member of the National Legislative Assembly was therefore done only in the provisional capacity of acting for a Member of the House of Representatives and Senator pending establishment of legislative organs under the Constitution. In addition, the qualifications, recruitment, office term and many other aspects of a Member of the National Legislative Assembly differed from a Member of the House of Representatives and Senator. Under section 263 paragraph one of the Constitution, the provision that a Member of the National Legislative Assembly “perform duties as” a Member of the House of Representatives or Senator only meant the performance of one’s functions under the same responsibilities as a Member of the House of Representatives and Senator while the House of Representatives and the Senate did not convene. The provision did not imply that a Member of the National Legislative Assembly “is” a Member of the House of Representatives or Senator. Due to the fact that both complainants were former Members of the National Legislative Assembly under the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) and section 263 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), they were not deemed to be or as having been Members of the House of Representatives or Senators, which were prohibitions under section 10(18) of the Organic Act on National Human Rights Commission, B.E. 2560 (2017). Furthermore, it did not appear that the respondent had selected a person who

was or had been a Member of the National Legislative Assembly for appointment to become a National Human Rights Commissioner. Moreover, it had been consistently decided that membership of the National Legislative Assembly was a prohibition, thereby disqualifying selection. Those decisions did not differ from the decision in the cases of both complainants. Therefore, such resolution of the respondent was not an unfair discrimination, not contrary to the principle of equality, and neither contrary to nor inconsistent with section 27 of the Constitution.