

Constitutional Court Ruling No. 5/2564 (2021)

Ombudsman

Applicant

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Respondent

Constitution, section 3 paragraph two, section 5 paragraph one, section 188, section 197 and section 213;

Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), section 5, section 6 paragraph one, section 44, section 51 and section 68 paragraph one;

Resolution of the General Assembly of Judges of the Supreme Administrative Court No. 18/2545, Wednesday 27th November B.E. 2545 (2002) Re: Problem Relating to the Administrative Case Plaintiff Filing Period.

The applicant's application for a ruling under section 213 of the Constitution that the Resolution of the General Assembly of Judges of the Supreme Administrative Court was contrary to or inconsistent with section 3 paragraph two, section 5 paragraph one, section 25 paragraph three, section 188 and section 197 of the Constitution raised the question of whether or not such Resolution of the General Assembly of Judges of the Supreme Administrative Court had the characters of the issuance of a rule to prescribe rules and procedures on plaintiff filing. The application was in accordance with the rules, procedures and conditions under section 213 of the Constitution. The Constitutional Court therefore accepted the application for consideration.

As for the applicant's motion to amend the application, which requested for a ruling that the actions of the chamber of judges of the Supreme Administrative Court in prescribing a time limit for filing an administrative case plain pursuant to such Resolution of the General Assembly of Judges of the Supreme Administrative Court was contrary to or inconsistent with the provisions of the Constitution, the Constitutional Court rejected the amendment motion with regard to the judicial acts of the Supreme Administrative Court. The Constitutional Court accepted the motion for consideration only with respect to the points of facts and points of laws submitted.

On the first issue of whether or not such Resolution of the General Assembly of Judges of the Supreme Administrative Court constituted an issuance of a rule under section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the Constitutional Court found as follows. Resolution of the General Assembly of Judges of the Supreme Administrative Court No. 18/2545, Wednesday 27th November B.E. 2545 (2002) Re: Problem Relating to the Administrative Case Plaintiff Filing Period, a case where in relation to a cause of action occurring prior to the commencement of the Administrative Court, the plaintiff filed a plaintiff in the

Administrative Court subsequent to the commencement of the Administrative Court, where at the time of filing of plaint in the Administrative Court the limitation period for filing a case in the Courts of Justices had not yet expired. However, the filing of such case in the Administrative Courts would be an administrative case filing after the expiration of case filing period. It was found that such Resolution of the General Assembly of Judges of the Supreme Administrative Court provided that the case filing period should be counted from the date of Administrative Court commencement onwards, which constituted a determination of guideline for deciding on a question, not just a judgment on a particular case. In addition, the participants in the General Assembly did not refer to the facts of any particular case of the three cases which were causes for submission of such matter to the General Assembly. Moreover, the orders in all three cases did not state that the decisions relied on the resolution of the General Assembly of Judges of the Supreme Administrative Court. On the other hand, the resolution was a prescription of general guideline on the filing of an administrative case that had occurred prior to the commencement of the Administrative Courts to ensure that judgments in other cases followed the same approach. Such Resolution of the General Assembly of Judges of the Supreme Administrative Court was equivalent to the enactment of a general rule on counting of case filing period, which therefore constituted a change in provision of law. The resolution was not a decision on any particular case pursuant to section 68 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). On the other hand, it was a prescription of relevant procedures for case filing under section 44.

On the second issue, if it was an issuance of rule, whether or not it had to comply with section 5 and section 6 paragraph one, and whether or not it was contrary to or inconsistent with section 3 paragraph two, section 25 paragraph three, section 188 and section 197 of the Constitution, it was held as follows. Upon deciding that such Resolution of the General Assembly of Judges of the Supreme Administrative Court constituted an issuance of a rule under section 44 of the Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), which had to comply with section 5 and section 6 paragraph one, due to a failure to comply with those provisions, it followed that the resolution was an issuance of a rule that had failed to comply with the procedures provided by law. Thus, the resolution was contrary to or inconsistent with section 3 paragraph two and section 197 paragraph four of the Constitution.