

## ● Constitutional Court Procedures

Section 216 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) states that “the procedures of the Constitutional Court shall be in accordance with the Organic Act on Constitutional Court Procedures” and the transitory provisions under section 300 paragraph five states that “while the Organic Act on Procedures of the Constitutional Court has not yet been enacted, the Constitutional Court has the powers to prescribe rules on procedures and rendering of decisions but such organic law shall be enacted within one year as from the date of promulgation of this Constitution.”

At present, the Constitutional Court has issued and applied the “Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)” (published in the Government Gazette, volume 124, part 96a, dated 21<sup>st</sup> December B.E. 2550 (2007)).

### ◆ The Constitutional Court trial process contains the following stages:

Constitutional Court procedures under the “Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)” provided for an inquisitorial system. Any procedure which is not specifically provided for under these Rules are governed by provisions of the Civil Procedure Code to the extent that such provisions are applicable and not inconsistent with these Rules (clause 6 of the Rules).

#### 1. Acceptance of Application.

An application filed with the Constitutional Court must be in writing. The application must contain polite words and must at least contain details relating to: (1) the name and address of the applicant, (2) a specification of the section of the Constitution and

laws relevant to the cause of application, (3) a specification of the matter giving rise to the cause for exercise of rights together with the relevant facts and circumstances, (4) a request specifying an intent for the Court to proceed in a certain manner together with clear supporting reasons, and (5) signature of the applicant. In the event that the application is filed and submitted on behalf of another person, a power of attorney to carry out the following act must also be attached.

Once an application has been filed with the Constitutional Court, the President of the Constitutional Court shall appoint no fewer than three Constitutional Court Judges to have charge of the case. Exceptions are provided in the case of filing an application for a constitutional review of an Act approved by the National Assembly pursuant to clause 17(5) of the Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007), or the case of filing an application for ruling on whether there has been a proposal, motion or any act by a member of the House of Representatives, senator or committee member in the deliberation of an Annual Appropriations Bill, Supplemental Appropriations Bill and Transfer of Appropriations Bill which results in the member of the House of Representatives, senator or committee member having a direct or indirect interest in the expenditure of appropriations budget pursuant to clause 17(9) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007), or a case of urgent necessity where the President of the Constitutional Court may elect to not appoint a Constitutional Court Judge in charge (clause 25 of the Rules). In the aforementioned cases, the Constitutional Court must consider and issue an order accepting the application for consideration within three days as from the receipt date of the application.

## **2. Consideration of the Application.**

Upon consideration of an application by the Constitutional Judges in charge, two opinions may be delivered:

- in the event of an opinion accepting the application, an order accepting the application for consideration shall be made within fifteen days as from the date of appointment (clause 27 paragraph one of the Rules);

- in the event of an opinion of non-acceptance for consideration, the Constitutional Court Judges in charge shall submit the matter to the Constitutional Court for consideration within seven days of the date of opinion, and if the Constitutional Court concurs, an order of the Constitutional Court shall be made (clause 27 paragraph two of the Rules); however, if the Constitutional Court does not concur with the opinion of the Constitutional Court Judge in charge, the case shall proceed in accordance with the Constitutional Court's opinion (clause 27 paragraph three of the Rules).

### **3. Notification of the Applicant and Service of Application to the Respondent.**

Upon an order of the Constitutional Court or the Constitutional Court Judges in charge accepting a party's application for consideration, as the case may be, a copy of the application shall be served on the respondent, or an order issued to notify the respondent to collect a copy of the application within the period stipulated by the Constitutional Court. Once the respondent has received a copy of the application, he/she shall submit a statement in reply to the allegations within fifteen days as from the receipt date of the application copy, or within the period stipulated by the Constitutional Court. In the event that the respondent fails to submit a statement in reply of the allegations within fifteen days as from the receipt date of application copy, or within the period stipulated by the Constitutional Court, or fails to collect an application copy within the period stipulated by the Constitutional Court, the Constitutional Court shall proceed with the trial process (clause 29 of the Rules).

#### 4. Trial Proceedings.

“Trial proceedings” under the definition in clause 4 of the Rules means an inquiry or consultation meeting for deliberation or ruling.

**4.1 Inquiry** means inspection of evidence, hearing or examination of evidence (clause 4 of the Rules) pursuant to the following important principles:

**4.1.1 Open Trial.** In other words, an inquiry of the Constitutional Court must be conducted openly, except where the Constitutional Court considers it appropriate in the interest of order in the courthouse vicinity or the preservation of public interests, the Constitutional Court has the power to determine the persons entitled to remain in the trial room. The dates and times of all inquiry hearings shall be posted at the Constitutional Courthouse. Copies of the notice of the first inquiry hearing date shall be sent to the parties at least fifteen days prior to the scheduled date (clause 32 of the Rules).

##### **4.1.2 Giving the Parties an Opportunity to Present Evidence.**

- A party has the right to adduce oneself, a person or other items as evidence as the Constitutional Court considers appropriate, and **the right to inspect evidence and make copies of evidence of oneself or the other party** at the courthouse during official hours as the determined by the Constitutional Court. A party shall submit a schedule of evidence as well as state the reasons, necessities for adducing the evidence and the procedures of obtaining such evidence. A party may submit a supplemental schedule of evidence as well as state the reasons and necessities as considered appropriate by the Constitutional Court. Any evidence not included in the schedule of evidence submitted by the party may not be introduced in the trial proceedings, except where otherwise allowed by the Constitutional Court in the interest of justice (clause

33 of the Rules).

- In order that trial proceedings proceed expeditiously and fairly, the Constitutional Court may determine a prior inspection of evidence. In such a case, the parties shall be notified at least fifteen days in advance of the evidence inspection date. Seven days prior to the evidence inspection date, the parties shall submit a schedule of evidence to the Constitutional Court. Any supplemental schedule of evidence must be submitted before the completion of evidence inspection. Submission of a supplemental schedule of evidence after the completion of evidence inspection may only be made by permission of the Constitutional Court, in which case the requestor must show reasonable cause for the inability to become aware of such evidence or that there is a necessity for the interest of justice to do so (clause 34 of the Rules).

- On the date of evidence inspection, the parties shall present all the evidence submitted to the court in order to enable both parties to inspect such evidence. The Constitutional Court or a designated Constitutional Court Judge in charge will question the parties on the relevance of the evidence adduced to the issues and necessities for examination as well as acceptance of the opposing party's evidence. Such proceedings shall be noted in the trial record. Upon completion, the Constitutional Court shall schedule a date for witness examination and notify the parties at least seven days in advance (clause 35 of the Rules).

- In an inquiry of the Constitutional Court, the parties shall pose questions only on the issues determined by the Constitutional Court and the examination shall only be carried out with respect to the evidence not accepted by both parties (clause 36 of the Rules). In such an inquiry, if the Court finds that the case contains sufficient facts and evidence to render a ruling, the Court may refrain from carrying out an inquiry (clause 37 of the Rules). Inquiry of a witness or relevant expert witness shall be as determined by the Court and shall only be conducted to the extent of necessity.

In such an event, the Court shall by itself examine the witness or expert witness, subject that prior to the inquiry the Court shall inform the witness of the issues and facts that will be subject to inquiry. The witness shall testify on those issues by a self-statement or in reply to the Court's questions. In the interest of justice, the Court may allow the parties to carry out additional examination pursuant to the issues and facts already determined by the Court. In such a case, the party adducing the witness shall be the first to examine (clause 38 of the Rules).

**4.1.3 Giving the Parties an Opportunity to Examine Evidence Located Outside the Courthouse.** The Constitutional Court may allow for an examination of evidence located outside the courthouse by video conference as requested by either party or both parties. The party making the request shall arrange for such a system and be liable for all the expenses incurred in this regard (clause 39 of the Rules).

**4.1.4 Giving the Parties an Opportunity to Make an Opening or Closing Statement.** Either one or both parties have the right to request to make an opinion or closing statement. Such statements would be allowed by the Court as it considers appropriate. The opening or closing statement of a party must be in writing, except where the Court finds an oral statement appropriate. When making an oral opening or closing statement, the applicant shall be the first to make a statement followed by the respondent. At the opening or closing statement of each party, the Court may question for further facts from the party making the statement during the statement or after the statement (clause 43 of the Rules).

## **4.2 Consultation Meeting for Deliberation and Ruling**

- In a consultation meeting for deliberation and ruling, a party, witness or related person may, with the Court's permission, give facts or opinions, as the case may be, in writing (clause 44 of the Rules).

- A quorum of the Constitutional Court in deliberations and rulings must consist of no fewer than five judges (clause 24 paragraph one of the Rules).

## **5. Ruling and Order Making.**

5.1 A quorum of the Constitutional Court in deliberations and rulings must consist of no fewer than five judges. A judge who is not eligible to participate in the proceedings of a case does not have the power to make a ruling for that case. A ruling of the Constitutional Court shall be made by a majority vote, except where provided otherwise by the Constitution (clause 24 of the Rules).

5.2 Every judge constituting the quorum must prepare a written opinion with respect to his/her individual ruling and make an oral statement to the meeting prior to voting on a resolution. Upon the passing of a resolution, the judges in the quorum shall prepare a ruling of the Constitutional Court (clause 54 paragraph one of the Rules). A ruling of the Constitutional Court must at least contain the background or allegations, a summary of facts obtained from the proceedings, reasons for ruling on a point of fact or law, and the provisions of the Constitution and laws invoked (clause 53 paragraph one of the Rules). The ruling of the Constitutional Court and the opinions in the ruling of every judge in the quorum shall be published in the Government Gazette (clause 54 paragraph three of the Rules).

5.3 A ruling of the Constitutional Court shall become effective on the reading date (clause 55 paragraph two of the Rules). In the case where the Constitutional Court passes a ruling on an application involving parties, if either party or both parties, as the case may be, have been duly notified but are absent, the court shall make a record and the ruling shall be deemed as having been duly read (clause 55 paragraph three of the Rules). In the case where the Constitutional Court passes a ruling on an application which does

not involve a respondent, the Constitutional Court shall notify the applicant of the Constitutional Court ruling and the date of Constitutional Court resolution, being the date on the ruling, shall be deemed as the reading date (clause 55 paragraph four of the Rules).

5.4 An order expunging an application and an order to not accept an application for consideration shall consist of a brief background of the application, supporting reasons and provisions of the Constitution and laws referred to (clause 56 paragraph one of the Rules).