

Constitutional Court Ruling No. 15/2565 (2022)

Ombudsman
Senate

Applicant
Respondent

Constitution, section 27 paragraph one and paragraph three and section 198;
Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), section 15 paragraph three.

Section 15 paragraph three of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), provided for the Judicial Commission of the Administrative Courts to submit a list of selected candidates for the offices of Judges of the Supreme Administrative Court to the Prime Minister, and the Prime Minister should submit such list to the respondent for approval. Upon obtaining approval, the Prime Minister would present the list to the King for Royal Appointment. Even though the provisions differed from the appointment of judges of the Courts of Justice, the Administrative Courts and Courts of Justice exercised different duties and powers. The administration of personnel with respect to judges of the Courts of Justice or judges of the Administrative Courts was carried out by a committee consisting of different suitably qualified persons. Since persons holding offices of judge of the Courts of Justice and judges of the Supreme Administrative Court differed in essence, the process for selection was therefore different. The selection of persons for appointment as judges of the Supreme Administrative Court applied to all applicants for selection equally. The process was not contrary to the principle of equality and did not constitute unjust discrimination against a person. Even though the current Constitution did not provide for the appointment of justices of the Supreme Administrative Court to require the approval of the respondent as was once provided under the previous Constitution, the prior principle was retained in the Act pursuant to the intents of founding of the Administrative Courts. The approval of the respondent was a process for screening behaviour and ethical characters unrelated to the selection of the Judicial Commission of the Administrative Courts which had independence in the selection of persons as well as its composition without involvement of the respondent. There was no prejudice to the independence of personnel administration with respect to the judges of the Administrative Court. The provision was consistent with the principle of the establishment of the Administrative Courts and the performance of duties of the judges of the Supreme Administrative Court, being the final court in the trial and adjudication of administrative cases. The provision was therefore neither contrary to nor inconsistent with section 27 paragraph one and paragraph three and section 198 of the Constitution.