

Thesis Title : Exercising of State Power's Inspection by The Supreme Court Criminal Division of Persons Holding Political : A Case Study on Conittal Proceeding and Appeal against Judgement

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## ABSTRACT

The Supreme Court Criminal Division of Holding Political is one of the divisions in the Supreme Court, officially established under the Constitutional Law of Thailand B.E. 2540 (1997). With a full power to try and adjudicate both civil and criminal cases dealing with the persons holding political positions, the Division has set a special case proceeding up to forfeit properties of such politicians who perform dishonestly their duties and have malfeasance as well as the non-politicians acting as the principals, instigators, and supporters. The case proceeding in the Supreme Court Criminal Division for Holders of Political Positions is different from the criminal and civil cases proceeding in Civil and Criminal Courts, as its quorum composes of nine judges, not more than three of whom are senior judges selected by the plenary session in the Supreme Court and the rest six are judges holding positions not lower than the judges of the Supreme Court ; the trial, in order, for exercising of power of the Holders and non-Holders of Political Positions, to be checded by the Court and bring such persons, in case of committing offences, to have been punished, shall be proceeded as continuously as possible until the case proceeding become final. The Constitution has also provided to be final without appeal of order or adjudication of the Supreme Court Criminal Division for Holders of Political Positions. In addition, the National Anti-Corruption Commission (NACC), under this Constitution, is an Organization responsible for a pre-fact finding instead of inquiry officers formally responsible

for such a pre-fact finding. The National Anti-Corruption Commission (NACC) is independent from the command of the Prime Minister or Minister and free from intervention. The Commission shall appoint a team of independent inquiry officers to be responsible directly for a pre-fact finding as it performed. In case of filing a motion to the Commission by the injured person, and such a filed motion, however, can not meet with the inquiry, or the inquiry of the Commission meets with a hesitation, or with no ground as being accused, the injured person, on the other hand, shall file such a motion to plenary session of the Supreme Court for the appointment of a team of independent authorized officers to have an inquiry. The Constitution has also its Organic Act of the Constitution on the Procedure of Case Proceeding for Holders of Political Positions. B.E. 2542, providing that a trial of criminal charge against person shall be proceeded without inquiry.

After having been studied, some of the defects are currently found in some of provisions such as : the criminal case for persons holding political positions has been charged without the first pre-examination and the order or adjudication is deemed final without appeal, with the purpose of having an expedient trial ; the Laws on Protection of Representatives and Senators are prohibited to bring to such a trial. These provisions are discriminatory to persons and contrary to the Constitution in which the equality by law enforcement is provided by the principle, and the protection shall be delivered equally by law with neither land of birth, sex, or religion should be taken into consideration ; contrary to the principle of Universal Declaration of Human Right, providing that a person is entitled to have his case been tried fairly and clearly by the Court of Independence and Justice with no bias be in the consideration as well as in a trial of criminal charge ; and also contrary to the Principle of International Convention on Civil and Political Right, providing that a person having criminal sentence should, as generally practiced and accepted in other countries, have the right to be revised in such a sentence and adjudication by higher court. In order, for the Supreme Court on which the politicians and non-politicians depend to prove their offences, to try the cases fairly, revision of this Constitution, the Organic Act of the Constitution, and other relevant laws is agreed to be re-written to make the trial and adjudication of politicians and concerned persons-related cases be proceeded in more than one layer of Courts. Preliminary examination also agreed to have with the establishment of the Criminal Divisions for Holders of Political Positions in Criminal Courts to be responsible for the first pre-examination and trial of cases. In addition, the appeal of only matter of law to the

Supreme Court Criminal Division for Holders of Political Positions is also agreed so as to protect the accused persons.

