

# Summary of the Constitutional Court Ruling No. 12/2543

Dated 17<sup>th</sup> March B.E. 2543 (2000)\*

**Re : The National Counter Corruption Commission requests for a Constitutional Court ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where Mr. Sukhum Cherdcheun, a senator, intentionally failed to submit documents supporting an account showing particulars of assets and liabilities.**

.....

## 1. Background and summarized facts

Mr. Sukhum Cherdcheun, the respondent, was appointed as a senator from 22<sup>nd</sup> March B.E. 2539 (1996) pursuant to a Notification, dated 21<sup>st</sup> March B.E. 2539 (1996). In this regard, section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the holder of a political position should submit an account showing particulars of assets and liabilities and supporting documents of himself, his spouse and children who had not yet become *sui juris* to the National Counter Corruption Commission (NCCC), the applicant.

From the investigation of the NCCC, it appeared that the respondent submitted an account showing particulars of assets and liabilities to the Office of the Secretariat to the Senate on 7<sup>th</sup> November B.E. 2540 (1997) but did not submit supporting documents which were copies of evidence proving the actual existence of the assets and liabilities. Also missing was a copy of personal income tax return for the preceding fiscal year. Thereafter, the Office of the Secretariat to the Senate forwarded the submitted account to the Office of the NCCC on 11<sup>th</sup> November B.E. 2540 (1997). The respondent's non-submission of documents supporting the account showing particulars of assets and liabilities was therefore a non-compliance of section 291 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In consequence, the Office of the NCCC proceeded under its procedures to unveil the intention of the respondent on three occasions:

First occasion. Letter No. NCCC 1172, dated 22<sup>nd</sup> October B.E. 2541 (1998), was issued to notify the respondent and instructed the respondent to give a statement of facts.

---

\* Published in the Government Gazette, Vol. 117, Part 76a, dated 8<sup>th</sup> August B.E. 2543 (2000)

Second occasion. Letter No. NCCC 0002.01/2988, dated 12<sup>th</sup> October B.E. 2542 (1999), directed the respondent to submit documents supporting the account showing particulars of assets and liabilities.

Third occasion. Letter No. NCCC 0002.01/1268, dated 9<sup>th</sup> November B.E. 2542 (1999), directed the respondent to submit the documents within 7 days as from the date of receipt of the letter. On this occasion, the respondent sent a letter dated 19<sup>th</sup> November, B.E. 2542 (1999) to the Secretary-General of the Office of the NCCC requesting for a deferment of submission for another 7 days. On 30<sup>th</sup> November B.E. 2542 (1999), the respondent sent a letter to the President of the NCCC requesting for a time extension for the submission of documents for an additional time of approximately 3 weeks.

The applicant considered that despite the letters to the respondent to notify the latter and direct him to comply with the constitutional requirements on three occasions, the respondent failed to proceed as directed. The applicant therefore reached a unanimous resolution in meeting no. 48/2542, dated 14<sup>th</sup> December B.E. 2542 (1999), that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents as prescribed by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A request was thus made for a Constitutional Court ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## **2. Preliminary issue**

The NCCC considered that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents and requested for a Constitutional Court ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court thus accepted the matter for consideration.

## **3. The issue considered by the Constitutional Court**

It was requested that the Constitutional Court consider pursuant to section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) that Mr. Sukhum Cherdcheun, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

The Constitutional Court allowed the applicant and respondent to testify before passing a ruling. A trial was conducted to hear the statements of the applicant and the respondent and as a result the following opinions were held by the Constitutional Court:

3.1 Mr. Sukhum Cherdcheun was under a duty to submit an account showing particulars of assets and liabilities and supporting documents under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 291 paragraph one of the Constitution

stated that “persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office:... (4) senators...” and section 291 paragraph two stated that “the account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year.” In this regard, the transitory provision in section 315 paragraph three stated that “senators holding office on the date of the promulgation of this Constitution shall be senators under this Constitution...,” and section 301 stated that “the National Counter Corruption Commission shall have the following powers and duties:... (4) to inspect the accuracy, actual existence as well as change of assets and liabilities of the persons holding positions under section 291 and section 296 as stated in the account and supporting documents submitted.” From such provisions, the membership of senators who had been elected under the previous Constitution terminated under this Constitution and was deemed to re-commence their term of office under the new Constitution as from 11<sup>th</sup> October B.E. 2540 (1997), which was the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such an interpretation achieved clarity and practicality. In addition, section 292 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that in the case of taking office, the holder of a political position should submit an account showing particulars of assets and liabilities and supporting documents within thirty days as from the date of taking office. As the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was deemed as the date of taking office of senators, the respondent, who held the position of senator under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was therefore under a duty to submit an account showing particulars of assets and liabilities and supporting documents to the NCCC within thirty days as from the date of promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3.2 The instructions of the NCCC issued to the respondent to submit documents supporting the account showing particulars of assets and liabilities as well as the personal income tax return for the preceding fiscal year on a total of three occasions were opportunities given to the respondent. Nevertheless, the respondent failed to proceed to prove his intentions. Moreover, when the Constitutional Court instructed the respondent to submit his personal income tax return, form Phor Ngor Dor 90a, the respondent submitted a withholding tax certificate for his remuneration as a senator which had previously been submitted to the NCCC and the Constitutional Court instead. Such documents did not serve as evidence of respondent’s ownership or rights in property at the date of submission of the account showing particulars of assets and liabilities. It could therefore be inferred that the respondent intentionally failed to submit the documents supporting the account showing particulars of assets and liabilities, being copies of evidence of the actual existence of such assets and liabilities, as well as a copy of the personal income tax return for the preceding fiscal year, as prescribed by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

#### **4. Ruling of the Constitutional Court**

The Constitutional Court held that Senator Mr. Sukhum Cherdcheun, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents under section 291, section 292 and section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

---