

# Summary of the Constitutional Court Ruling No. 27/2543

Dated 3<sup>rd</sup> July B.E. 2543 (2000)\*

**Re : The National Counter Corruption Commission requested 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. Kosol Srisang intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.**

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## 1. Background and summarized facts

Mr. Kosol Srisang (the respondent) was appointed as advisor to the Minister of Education (Mr. Chingchai Mongkoltham) from 18<sup>th</sup> August B.E. 2540 (1997) by Order of the Ministry of Education No. O.S.M. 608/2540, dated 26<sup>th</sup> August B.E. 2540 (1997). The respondent was therefore a political official under section 4 (10) of the Rules of Political Officials Act, B.E. 2535 (1992) and vacated office on 7<sup>th</sup> November B.E. 2540 (1997) together with Mr. Chingchai, his appointer. During that time, the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was promulgated on 11<sup>th</sup> October B.E. 2540 (1997), replacing the Constitution of the Kingdom of Thailand, B.E. 2534 (1992). The National Counter Corruption Commission (NCCC), the applicant, considered that the respondent was under a duty to submit an account showing particulars of assets and liabilities of himself, his spouse and his children who had not yet become *sui juris* under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because under the transitory provisions in section 317 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) recognised the status of the Council of Ministers that the Council of Ministers which carried out the administration of the State affairs on the date of the promulgation of this Constitution should be the Council of Ministers under this Constitution. Hence, it was deemed that 11<sup>th</sup> October B.E. 2540 (1997) was the date of first taking of office of the Council of Ministers as well as the political officials holding the position of advisors. In this regard, the respondent had to submit an account within 9<sup>th</sup> November B.E. 2540 (1997) after taking office and submit an account upon the vacation of office within 6<sup>th</sup> December B.E. 2540 (1997) as well as submit an account upon the expiration of one year after the vacation of office within 6<sup>th</sup> December B.E. 2541 (1998).

The applicant had proceeded under its procedures to uncover the intentions of the respondent in this case of failure to submit accounts. Two letters of notices were sent to the

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respondent. In the second letter, the applicant notified the respondent to give a statement within fifteen days as from the date of receipt of the letter. Moreover, the applicant also notified Mr. Chingchai, the respondent's appointer, to assist in the notification of the respondent regarding the submission of accounts. The respondent, however, failed to take any action and did not contact the applicant to give any statement.

The applicant considered the matter in its Meeting No. 30/2543 on 20<sup>th</sup> April B.E. 2543 (2000) and reached a unanimous resolution, a number exceeding two-thirds of the existing members of the NCCC, that the respondent intentionally failed to submit accounts prescribed by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and referred the matter to the Constitutional Court for a ruling.

## **2. Preliminary issue**

The NCCC, the applicant, had resolved 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 therefore accepted the matter for consideration.

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

The Constitutional Court offered an opportunity to the relevant persons to give statements or testimonies prior to passing a ruling and held a trial to hear the statements of the applicant and the respondent. The following considerations were made.

The Constitutional Court held the following opinion:

On the first issue, the Constitutional Court considered whether or not the respondent was under a duty to submit an account to the applicant under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The respondent claimed that the applicant did not have the power to make an application to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because the respondent was appointed as advisor to the Minister of Education from 18<sup>th</sup> August B.E. 2540 (1997) and was not imposed with the duty to submit an account in the case of taking and vacating a political office under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which was promulgated on 11<sup>th</sup> October B.E. 2540 (1997). The applicant's allegations made after the respondent's appointment were unlawful and inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because the transitory provisions in section 317 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)

provided that the Council of Ministers administering the State affairs at the date of promulgation of this Constitution continued to be the Council of Ministers under this Constitution. The provisions did not stipulate the vacation of office and retaking of office. Moreover, whilst the respondent held office as advisor to the Minister of Education, the applicant had not yet been appointed as the NCCC and there had not yet been an Organic Law on the NCCC. The respondent claimed that under section 321, section 329 and section 331 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the applicant was unable to apply the Rules of the NCCC on the Performance of Duties of the National Counter Corruption Commission, B.E. 2541 (1998), which was subsequently enacted, to the respondent, being a restriction of rights and liberties under section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was promulgated on 11<sup>th</sup> October B.E. 2540 (1997). The provisions therein prescribed a duty on political officials to submit an account as well as determined the responsible organ and the time period for submission of accounts. In the result, a person holding a political position under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was under a duty to submit an account to the respondent, who was empowered under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to examine the assets and liabilities of persons holding political positions. As regards the respondent's claims that the application of the Rules of the NCCC on the Performance of Duties of the National Counter Corruption Commission, B.E. 2541 (1998), which was in force subsequent to the respondent's vacation of office as advisor to the Minister (office was vacated on 7<sup>th</sup> November B.E. 2540 (1997)), was a retrospective application of the law on the respondent. Section 317 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that the Council of Ministers appointed under the previous Constitution remained as Ministers under this Constitution. Hence, the date of promulgation of this Constitution, i.e. 11<sup>th</sup> October B.E. 2540 (1997) should therefore be deemed as the first date of taking office. In addition, section 4 (10) of the Rules of Political Officials Act, B.E. 2535 (1992) provided that the Minister who was the appointer of the advisor to the Minister should also be deemed as a political official who took office on 11<sup>th</sup> October B.E. 2540 (1997). Therefore, the respondent was under a duty to submit an account to the applicant under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, the Constitutional Court considered whether or not the respondent intentionally failed to submit an account under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As a result of the NCCC's investigation, it appeared that the applicant had sent a letter to notify the respondent and instructed the latter to give a statement of facts on two occasions. The letters were sent to Maha Sarakham province, which was the respondent's domicile stated in the housing register. However, the respondent neither submitted an account nor gave any reasons for his failure to do so. When the respondent returned to Maha Sarakham province, he

was informed of the two letters of warnings from the applicant but could not find and did not follow up the letters due to urgent engagements. The respondent claimed that he had traveled to the Office of the NCCC to meet an acquaintance who was an official thereat but such official was not available. The respondent therefore returned without inquiring any other official. These facts confirmed that the respondent knew of the warnings but still failed to submit an account. The facts were sufficient proof of the respondent's intentional failure to submit an account to the applicant under section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

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

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