

# Summary of the Constitutional Court Ruling No. 31/2543

**Dated 10<sup>th</sup> August 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 Major General Sanan Kajornprasart intentionally submitted a false account showing particulars of assets and liabilities and supporting documents.**

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## **1. Background and summarized facts**

Major General Sanan Kajornprasart, the respondent, submitted an account showing particulars of assets and liabilities and supporting documents to the National Counter Corruption Commission (NCCC), the applicant, on 10<sup>th</sup> November B.E. 2540 (1997) in the case of taking the office of member of the House of Representatives, on 12<sup>th</sup> December B.E. 2540 (1997) in the case of taking the office of Minister of Interior and on 30<sup>th</sup> October B.E. 2541 (1998) in the case of taking the office of Deputy Prime Minister. The particulars of liabilities in the accounts submitted on the three occasions revealed the same items and the same balance of loans, viz loan items from A. A. S. Auto Service Company Limited at an outstanding balance of 45 million Baht pursuant to 3 loan contracts, being loan contract dated 11<sup>th</sup> January B.E. 2540 (1997) in the amount of 20 million Baht, loan contract dated 20<sup>th</sup> March B.E. 2540 (1997) in the amount of 15 million Baht and loan contract dated 15<sup>th</sup> May B.E. 2540 (1997) in the amount of 10 million Baht. Subsequently, during 15<sup>th</sup>-18<sup>th</sup> December B.E. 2542 (1999), the House of Representatives held a debate of no confidence on the entire Council of Ministers. The respondent was also one of the Ministers subjected to the debate of no confidence. The opposition invoked such submitted accounts in a debate that the liability in the amount of 45 million Baht was false. Thereafter, the People's Rights and Liberties Protectionist Group collected the information acquired from the debate of no confidence and prepared a letter which was submitted to the NCCC requesting for an examination of the accuracy and actual existence of the respondent's assets and liabilities.

The NCCC (the applicant) established a sub-committee to examine the accuracy and actual existence of the respondent's particulars of assets and liabilities. The NCCC (the applicant) considered the sub-committee's report and was of the opinion that the respondent

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did not in actual fact make the three loans in the loans contracts between the respondent and A. A. S. Auto Service Company Limited for the total amount of 45 million Baht which were included by the respondent in all three accounts.

The NCCC (the applicant) unanimously resolved on 28<sup>th</sup> March B.E. 2543 (2000) with 9 votes that the respondent intentionally submitted false accounts and referred the matter to the Constitutional Court for a ruling under section 295 of the Constitution. The Constitutional Court therefore accepted the matter for consideration.

## **2. Preliminary issue**

The Constitutional Court accepted the matter for proceedings on 7<sup>th</sup> April B.E. 2543 (2000) and notified the respondent to give a statement in writing. A trial was held to hear the submissions of the parties during 18<sup>th</sup>–19<sup>th</sup> May B.E. 2543 (2000), to hear the testimony of witnesses on 7<sup>th</sup>, 22<sup>nd</sup> and 26<sup>th</sup> June B.E. 2543 (2000), and the parties made their closing oral statements on 27<sup>th</sup> June B.E. 2543 (2000). The parties submitted their closing statements in writing on 14<sup>th</sup> July B.E. 2543 (2000). In the Constitutional Court proceedings, the two opposing parties were given opportunities to adduce documentary evidence and witness testimonies. There were examinations of witnesses by the party adducing the witness as well as cross-examinations by the opposing sides and additional examination on issues which had been cross-examined. In this regard, the NCCC (the applicant) entrusted Mr. Klanarong Jantik, Secretary-General of the NCCC, and Mr. Sunthorn Benjanirat, Secretary to the President of the NCCC, as well as 3 additional officials of the Office of the NCCC, as its representative in making statements, replying to examinations, cross-examinations and participating in other proceedings in the Constitutional Court. The respondent, on the other hand, appointed 7 attorneys to try the case in the Constitutional Court proceedings and stated that the testimonies of 14 witnesses would be adduced in Court. The Constitutional Court allowed the respondent the opportunity to fully adduce the testimonies of the witnesses. However, the respondent adduced the testimony of only 3 witnesses before declaring that there were no more witnesses.

The Constitutional Court ruled on two points of law raised by the respondent prior to making a ruling on the issue under its jurisdiction in section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the first issue, the respondent objected that the applicant's ruling was a result of an unlawful investigation by the applicant's working group, in which there were 6 defects.

On the second issue, the respondent objected that Mr. Klanarong Jantik, who was the only witness who testified in Court, was a hearsay witness, hence his testimony was inadmissible. Moreover, Mr. Klanarong Jantik, in his capacity as the applicant's representative, did not adduce evidence for examination on all issues in the allegations.

The respondent therefore requested that the Constitutional Court dismiss the application.

The Constitutional Court held on the first issue that the applicant was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) with powers and duties pertaining to the examination of the accuracy and actual existence as well as the changes in the assets and liabilities of persons holding political positions as prescribed by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant therefore had the power to request documents or evidence relating to a person or summon the person for a statement as well as to request the official service and State agencies to take any action for the benefit of its deliberations. In addition, the applicant possessed the power to appoint a person or group of persons to perform the duties entrusted by the applicant. This was in accordance with section 301 paragraph one subparagraph (4) and section 301 paragraph two read in conjunction with section 146 and section 265 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). By the applicant's appointment of a working group to conduct an investigation in this case, which even though consisted of only 2 members of the NCCC, and upon the result of the working group's investigation, the applicant, which was the appointer of such a working group, maintained a discretion to decide whether or not and how to consider the result of such an investigation. On this issue, the applicant further submitted to the Constitutional Court that the applicant did not accept or believe all the reasons put forward by the working group and only those parts which were signed as evidence by the applicant were accepted and submitted to the Constitutional Court.

On the next issue, the respondent objected that Mr. Klanarong Jantik was a hearsay witness and that his testimony was inadmissible. The Constitutional Court was of the following opinion. In this case, the applicant was a constitutional organ with the power to refer a matter to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) with their investigation report as evidence supporting the application. Subsequent to the submission of an application to the Constitutional Court, the applicant sent a letter to the President of the Constitutional Court entrusting Mr. Klanarong Jantik, Secretary-General of the NCCC, and a company of 4 persons, as its representative in making statements, responding to examinations, cross-examinations and other proceedings in the Constitutional Court procedures. Mr. Klanarong Jantik was therefore in the capacity as the appointee of a power of attorney granted by the applicant, thus he was a party to the case and not a witness. Mr. Klanarong's statements were therefore not a witness testimony. Moreover, Mr. Klanarong did not testify that he had knowledge of the applicant's actions. As a result, Mr. Klanarong's performance of duties was not that of a hearsay witness.

As for the respondent's objection that the investigation had not been properly conducted because the examination of evidence was by its nature inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that the applicant was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540

(1997) with the powers and duties relating to the verification and examination of the actual existence, including the changes, of the assets and liabilities of persons holding political positions. The procedures adopted were within the framework established by the Constitution and the law. When the applicant referred the matter to the Constitutional Court for consideration, the Constitutional Court would accept the application for consideration, deliberating only on those points as determined and empowered by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As regards the supporting objection raised by the respondent that the applicant did not have the power to make this application because the case was an administrative case involving the exercise of powers by a State agency on a person therefore the principle of legality should be the determining principle in adjudicating the exercise of the applicant's inquiry, analysis and Court application powers, the Constitutional Court was of the opinion that such reasons were unworthy. It was held that the respondent was a person holding a political position under a duty to submit an account under section 291 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant had the power to refer the respondent to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This case was therefore a constitutional case within the adjudicative jurisdiction of the Constitutional Court under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

On the issue which the Constitutional Court had to consider regarding whether or not the respondent intentionally submitted a false 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), the Constitutional Court held that this matter contained certain unresolved factual questions. Therefore, before a ruling could be made on such an issue, the following three issues had to be considered.

1. Whether or not the respondent had a loan debt in the amount of 45 million Baht? In this issue, the following factors were considered:

(1) the loan between the respondent and Mr. Krisanant Phlarit;

(2) the loan between Mr. Krisanant Phlarit and Mr. Songchai Ajchariyahiranchai in the amount of 43 million Baht;

(3) the transmission and receipt of money between Mr. Krisanant Phlarit and the respondent in the amount of 45 million Baht;

(4) the transmission of money between Mr. Krisanant Phlarit and Mr. Songchai Ajchariyahiranchai in the amount of 3 million Baht as interest on the loan;

2. Whether or not the respondent actually expended the loan amount of 45 million Baht in the purchase of shares in Royal Lanna Tower Company Limited?

3. Whether or not there was actually an assignment of the respondent's debts in the amount of 45 million Baht from the original creditors, who were the 3 directors, to A. A.S. Auto Service Company Limited?

The Constitutional Court held the following opinion:

The Constitutional Court had considered with care and in detail the various evidence, both witnesses and documentary evidence, adduced by both parties in order to give justice to both parties. In the end, the committee of Constitutional Court judges held that the evidence adduced by the respondent on all such 3 issues lacked substance, evidentiary weight, credibility and could not be accepted. In particular, it could not be accepted that the respondent had a loan liability of 45 million Baht. It could not be believed that the respondent expended the loan amount of 45 million Baht in the purchase of shares in Royal Lanna Tower Company Limited. Moreover, it could not be believed that there was an assignment of the respondent's debts in the amount of 45 million Baht from the original creditors, who were 3 directors, to A. A. S. Auto Service Company Limited.

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

The Constitutional Court unanimously resolved (a quorum of 11 Constitutional Court judges) that Major General Sanan Kajornprasart, the respondent, intentionally submitted a false account showing particulars of assets and liabilities and supporting documents.

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