

# Summary of the Constitutional Court Ruling No. 5/2544

Dated 13<sup>th</sup> February B.E. 2544 (2001)\*

**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. Sumet Upoltean intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.**

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## 1. Background and summarized facts

The President of the National Counter Corruption Commission (NCCC) submitted an application to the Constitutional Court requesting for a ruling under section 295 of the Constitution in the case where Mr. Sumet Upoltean intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

Mr. Sumet Upoltean (the respondent) held the position of member of the Khon Kaen Municipal Assembly from 17<sup>th</sup> December B.E. 2538 (1995) and vacated office on 18<sup>th</sup> December B.E. 2542 (1999). Under the Organic Act on Counter Corruption, B.E. 2542 (1999), which came into force as from 18<sup>th</sup> November B.E. 2542 (1999), the respondent was under a duty to submit an account showing particulars of assets and liabilities and supporting documents for himself, his spouse and his children who had not yet become *sui juris* to the National Counter Corruption Commission (the applicant) on every occasion of taking office, vacating office and upon the expiration of one year after the vacation of office.

The applicant issued a letter to the Mayor of Khon Kaen Municipality in order to notify the administrators and members of the Khon Kaen Municipal Assembly to submit accounts within the time limit. However, on the date of the expiration of the time limit, the respondent had not submitted an account to the applicant. The applicant issued two more letters to the respondent for an explanation of the reasons for not submitting an account. In addition, the applicant also issued a letter to the Director-General of the Department of Local Administration to notify the Office of Khon Kaen Municipality as another means of notifying the respondent to give an explanation of the reasons for not submitting an account. Thereafter, an official of the NCCC collected additional evidence on this matter by interrogating witnesses and the respondent, a total of seven persons. The respondent's statement could be briefly stated as follows. The respondent had received both letters from the applicant; in response, the respondent had drafted a letter in preparation for making a

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statement to the applicant. The drafted letter was typed and saved into a computer but the data was subsequently lost. Moreover, the respondent was in the process of collating data which was widely scattered from the beginning of the year up until then, and there were so many pending cases that the respondent did not have the time to prepare an account, which was later forgotten. The respondent did not intend to not submit an account. The respondent still wished to submit an account and would, with great urgency, proceed to submit an account to the applicant.

Subsequently, an account was submitted by the respondent. The applicant considered this matter in Meeting No. 81/2543 and considered that the respondent's statement on the reasons for not submitting an account was insufficient indication that the respondent did not intentionally fail to submit an account. Therefore, a unanimous resolution was reached that the respondent intentionally failed to submit an account to the applicant and the matter was submitted to the Constitutional Court for a ruling under section 295 of the Constitution.

## **2. Preliminary issues**

The preliminary issues considered were whether or not the National Counter Corruption Commission had the power to submit an application and whether or not the Constitutional Court had the power to consider such a matter under section 295 of the Constitution.

It was held that the case was in accordance with section 295 of the Constitution, being that the applicant reached a resolution that the respondent intentionally failed to submit an account and the matter was referred to the Constitutional Court for a ruling. The Constitutional Court therefore had the power to accept such a matter for consideration.

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

The issue considered was whether or not the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

The Constitutional Court held as follows. The respondent failed to submit an account within the time limit prescribed by the Constitution. The applicant sent two letters to the respondent for the latter to state the reasons for not submitting an account and the respondent accepted that he had received such letters but did not give any reason. It was not until the applicant entrusted an official of the NCCC to collect additional evidence by interrogating the witnesses, including the respondent, that the respondent submitted an account to the applicant. The respondent's reply to the official of the NCCC that there was no intention or intent to withhold the account but that the non-submission was due to forgetfulness and the submission of an account after the passage of a long time after the time limit could not be accepted as indicating that the respondent did not intentionally fail to submit an account. In addition, the respondent had sent a letter to the Constitutional Court stating that he did not intend to raise a defence in the consideration of this application. The

case could therefore be accepted as indicating that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents to the applicant pursuant to section 291 and section 292 of the Constitution.

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

The Constitutional Court held under section 295 of the Constitution that Mr. Sumet Upoltean, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

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