

Summary of the Constitutional Court Ruling No. 18/2544

Dated 26th June B.E. 2544 (2001)*

Re: The composition and powers and duties of the National Counter Corruption Commission.

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1. Background and summarized facts

The President of the Senate, acting as President of the National Assembly (the applicant), submitted a matter together with an opinion to the Constitutional Court for consideration under section 266 of the Constitution in a case on the powers and duties of the National Counter Corruption Commission (NCCC). Mr. Amorn Amornrattananont had submitted a letter of complaint to the President of the Senate that three members of the NCCC, being Mr. Krirkkeart Pipatseritham, Lieutenant General Sawat Or-rungroj and Khun Ying Pariya Kasemsan Na Ayutthaya, appeared in the list of directors of partnerships and companies in violation of section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution as well as section 11 paragraph one subparagraph (3) and section 11 paragraph two of the Organic Act on Counter Corruption Commission, B.E. 2542 (1999). The applicant referred the matter to the Administration and Justice Committee of the Senate to study the legal and factual issues involved. The facts appeared as follows.

In the case of Mr. Krirkkeart Pipatseritham, it appeared from a certificate of the Office of Partnerships and Companies Registration, Bangkok, Department of Commercial Registration, Ministry of Commerce, that Mr. Krirkkeart Pipatseritham's name was listed as a limited liability partner in Pisanukarnyotha Partnership Limited. He did not hold the position of managing partner. The case was therefore not under the prohibition in section 258 paragraph one subparagraph (3) of the Constitution and section 11 paragraph one subparagraph (3) of the Organic Act on Counter Corruption, B.E. 2542 (1999).

In the case of Lieutenant General Sawat Or-rungroj, the first respondent, it appeared from the certificate of the Office of Partnerships and Companies Registration, Bangkok, that his name was listed as a director of The Best General Communication Company Limited. In delivering his testimony to the Administration and Justice Committee of the Senate, the first respondent produced copies of resignation letters from the position of company director, dated 25th February B.E. 2540 (1997) and another letter dated 4th January B.E. 2544 (2001) stating that actions had been taken to register the vacation of office as company director with

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the Partnerships and Companies Registrar of Bangkok, which was more than fifteen days from the date when the first respondent was elected by the Senate.

In the case of Khun Ying Pariya Kasemsan Na Ayutthaya, the second respondent, it appeared from the certificate of the Office of Partnerships and Companies Registration of Bangkok, that her name was listed as a director of Wongamorn Company Limited. In her statement to the Administration and Justice Committee of the Senate, the second respondent did not produce any evidence of a letter of resignation from the directorship of Wongamorn Company Limited. There was only a letter from Khun Ying Wanida Phoosiriwong, her younger sister, who was also a director of such company, certifying that the second respondent had expressed an intent to resign from the company's directorship on 9th January B.E. 2544 (2001). There were also actions taken to register the changes from the resignation of the company's director with the Partnerships and Companies Registrar of Bangkok more than fifteen days as from the date when the second respondent was elected by the Senate.

The applicant considered that, after a consideration of the facts and the law, the case of Mr. Krirkkeart was not under a prohibition in section 258 paragraph one subparagraph (3) of the Constitution in conjunction with section 11 paragraph one subparagraph (3) of the Organic Act on Counter Corruption, B.E. 2542 (1999). The remaining issues which the Constitutional Court was requested to consider were the following:

(1) In the case of the first respondent, whether or not the non-registration of the resignation from the directorship of The Best General Communication Company Limited with the Partnerships and Companies Registrar of Bangkok within the above time limit could be deemed as a resignation from the directorship of such company in accordance with section 258 paragraph two of the Constitution in conjunction with section 11 paragraph two of the Organic Act on Counter Corruption, B.E. 2542 (1999).

(2) In the case of the second respondent, where there was no evidence in a letter of resignation from the directorship of Wongamorn Company Limited and the non-registration of such resignation from the said company with the Partnerships and Companies Registrar of Bangkok within the above time limit, whether or not it could be deemed that the second respondent was elected as a member of the NCCC beforehand.

(3) If it was held that both members of the NCCC, viz Lieutenant General Sawat Or-rungroj and Khun Ying Pariya Kasemsan Na Ayudhaya, or either one of the two, had from the commencement of their offices violated section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution in conjunction with section 11 paragraph one subparagraph (3) and section 11 paragraph two of the Organic Act on Counter Corruption, B.E. 2542 (1999), whether or not the composition of the NCCC was proper and complete under section 297 paragraph one of the Constitution in conjunction with section 6 of the Organic Act on Counter Corruption, B.E. 2542 (1999). And if it was held that the composition of the NCCC was improper and incomplete from the beginning, whether or not and to what extent were the lawfulness of the acts done in the performance of duties of the members of the NCCC and of the NCCC.

2. Preliminary issue

Could the Constitutional Court accept this application for consideration under section 266 of the Constitution?

The Constitutional Court held as follows. The applicant had requested for a ruling on the performance of duties by members of the NCCC in the case where there were certain members of the NCCC who violated section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution and section 11 paragraph one subparagraph (3) and section 11 paragraph two of the Organic Act on Counter Corruption, B.E. 2542 (1999), which could have affected the completeness of the composition of the NCCC from the beginning, and if incomplete, whether or not the performance of duties by the members of the NCCC and the NCCC were lawful. This could be considered as a problem on the powers and duties of the NCCC, which was an organ under the Constitution. As the President of the National Assembly was the submitter of such matter to the Constitutional Court for consideration, the Constitutional Court held that the application should be accepted for consideration under section 266 of the Constitution.

3. The issues considered by the Constitutional Court

The following three issues had to be considered by the Constitutional Court:

On the first issue, whether or not the first respondent's non-registration of resignation from the directorship of The Best General Communication Company Limited with the Partnerships and Companies Registrar of Bangkok within fifteen days as from when he was elected by the Senate was a violation of section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution.

On the second issue, whether or not the second respondent's non-possession of any evidence in a letter of resignation from the directorship of Wongamorn Company Limited within fifteen days as from the dated of being elected by the Senate and the non-registration of the resignation from the directorship of such company with the Partnerships and Companies Registrar of Bangkok within the above time limit, was a violation of section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution.

On the third issue, if it were held that both members of the NCCC, being the first and second respondents, or either one of those two persons, had from the beginning violated section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution, whether or not the composition of the NCCC would from the beginning be proper and complete under section 297 paragraph one of the Constitution. And if it was held that the composition of the NCCC was not proper from the beginning, whether or not and to what extent the performance of duties by members of the NCCC and the NCCC were proper.

The Constitutional Court held the following opinion:

On the first issue, the first respondent (Lieutenant General Sawat Or-rungroj) expressed an intent to resign from the directorship of The Best General Communication Company Limited in a letter dated 25th February B.E. 2540 (1997) submitted to General Euamsak Julajarit, the authorised director of the company, who signed an acknowledgement on 27th February B.E. 2540 (1997). General Euamsak Julajarit testified to the Court confirming that he had actually acknowledged the resignation. The first respondent's resignation was therefore effective as from 27th February B.E. 2540 (1997), which was prior to the first respondent's election as a member of the NCCC. The registration of the first respondent's resignation from company directorship with the Partnerships and Companies Registrar of Bangkok on 4th January B.E. 2544 (2001) was therefore a certification of the resignation from company directorship which was effective as from 27th February B.E. 2540 (1997). Therefore, on 26th March B.E. 2542 (1999), when the Senate reached a resolution electing the first respondent as a member of the NCCC, the first respondent did not hold the position of director of The Best General Communication Company Limited, which was a prohibition under section 258 paragraph one subparagraph (3) of the Constitution, and thus there was no violation under section 258 paragraph two of the Constitution. All this was in accordance with Constitutional Court Ruling No. 4/2544, dated 6th February B.E. 2544 (2001). The first respondent was constitutionally elected as a member of the NCCC.

On the second issue, the second respondent (Khun Ying Pariya Kasemsan Na Ayutthaya) expressed intent to resign from the directorship of Wongamorn Company Limited to Khun Ying Vanida Phoonsiriwong, the director who was the authorised signatory of the company. Khun Ying Vanida Phoonsiriwong issued a letter of certification and the second respondent submitted the written statement of Khun Ying Vanida Phoonsiriwong which certified that she had acknowledged the expression of intent to resign from the directorship of the company both verbally and in writing on about 1st to 3rd April B.E. 2542 (1999). A resignation from the directorship of a company could be effected by an expression of intent to the authorised officer of the company, which could be made either verbally or in writing. The duty to register the withdrawal of name from the list of directors of the company with the Partnerships and Companies Registrar was owed by the authorised director. This was a general principle laid down by the Constitutional Court in Ruling No. 4/2544, dated 6th February B.E. 2544 (2001). Therefore, the second respondent's resignation from the directorship of Wongamorn Company Limited was effective as from 1st or latest 3rd April B.E. 2542 (1999). The second respondent did not violate section 258 paragraph two of the Constitution. The second respondent was therefore constitutionally elected as a member of the NCCC.

On the third issue, as the Constitutional Court held that the first and second respondents did not violate section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution, both respondents had been constitutionally elected as members of the NCCC. The third issue therefore needed not be considered.

4. Ruling of the Constitutional Court

The Constitutional Court held that the first and second respondents did not violate section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitutional. There was therefore no problem on the composition and powers and duties of the NCCC under the Constitution.
