

Summary of the Constitutional Court Ruling No. 7/2546

Dated 27th March B.E. 2546 (2003)*

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 Police Lieutenant Colonel Surathin Pimanmaykin intentionally failed to submit an account showing assets and liabilities and supporting documents.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC), the applicant, submitted an application to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which could be summarized as follows. Police Lieutenant Colonel Surathin Pimanmaykin, the respondent, was elected to be a member of the House of Representatives on 17th November B.E. 2539 (1996). Thereafter, the present Constitution was promulgated on 11th October B.E. 2540 (1997). In this connection, the respondent was deemed to assume office as a member of the House of Representatives from 11th October B.E. 2540 (1997). The respondent had therefore a duty to submit an account showing particulars of assets and liabilities of himself, his spouse and children who had not yet become *sui juris* together with supporting documents to the NCCC upon his taking office within 30 days as from 11th October B.E. 2540 (1997), i.e. by 10th November B.E. 2540 (1997). It was appeared that the respondent submitted, on 10th November B.E. 2540 (1997), the account showing only particulars of assets and liabilities of his spouse and children who had not yet become *sui juris*. He failed to submit the account showing his own particulars of assets and liabilities and supporting documents which were copies of evidences proving the existence of all particulars of assets and liabilities. Moreover, the respondent failed to attach with a form showing particulars of personal income taxes of himself and his spouse for the preceding year.

Thereafter, the respondent resigned from the membership of the House of Representatives on 23rd December B.E. 2542 (1999). He had accordingly the duty to submit the account on the occasion of vacating office within 30 days as from 23rd December B.E. 2542 (1999), i.e. by 21st January B.E. 2543 (2000). However, the respondent failed to submit such account

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within the said time limit and did not notify any necessity or reason for not submitting thereof to the applicant.

The NCCC unanimously resolved by 9 votes in the Meeting No. 74/2544 on 11th October B.E. 2544 (2001) that the respondent intentionally failed to submit the accounts showing particulars of assets and liabilities and supporting documents to the NCCC on the occasion of taking and vacating membership of the House of Representatives as required by the Constitution and the Organic Act on Counter Corruption, B.E. 2542 (1999). The NCCC therefore submitted the application to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court resolved to accept the application for consideration and decision and notified Police Lieutenant Colonel Surathin Pimanmaykin to give a statement in defense of allegations.

Police Lieutenant Colonel Surathin Pimanmaykin stated to the Constitutional Court that during his taking membership of the House of Representatives in B.E. 2539 (1996), he assigned an assistant of members of the House of Representatives to operate the matter for him. After submission of the account, he had never received any letter of warning from the NCCC. He therefore understood that the account was correctly and completely submitted. Later, he resigned from membership of the House of Representatives on 23rd December B.E. 2542 (1999) with understanding that there was no need to submit any further account upon vacating office. The respondent accordingly confirmed that there was no intention not to submit the accounts. It was only a misunderstanding in the matter of law. Furthermore, after resignation from membership of the House of Representatives, he operated business in Laos in which he was arrested and sentenced by the Court to 9 years imprisonment.

2. The issue considered by the Constitutional Court

The first issue considered was whether or not the respondent intentionally failed to submit the accounts on the occasion of taking office and vacating office.

The Constitutional Court held as follows. The respondent's statement to the Constitutional Court that he understood that the submission of the account upon his taking office was correct and completed due to assigning other to operation for him and that there was no need to submit the account upon vacating office was without any denial and argument. The case could therefore be accepted that the respondent truly failed to submit the account to the NCCC on both occasion of taking and vacating office. As regards the defense of the respondent that there was no intention not to submit the accounts to the NCCC, the Court held that it was only a statement which was not sufficient to be a ground for escaping from guilt. The conduct of the respondent could be held as intentional failure to submit the accounts showing particulars of assets and liabilities and supporting documents on both occasion of taking and vacating office under section 295 of the Constitution of the

Kingdom of Thailand, B.E. 2540 (1997).

The second issue considered was from which date the respondent should be prohibited from holding any political position for a period of five years.

The Constitutional Court held as follows. The respondent was elected to be a member of the House of Representatives on 17th November B.E. 2539 (1996) and subsequently resigned from the membership of the House of Representatives on 23rd December B.E. 2542 (1999). When it appeared that the Constitutional Court decided on the respondent's case after the vacation of his office, it could therefore deem that the respondent had vacated office since the date he resigned from the membership of the House of Representatives. When the period for the prohibition from holding any political position could commence was under the provision of section 295 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which was as from the date of the vacation of office. In this case, a person holding a political position who vacated office by resignation and before the decision of the Constitutional Court could not be re-vacated office as from the due date of the submission of the account under section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), because he already vacated office. The period of five years for the prohibition from holding any political position therefore commenced on 23rd December B.E. 2542 (1999) which was the date of resignation from the membership of the House of Representatives.

3. Ruling of the Constitutional Court

The Constitutional Court held that Police Lieutenant Colonel Surathin Pimanmaykin, the respondent, intentionally failed to submit the accounts showing particulars of assets and liabilities and supporting documents on the occasion of taking office and vacating office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and he was prohibited from holding any political position for a period of five years as from the date of vacating membership of the House of Representatives, i.e. 23rd December B.E. 2542 (1999).
