

# Summary of the Constitutional Court Ruling No. 47/2546

Dated 25<sup>th</sup> November 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 Mr. Adul Wongpanich 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 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) in the case where Mr. Adul Wongpanich, the respondent, intentionally failed to submit his account showing assets and liabilities and supporting documents. Since the respondent was appointed to hold a permanent position in the Office of the Secretariat of the Prime Minister for the Chuan Leekpai's Government on 30<sup>th</sup> December B.E. 2540 (1997), he was a political official as well as a person holding a political position. Thereafter, the vacation of the Prime Minister's office on 18<sup>th</sup> February B.E. 2544 (2001) resulted in the vacation of the respondent's office as well. The respondent had therefore a duty to submit the account showing particulars of assets and liabilities upon his vacation of office by 19<sup>th</sup> March B.E. 2544 (2001) and upon the expiration of one year after the vacation of office by 19<sup>th</sup> March B.E. 2545 (2002).

The National Counter Corruption Commission discovered in the course of its investigation that the respondent submitted the account showing particulars of assets and liabilities of himself, his spouse and children who had not yet become *sui juris* on the occasion of taking office. However, the respondent failed to submit such account on the occasion of vacation of office and expiration of one year after vacating office. The National Counter Corruption Commission accordingly issued three letters notifying the respondent to give a statement of fact, but the account and any statement of fact whatsoever had not yet been submitted by the respondent. The National Counter Corruption Commission held a meeting and resolved that the respondent did intentionally not submit the account showing particulars of assets and liabilities and supporting documents in the case of vacation of office and expiration of one year after vacating office. The National Counter Corruption

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Commission 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).

Thereafter, the respondent submitted a statement in defense of the allegations to the Constitutional Court that he had a lot of liabilities arising from business operation. Nevertheless, because there were no documental evidences, he did not know how to fill in the Form of National Counter Corruption Commission and was afraid of becoming concealment and false statements to the National Counter Corruption Commission.

## **2. Preliminary issue**

The Constitutional Court held that the case was under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and could therefore be accepted for consideration.

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

The first issue considered was whether or not the respondent intentionally failed to submit the accounts showing particulars of assets and liabilities and supporting documents upon vacating office and upon the expiration of one year after vacating office.

The respondent was appointed to be a political official holding a permanent position in the Office of the Secretariat of the Prime Minister. The respondent was thus the person holding a political position and had the duty to submit the account showing particulars of assets and liabilities of himself, his spouse and children who had not yet become *sui juris* to the National Counter Corruption Commission pursuant to the provisions of section 291, section 292 and section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The statement of the respondent in defense of allegations submitted to the Constitutional Court presented that the respondent realized well of the duty to submit the account showing assets and liabilities. He refused to submit it by stating that he did not know how to fill in the Form due to lack of evidences or documents regarding liabilities and no property in his ownership. This statement of the respondent could not be heard, because the National Counter Corruption Commission had delivered the letter notifying the respondent to give statement and reason for not submitting such the account for three times but he ignored and had not given any statement whatsoever to the National Counter Corruption Commission. Accordingly, it was appeared that the respondent intentionally failed to submit the account showing particulars of assets and liabilities and supporting documents upon the vacation of office and the expiration of one year after vacation of 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 respondent vacated his office on 18<sup>th</sup> February B.E. 2544 (2001) before the Constitutional Court decided on his acts. The vacation of political position could no longer apply to the respondent because he already vacated office. As a result, the date from which the respondent should be prohibited from holding any political position for a period of five years was the actual date of vacation of office, viz as from 18<sup>th</sup> February B.E. 2544 (2001).

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

The Constitutional Court held the meeting and resolved by the majority that the respondent intentionally failed to submit the account showing particulars of assets and liabilities and supporting documents upon the vacation of office and the expiration of one year after vacation of office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and that he was prohibited from holding any political position for a period of five years as from 18<sup>th</sup> February B.E. 2544 (2001) which was the date the respondent vacated his office of permanent position in the Office of the Secretariat of the Prime Minister.

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