

# Summary of the Constitutional Court Ruling No. 48/2546

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. Mongkol Tunsakul intentionally failed to submit an account showing assets and liabilities and supporting documents.**

.....

## 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. Mr. Mongkol Tunsakul (the respondent) was a political official who was appointed to hold political positions for two times as follows.

(1) The respondent was appointed to hold the position of advisor to the Minister of Foreign Affairs (Mr. Surin Pitsuwan) on 28<sup>th</sup> November B.E. 2540 (1997) and vacated this office on 17<sup>th</sup> March B.E. 2541 (1998). The respondent thus had a duty to submit accounts 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 on three occasions. The first occasion was the case of taking office, submitted by 27<sup>th</sup> December B.E. 2540 (1997). The second occasion was the case of vacating office, submitted by 15<sup>th</sup> April B.E. 2541 (1998). The third occasion was the case of the expiration of one year after the vacation of office, submitted by 15<sup>th</sup> April B.E. 2542 (1999).

It was appeared that the respondent submitted the account only on the occasion of taking office on 26<sup>th</sup> December B.E. 2540 (1997). He failed to submit the accounts on the occasion of vacating office and of the expiration of one year after vacation of office. In this regards, the respondent delivered the letter to the NCCC stating that since he had to operate many business affairs and usually take business trips to foreign countries, he misunderstood that the account was submitted after vacating office of advisor to the Minister of Foreign Affairs. Moreover, some items of documents required timing to be searched. The respondent had no intention to withhold compliance with the Constitution. Together with such letter, the respondent submitted the account on the occasion of the expiration of one year after vacation

---

\* Published in the Government Gazette, Vol.121, Part 53a, dated 23<sup>rd</sup> August B.E. 2547 (2004)

of office. This account was submitted 645 days after the expiration of the time period specified by the Constitution. However, the account on the occasion of vacating from the office of advisor to the Minister of Foreign Affairs had not been submitted whatsoever.

(2) The respondent was appointed to hold the position of advisor to the Deputy Prime Minister (Mr. Tairong Suwannakiri) on 19<sup>th</sup> July B.E. 2542 (1999) and vacated this office on 18<sup>th</sup> February B.E. 2544 (2001). The respondent thus had a duty to submit accounts to the NCCC on three occasions. The first occasion was the case of taking office, submitted by 17<sup>th</sup> August B.E. 2542 (1999). The second occasion was the case of vacating office, submitted by 19<sup>th</sup> March B.E. 2544 (2001). The third occasion was the case of the expiration of one year after the vacation of office, submitted by 19<sup>th</sup> March B.E. 2545 (2002).

It was appeared that the respondent submitted the account on the occasion of holding the position of advisor to the Deputy Prime Minister on 18<sup>th</sup> August B.E. 2542 (1999) (1 day after the expiration of the time period specified by the Constitution) and submitted the account on the occasion of vacating office on 28<sup>th</sup> June B.E. 2544 (2001) (101 days after the expiration of the time period specified by the Constitution). The respondent had not submitted any account on the occasion of the expiration of one year after vacation of office. The NCCC issued a letter notifying the respondent to give a statement in the case of failure to submit such account. The respondent stated that he did not receive the letter from the NCCC. Due to business operation, he misunderstood that the account was already submitted. Furthermore, he needed time to find some items of documents which required timing to be searched. He had no intention to withhold compliance with the Constitution. However, the respondent had not submitted the account on the occasion of the expiration of one year after vacation of office of advisor to the Deputy Prime Minister.

The NCCC unanimously resolved by 8 votes in the Meeting No. 49/2546 on 10<sup>th</sup> July B.E. 2546 (2003) that the respondent intentionally failed to submit the accounts showing particulars of assets and liabilities and supporting documents on the occasion of vacating the office of advisor to the Minister of Foreign Affairs and of the expiration of one year after vacation of the office of advisor to the Deputy Prime Minister. The respondent also intentionally failed to submit the accounts showing particulars assets and liabilities and supporting documents within the time period specified by the Constitution upon the expiration of one year after vacating the office of advisor to the Minister of Foreign Affairs and the occasion of vacation of the office of advisor to the Deputy Prime Minister. 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 provided the respondent for an opportunity to submit a statement in writing in defense of allegations by means of delivering a letter through registered postal mail and posting the Notification. However, the respondent had not submitted any statement to the Constitutional Court whatsoever.

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

**First issue:** whether or not the respondent intentionally failed to submit the accounts on the occasion of vacating office and of the expiration of one year after vacation of office.

The Constitutional Court, upon its consideration, held that the respondent was a person holding political positions and thus had the duty to submit the accounts to the NCCC, the applicant, as provided by the Constitution. The respondent's statement to the NCCC that due to many business operations and usual business trips to foreign countries, he misunderstood that the accounts were already submitted was only an excuse insufficient 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 occasions of vacating the office of advisor to the Minister of Foreign Affairs and of the expiration of one year after vacation of such office and on the occasions of vacating the office of advisor to the Deputy Prime Minister and of the expiration of one year after vacation of such office.

**Second issue:** the respondent vacated office and was prohibited from holding any political position for a period of five years as from which date.

The Constitutional Court, upon its consideration, held that the respondent was appointed to hold the position of advisor to the Minister of Foreign Affairs on 28<sup>th</sup> November B.E. 2540 (1997) and vacated such office on 17<sup>th</sup> March B.E. 2541 (1998). Subsequently, the respondent was appointed to hold the position of advisor to the Deputy Prime Minister on 19<sup>th</sup> July B.E. 2542 (1999) and vacated such office on 18<sup>th</sup> February B.E. 2544 (2001). The Constitutional Court decided on the respondent's case after the vacation of his offices. 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, the Court held that when a person holding a political position vacated political office before the decision of the Constitutional Court, he could not anymore vacate office as from the due date of submission of the accounts. When the facts revealed that the respondent vacated the position of advisor to the Minister of Foreign Affairs as from 17<sup>th</sup> March B.E. 2541 (1998), the respondent was thus prohibited from holding any political position for a period of five years as from 17<sup>th</sup> March B.E. 2541 (1998). In addition, the respondent vacated the position of advisor to the Deputy Prime Minister as from 18<sup>th</sup> February B.E. 2544 (2001), the respondent was thus prohibited from holding any political position for a period of five years as from 18<sup>th</sup> February B.E. 2544 (2001). In case of the application, the respondent vacated two political positions before the decision of the Constitutional Court. The period of five years for the prohibition from holding any political position therefore commenced on the date of vacating the last position as the advisor to the Deputy Prime Minister, i.e. 18<sup>th</sup> February B.E. 2544 (2001).

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

Mr. Mongkol Tunsakul, the respondent, intentionally failed to submit the accounts showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and was prohibited from holding any political position for a period of five years as from 18<sup>th</sup> February B.E 2544 (2001).

---