

# Summary of Constitutional Court Ruling

No. 35/2547

Dated 16<sup>th</sup> March B.E. 2547 (2004)\*

**Re: The National Counter Corruption Commission requested 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 Miss Saichol Paradorn or Mrs. Chalisa Thep-asa 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 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). The application could be summarized as follows.

Under section 291 paragraph one subparagraph (6) of the Constitution and section 4(9) and section 32 of the Organic Act on Counter Corruption, B.E. 2542 (1999), in conjunction with the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organisations in order to Ascribe the Status of Political Position Holder to Local Administrators and Members of Local Councils of Local Administrative Organisations, dated 30<sup>th</sup> December B.E. 2542 (1999), as amended by (No. 2), B.E. 2543 (2000) dated 18<sup>th</sup> October 2543 (2000), a criteria for revenues of local administrative organizations was established. As a result thereof, administrators and members of local administrative organization councils falling within the criteria in such notification were under a duty to submit an account showing particulars of assets and liabilities for themselves, their spouses and children who had not yet become *sui juris* to the applicant on every occasion of taking office, leaving office and the expiration of one year after leaving office, as the case may be. Examinations revealed that in the fiscal year of B.E. 2544 (2001), Uthai Thani Provincial Administrative Organisation had a total revenue of 112,351,800.64 baht, which was within the criteria under such notification. There were altogether 24 administrators and council members of the Uthai Thani Provincial Administrative Organisation. Miss Saichol Paradorn or Mrs. Chalisa Thep-asa, the respondent, who was elected as a member of the Uthai Thani Provincial Administrative Organisation Council, was within the criteria which imposed an obligation to submit an

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\* Published in the Government Gazette, Vol. , Part , dated

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account of assets and liabilities under such laws to the applicant within thirty days as from 1<sup>st</sup> October B.E. 2544 (2001) (which was the first date of the fiscal year B.E. 2545 (2002)).

The applicant's examinations revealed that the respondent had not submitted an account to the applicant on the occasion of taking office. After the Office of the National Counter Corruption Commission sent three letters to the respondent requesting for an explanation of reasons for failing to submit an account (letters dated 29<sup>th</sup> January B.E. 2545 (2002), 12<sup>th</sup> April B.E. 2545 (2002) and 18<sup>th</sup> September B.E. 2545 (2002)), which were received by another person on her behalf on all three occasions, the respondent still did not give an explanation for her failure to submit an account, nor did she submit an account to the applicant in connection with her taking office as member of the Uthai Thani Provincial Administrative Organisation Council. Moreover, there were further facts which indicated that the Uthai Thani Provincial Administrative Organisation Council passed a resolution on 24<sup>th</sup> April B.E. 2545 (2002) to remove the respondent from the office of member of the Uthai Thani Provincial Administrative Organisation Council because it was found that the respondent committed an offence and was evading criminal proceedings relating to a narcotics offence pursuant to an arrest warrant of the Amphoe Muang Uthai Thani Regional Police Station No. 13/2544, dated 4<sup>th</sup> May B.E. 2544 (2001). Upon leaving such office, the respondent also did not submit an account within the time limit prescribed by section 292 of the Constitution.

The NCCC (applicant) deliberated on the issue in meeting no. 61/2546 on 28<sup>th</sup> August B.E. 2546 (2003) and reached a unanimous resolution of 8 votes that the respondent intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents on the occasion of taking office and leaving office of membership of the Uthai Thani Provincial Administrative Organisation Council. A reference of the matter was therefore made to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The issues which had to be considered by the Constitutional Court were whether or not the respondent intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents to the applicant on the occasions of taking office and leaving office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Uthai Thani Provincial Administrative Organisation's revenues for the fiscal year B.E. 2544 (2001) was within the criteria set forth in the Notification of the NCCC Re: Prescription of Revenue Criteria for Local Administrative Organisations in order to Ascribe the Status of Political Position Holder to Local Administrators and Members of Local Councils of Local Administrative Organisations, dated 30<sup>th</sup> December B.E. 2542 (1999), as amended by (No. 2), B.E. 2543 (2000) dated 18<sup>th</sup>

October 2543 (2000). The respondent was elected as a member of the Uthai Thani Provincial Administrative Organisation Council. Therefore the respondent was a political position holder and was obliged to submit an account showing particulars of assets and liabilities as well as supporting documents for herself, her spouse and her children who had not yet become *sui juris* to the applicant within thirty days on each occasion of taking office or leaving office, as the case may be, under section 291 paragraph one subparagraph (6) and section 292 of the Constitution in conjunction with section 4(9) and section 32 of the Organic Act on Counter Corruption, B.E. 2542 (1999). The applicant failed to submit an account to the applicant on the occasion of taking office as member of the Uthai Thani Provincial Administrative Organisation Council within thirty days as of 1<sup>st</sup> October B.E. 2544 (2001) without giving reasons to the applicant despite the fact that the applicant issued three letters requesting for reasons from the respondent, and all three letters were received by another on the respondent's behalf. When the Uthai Thani Provincial Administrative Organisation Council passed a resolution on 24<sup>th</sup> September B.E. 2545 (2002) removing the respondent from membership of the Uthai Thani Provincial Administrative Organisation Council because of the respondent's commission of an unlawful act and evasion of criminal proceedings relating to a narcotics offense, the respondent also failed to submit an account on the occasion of leaving office to the applicant within thirty days as of 24<sup>th</sup> September B.E. 2545 (2002). In addition, when the Constitutional Court offered an opportunity to the respondent to make a statement in defence of the allegations, the respondent did not make any such defence to the Constitutional Court. These circumstances surrounding the respondent indicated that the respondent intentionally failed to submit accounts on the occasion of taking office and leaving office.

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

The Constitutional Court, by a majority of 13 Constitutional Court judges, held that the respondent intentionally failed to submit accounts showing particulars of assets and liabilities on the occasions of taking office and leaving office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). One Constitutional Court judge ruled in the minority that the application should be dismissed because the NCCC lacked the power to issue the Notification of the NCCC Re: Prescription of Revenue Criteria for Local Administrative Organisations in order to Ascribe the Status of Political Position Holder to Local Administrators and Members of Local Councils of Local Administrative Organisations, dated 30<sup>th</sup> December B.E. 2542 (1999).

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