

# **Summary of Constitutional Court Ruling**

## **No. 50/2547**

### **Dated 19<sup>th</sup> August B.E. 2547 (2004)\***

**Re: The National Counter Corruption Commission requested 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. Witoon Phatralaoha intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed.**

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#### **1. Background and summarized facts**

The National Counter Corruption Commission (NCCC), the applicant, submitted an application dated 25<sup>th</sup> August B.E. 2546 (2003) to the Constitutional Court requesting for a ruling under section 295 of the Constitution that Mr. Witoon Phatralaoha, advisor to the President of the Senate (Mr. Meechai Ruechupan), the respondent, intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed. The facts in the application and the supporting documents could be summarized as follows:

1.1 The respondent submitted an account showing particulars of assets and liabilities of himself, his spouse (Mrs. Nuanpen Phatralaoha) on the occasion of taking office to the NCCC on 7<sup>th</sup> November B.E. 2540 (1997). In summary, the account showed certain assets, namely 3 deposit accounts totaling 75 million baht, 26 parcels of land totaling an area of 89 rai, 3 ngan and 88.70 square wa representing a total value of 90 million baht, buildings and structures valued at 6 million baht and a residential home valued at 5 million baht. As for the assets and liabilities of his spouse, the respondent notified that there were no assets or liabilities to disclose. Subsequently, the respondent vacated the office of advisor to the President of the Senate on 22<sup>nd</sup> March B.E. 2543 (2000) and submitted an account showing particulars of assets and liabilities on the occasion of vacating office to the applicant on 12<sup>th</sup> April B.E. 2543 (2000). The details of each item of assets were identical to the items that were submitted on the occasion of taking office as advisor to the President of the Senate, except for the amount of cash deposit in the three accounts which increased by approximately 7 million baht.

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1.2 The applicant undertook an examination to verify the accuracy and actual existence of the assets and liabilities and discovered that there were 3 items of assets that were not disclosed in the account submitted on the occasion of taking office (on 7<sup>th</sup> November B.E. 2540 (1997)) and on the occasion of vacating office (on 22<sup>nd</sup> March B.E. 2543 (2000)). Those were the respondent's deposit accounts on 7<sup>th</sup> November B.E. 2540 (1997), altogether 21 accounts or a total sum of 698,739,176.06 baht, and on 22<sup>nd</sup> March B.E. 2543 (2000), altogether 19 accounts or a total sum of 320,149,818.20 baht; the accounts of Mrs. Nuanpen Phatralaoha, the respondent's spouse, on 7<sup>th</sup> November B.E. 2540 (1997) altogether 4 accounts or a total sum of 1,154,439.84 baht and on 22<sup>nd</sup> March B.E. 2543 (2000) altogether 4 accounts or a total sum of 539,140.52 baht; and the respondent's land in the number of 17 parcels valued according to the Land Department's valuation on 7<sup>th</sup> November B.E. 2540 (1997) at 186,086,200 baht and on 22<sup>nd</sup> March B.E. 2543 (2000) at 155,152,100 baht.

When the applicant requested the respondent to explain the discrepancies in the respondent's account submitted on the occasion of taking office and such facts, the respondent explained that Mrs. Yaowapa Wanichworanant, his secretary, was responsible for preparing the accounts which was delivered to him for signature. He did not read the contents of the account since he was overburdened with a lot of tasks. Under those circumstances he affixed his signature on the account. Also, Mrs. Yaowapa Wanichworanant did not coordinate with Miss Orathai Wessanont, the bookkeeper of Utsahakam Thor Nam Thai Company Limited, who was another person, charged with the handling of his cash deposit accounts. However, Mrs. Yaowapa Wanichworanant stated that the details pertaining to cash deposits and land which were the assets of her boss, the respondent, were all supplied to her by the respondent. Mrs. Yaowapa Wanichworanant only prepared the accounts from such documentary evidence. Aside from that, the statements of the respondent and Mrs. Yaowapa Wanichworanant were consistent in the fact that the respondent regarded the submission of an account as only a legal formality, and since the respondent did not use his powers in office to acquire those assets, the disclosure of such particulars of assets and liabilities were not taken seriously.

The applicant considered that the respondent had engaged in business for a long time to the point of achieving a stable financial standing. As such, he should have installed a system for managing his assets to avoid any confusion and should have good knowledge of the extent of his assets. Yet, the submission of an account evidencing only a portion of such assets resulted from a motive of treating the requirement as mere formality. Therefore, the applicant reached a unanimous decision in Meeting No. 49/2546, on 10<sup>th</sup> July B.E. 2546 (2003), with 8 votes that Mr. Witoon Phatralaoha, the respondent, intentionally submitted accounts showing particulars of assets and liabilities and supporting documents on the occasion of taking office and on the occasion of vacating office as advisor to the President of the Senate which contained false statements or concealed facts that should have been disclosed. In addition, the applicant requested for a ruling that the respondent be removed from office as from the discovery date of such acts and prohibit the taking of any political office for a period of five years as from the date of vacating office.

1.3 The Constitutional Court decided to admit the application for consideration and gave an opportunity to the respondent to submit a statement in defence to the allegations. The respondent submitted a statement of defence, dated 16<sup>th</sup> October B.E. 2546 (2003), which could be summarized as follows. The respondent neither intended nor purposely submitted accounts which contained false statements or concealed facts that should have been disclosed. However, the respondent was limited by his workload and time constraints together with the fact that the respondent had never been a government official and therefore did not have an understanding of the procedures. His honest understanding was only that all his assets were acquired honestly and that he did not personally prepare the accounts. Once his staff had completed the accounts and presented them to him for signature, he affixed his signature without inspecting the details due to the belief that they were already accurate and complete. But after the respondent vacated the office of advisor to the President of the Senate for almost one year, he was notified by an acquaintance that the respondent was under a duty to submit another account. As a result, he compared the accounts prepared on the previous two occasions and discovered that the accounts contained some inaccuracies and did not even disclose the assets and liabilities of his wife. The respondent therefore submitted two additional accounts to the applicant on 28<sup>th</sup> March B.E. 2544 (2001) and on 17<sup>th</sup> April B.E. 2544 (2001). The respondent submitted the additional accounts on both occasions as a result of his own findings and such submissions were made prior to the applicant's letter summoning the respondent for investigations by almost 9 months. Subsequent to the respondent's submission of additional accounts on both occasions, the respondent received a letter from the applicant notifying the respondent to make a statement. Yet, in the deliberations of the applicant as stated in the application, the applicant did not in any manner raise the fact that the respondent had submitted additional accounts on two such occasions. The respondent conceded that he did not exercise due care in entrusting his staff to complete the accounts. Nonetheless, the respondent asserted that he did not have any intention to make false statements or conceal facts since after the respondent discovered that the accounts were inaccurate, he undertook to make the corrections instantly and voluntarily as well as disclosed the particulars of assets and liabilities of his spouse. Moreover, the additional accounts submitted by the respondent on both occasions evidenced all the assets and liabilities claimed to be discovered by the applicant and even disclosed several other assets and liabilities which the applicant had failed to discover. The respondent argued that this showed that he was honest. It was therefore requested that the Constitutional Court rule that the respondent had not intentionally submitted accounts showing particulars of assets and liabilities and supporting documents containing false statements or concealed facts that should have been disclosed under section 295 of the Constitution and to dismiss the application.

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

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could accept the application for consideration under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the respondent was a holder of the office of advisor to the President of the Senate, a political official of the National Assembly under section 61(3) of the Rules of National Assembly Officials Act, B.E. 2518 (1975), as amended in B.E. 2535 (1992). The respondent was therefore a holder of a political position under section 4 of the Organic Act on Counter Corruption, B.E. 2542 (1999), holding the status of other political officials under section 291(5) of the Constitution, and was under a duty to submit an account to the applicant on every occasion of taking office, vacating office and the expiration of one year after leaving office pursuant to section 292 of the Constitution and section 32 of the Organic Act on Counter Corruption, B.E. 2542 (1999).

1. The issue which had to be considered by the Constitutional Court was whether or not the respondent intentionally submitted accounts which contained false statements or concealed facts that should have been disclosed. The Constitutional Court found that the respondent submitted accounts to the applicant on two occasions evidencing assets which were obviously discrepant. Moreover, the respondent owned a large business enterprise with significant amounts of revenue and assets, which had a bearing on his ability to administer his business and assets. The respondent could be imputed with the knowledge of the extent and location of his assets. If the respondent intended to submit factually accurate accounts, he could have done so. The excuse invoked by the respondent that he had entrusted Mrs. Yaowapa Wanichworanant, the respondent's secretary, with the preparation of the accounts that was delivered to the respondent for signature without further examination of the details due to overburdening of tasks and lack of due care, contradicted Mrs. Yaowapa Wanichworanant's statement to the applicant that the respondent was a detailed and cautious person who would meticulously read every single document before affixing his signature and that the respondent's understanding of the submission of accounts was of mere formality.

As for the point raised by the respondent that upon finding out that the submitted accounts were incomplete and inaccurate, he attempted to make corrections and submitted additional accounts on two occasions in order to display his honesty, it appeared from the facts that the applicant had conducted its investigation before the respondent submitted the additional accounts, which were made substantially after the expiration of the due dates for such submission of accounts. Thus, the excuse raised by the respondent did not have merit.

For the reasons stated above, the Constitutional Court by a majority of 13 judges, namely Mr. Kramol Tongdhamachat, Mr. Jira Boonpojanascontorn, Mr. Chumpol Na Songkhla, Mr. Parn Juntraparn, Mr. Mongkol Saratun, Mr. Manit Wityatem, Mr. Sakdi Techacharn, Mr. Suchit Bunbongkarn, Mr. Sutce Suthisomboon, Police General Suwan Suwanvecho, Mr. Suvit Teerapong, Mrs. Saowanee Asawaroj and Mr. Ura Wang-Orm-Klang, held under section 295 of the Constitution that the respondent intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been disclosed. One Constitutional Court judge, Mr. Preecha Chalermvanich, ruled that the application should be dismissed because all the assets of the respondent and his spouse were acquired prior to taking the political office; hence any failure to submit an account was a deficiency in the submission without any intention to violate section 295.

2. The next issue in the application which had to be considered by the Constitutional Court was the starting date from which the respondent was prohibited from holding any political office.

The Constitutional Court by a majority of 11 judges, namely Mr. Kramol Tongdhamachat, Mr. Parn Jantraparn, Mr. Mongkol Saratun, Mr. Manit Wityatem, Mr. Sakdi Techacharn, Mr. Suchit Bunbongkarn, Mr. Sutce Suthisomboon, Police General Suwan Suwanvecho, Mr. Suvit Teerapong, Mrs. Saowanee Asawaroj and Mr. Ura Wang-Orm-Klang, held that the respondent vacated office before the Constitutional Court ruled that he had submitted accounts which contained false statements or concealed facts that should have been disclosed, and therefore the respondent's vacation of office was deemed to commence from such factual date, i.e. 22<sup>nd</sup> March B.E. 2543 (2000). Thus, the respondent was prohibited from holding any political office for a period of five years as from 22<sup>nd</sup> March B.E. 2543 (2000).

Two Constitutional Court judges, namely Mr. Jira Boonpojanasontorn and Mr. Jumpol Na Songkhla, ruled that the respondent was prohibited from holding any political office for a period of five years as from 10<sup>th</sup> July B.E. 2546 (2003), being the date when the applicant discovered that the respondent submitted accounts containing false statements or concealed facts that should have been disclosed. One Constitutional Court judge, Mr. Preecha Chalermvanich, held that after ruling that the application should be dismissed, it was not necessary to rule on this issue.

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

By virtue of the reasons stated above, the Constitutional Court held under section 295 of the Constitution that Mr. Witoon Phatrallaoha, the respondent, intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed. Therefore, the respondent was prohibited from holding any political office for a period of five years as from 22<sup>nd</sup> March B.E. 2543 (2000), which was the date which the respondent vacated office as advisor to the President of the Senate.

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