

# Summary of the Constitutional Court Ruling No. 39/2545

**Dated 9<sup>th</sup> July B.E. 2545 (2002)\***

**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 Miss Phenapha Phaisalsupnimit 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) submitted an application under section 295 of the Constitution. In summary, Miss Phenapha Phaisalsupnimit, the respondent, was a political official holding the position of advisor to Deputy Minister of Foreign Affairs (M.R. Sukhumphan Boripatr). The respondent took office on 8<sup>th</sup> July B.E. 2542 (1999) and was under a duty to submit an accounts showing particulars of assets and liabilities and supporting documents in the case of taking office by 6<sup>th</sup> August B.E. 2542 (1999).

The NCCC, after examination, discovered that the respondent did not submit an account showing particulars of assets and liabilities and supporting documents and therefore sent a letter of warning to the respondent. The respondent stated in reply that she was not aware of the fact that by taking office as advisor to the Deputy Minister of Foreign Affairs she was encumbered with the duty to submit an account of assets and liabilities. However, she had the intention to submit an account of assets and liabilities to the applicant within thirty days as from the date of vacation of office. The reason for not submitting an account of assets and liabilities immediately after being notified was that she was approaching the end of her term in office.

The NCCC resolved that the respondent intentionally failed to submit an account of assets and liabilities to the NCCC in the case of taking office and submitted an application to the Constitutional Court for a ruling under section 295 of the Constitution that:

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(1) the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents to the NCCC in the case of taking office;

(2) the respondent should be prohibited from holding any political position for a period of five years as from the date of vacation of office.

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

The first issue considered was whether or not the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents to the NCCC in the case of taking office.

The second issue considered was from which date should the respondent vacate office and be prohibited from holding any political position.

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

On the first issue, the Constitutional Court held by 9 votes that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution.

Five Constitutional Court judges considered that the respondent did not intentionally fail to submit an account showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution and that the application should therefore be dismissed without having to consider on the second issue.

On the second issue, the Constitutional Court held by 6 votes from judges who held that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents that the respondent should be prohibited from holding any political position for a period of five years as from the actual date of vacation of office as advisor to the Deputy Minister of Foreign Affairs, viz as from 18<sup>th</sup> February B.E. 2544 (2001).

Three of the Constitutional Court judges who held that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents considered that the respondent should be prohibited from holding any political position for a period of five years as from the date of expiration of time limit for the submission of such account in the case of taking office, viz as from 6<sup>th</sup> September B.E. 2542 (1999).

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