

Summary of the Constitutional Court Ruling No. 41/2545

Dated 16th July B.E. 2545 (2002)*

Re : The National Counter Corruption Commission requested that the Constitutional Court make a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where Mr. Subin Pipornpong intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents and intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been revealed.

.....

1. Background and summarized facts

The National Counter Corruption Commission (NCCC) made an application under section 295 of the Constitution. In summary, Mr. Subin Pipornpong, the respondent, was a political official holding the position of advisor to the Minister of the Prime Minister's Office (Mr. Piyanat Watcharaporn). The respondent took office on 25th December B.E. 2539 (1996). Thereafter, the present Constitution was promulgated on 11th October B.E. 2540 (1997). As a result, the respondent was under a duty to submit an account showing particulars of assets and liabilities and supporting documents in the case of taking office within 30 days as from 11th October B.E. 2540 (1997). On 3rd November B.E. 2540 (1997), Order of the Prime Minister's Office No. 355/2540 was issued, requiring the respondent to vacate the office of advisor to the Minister of the Prime Minister's Office as from 24th October B.E. 2540 (1997). The respondent thus came under the duty to submit an account showing particulars of assets and liabilities and supporting documents in the case of vacation of office within 30 days as from the date of vacation of office.

After examination, the NCCC discovered that on 10th November B.E. 2540 (1997), the respondent submitted the same accounts for the cases of taking office and vacation of office. In addition, such submission of accounts had not been duly carried out under the provisions of the Constitution. No supporting documents had been attached as copies of documents which certified the existence of assets and liabilities. The particulars of assets and liabilities shown on the accounts were also untrue. The NCCC sent 4 letters to the respondent for the latter to give statements of facts. The respondent replied that he had not

* Published in the Government Gazette, Vol. 120, Part 38a, dated 6th May B.E. 2546 (2003)

been responsible for the preparation of accounts and was therefore unaware of the details. The respondent was a real estate businessman who bought pieces of land before apportioning them for sale under various projects. The respondent could not recall which land deeds were in his possession because most properties had been sold and transferred. The remaining properties were mortgaged. As for loan debts, overdrafts and promissory notes, such debts with some banks had been completely repaid and the accounts closed. Most accounts had not been used and had no movements. Moreover, the banks had not been cooperative in the investigation. The NCCC made another invitation for the respondent to give a statement of facts in January B.E. 2545 (2002) but the respondent failed to appear.

The NCCC therefore resolved that the respondent intentionally failed to submit to the NCCC accounts showing particulars of assets and liabilities and supporting documents as prescribed by the Constitution and intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been revealed in the case of taking office and vacation of office. The NCCC thus made an application to the Constitutional Court for a ruling under section 295 of the Constitution.

The Constitutional Court sent a letter to the respondent offering an opportunity for the respondent to submit a statement in defence of the allegations. However, from the evidence presented, a person in the household accepted the documents on behalf of the respondent and a notice was posted but the respondent did not submit a statement to the Constitutional Court.

2. The issue considered by the Constitutional Court

The Constitutional Court, by a majority of 11 votes by Constitutional Court judges, namely, Mr. Jira Bunpojanasunthorn, Lieutenant General Jul Adirek, Mr. Preecha Chalermwanich, Mr. Mongkol Saradan, Mr. Sujit Bunbongkarn, Mr. Sujinda Yongsunthorn, Mr. Suvit Theerapong, Mr. Anant Ketuwong, Mr. Amorn Raksasat, Mr. Issara Nititanprapas and Mr. U-ra Wangormklang, held that the respondent was within the application of section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Six Constitutional Court judges, namely, Mr. Mongkol Saradan, Mr. Sujit Bunbongkarn, Mr. Sujinda Yongsunthorn, Mr. Anant Ketuwong, Mr. Amorn Raksasat and U-ra Wangormklang held that Mr. Subin Pipornpong, the respondent, intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents and intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been revealed. Four Constitutional Court judges, namely, Mr. Jira Bunpojanasunthorn, Lieutenant General Jul Adirek, Mr. Suvit Theerapong and Mr. Issara Nititanprapas, considered that Mr. Subin Pirapong, 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 revealed. On the other hand, Mr. Preecha Chalermwanich

considered that the facts in the application were insufficient proof that the respondent intentionally concealed facts which should have been revealed.

The four Constitutional Court judges in the minority, namely, Mr. Kramol Thongthammachart, Mr. Chumpol Na Songkla, Mr. Phan Jantrapan and Mr. Sak Techachan, who considered that the respondent was not subject to the application of section 295 of the Constitution, considered further that the case in this application was not proper under section 295 of the Constitution and that the application should be dismissed.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that Mr. Subin Pipornpong, the respondent, intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents and intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been revealed, which constituted an offence under section 295 of the Constitution.
