

# Summary of the Constitutional Court Ruling No. 53/2545

Dated 10<sup>th</sup> October 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 Mr. Saman Nguansam-ang intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.**

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## 1. Background and summarized facts

Mr. Saman Nguansam-ang, the respondent, held office as advisor to the Deputy Minister of Commerce (Mr. Phaitoon Kaewthong) during the government of Mr. Chuan Leekpai from 17<sup>th</sup> February B.E. 2543 (2000). The respondent took office on the same date and vacated office on 18<sup>th</sup> February B.E. 2544 (2001). As a result, the respondent was under a duty to submit to the National Counter Corruption Commission (NCCC), the applicant, an account showing particulars of assets and liabilities for himself, his spouse and his children who had not yet become sui juris. In the case of taking office, such submission had to be made by 17<sup>th</sup> March B.E. 2543 (2000) and in the case of vacation of office, by 19<sup>th</sup> March B.E. 2544 (2001).

The applicant discovered in its examination that the respondent had not submitted to the applicant an account showing particulars of assets and liabilities for himself, his spouse and his children who had not yet become sui juris in the case of taking office as advisor to the Deputy Minister of Commerce (Mr. Phaitoon Kaewthong). The applicant issued notification letters to the respondent requiring the respondent to provide a statement of facts on 3 occasions. The respondent sent a letter, dated 15<sup>th</sup> May B.E. 2544 (2001), explaining to the applicant that the reason for not having submitted the account was due to the overburden of duties and the intention to cease political activities. Subsequently, the respondent sent another letter, dated 21<sup>st</sup> May B.E. 2544 (2001), additionally explaining that the reason behind the non-submission was the non-intention to continue holding office as a political official. The respondent had learnt from news presented by the mass media and from rulings of the Constitutional Court that the non-submission of account would only result in a prohibition from holding any political position for a period of five years as from

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the date of vacation of office pursuant to section 295 of the Constitution. The respondent had not known that there were sanctions under section 119 of the Organic Act on Counter Corruption, B.E. 2542 (1999) which imposed a term of imprisonment not exceeding six months or a fine not exceeding ten thousand baht or to both.

The applicant considered this matter in a meeting on 28<sup>th</sup> June B.E. 2544 (2001) and held that a sufficient deduction could be made from the respondent's statements that the respondent intentionally failed to submit an account showing particulars of assets and liabilities. Hence, a resolution was reached by 7 votes that the respondent intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents as prescribed by the Constitution. The matter was therefore referred to the Constitutional Court for a ruling under section 295 of the Constitution.

## **2. Preliminary issue**

Could this application be accepted by the Constitutional Court for ruling under section 295 of the Constitution?

The Constitutional Court held that, as the NCCC, the applicant, had resolved that Mr. Sman Nguansam-ang, the respondent, intentionally failed to submit an account and referred the matter to the Constitutional Court for a ruling in accordance with section 295 of the Constitution; the application was accepted for consideration.

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

The issue which had to be ruled upon was whether or not Mr. Sman Nguansam-ang intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution.

The respondent submitted to the Constitutional Court in response to the allegations that the reason for not submitting the accounts to the applicant was because he was not aware of the requirement under section 292 (1) of the Constitution of having to submit accounts within 30 days as from the date of taking office as advisor to the Deputy Minister of Commerce (Mr. Phaitoon Kaewthong). The respondent considered that a person who had been appointed as an advisor to the Minister of Commerce or an advisor to the Deputy Minister of Commerce each performed the function of giving advice on the operations of the Ministry of Commerce. Other persons who had been appointed by the Deputy Minister of Commerce (Mr. Phaitoon Kaewthong) similarly did not submit accounts. Moreover, the respondent had taken the office of advisor to the Deputy Minister of Commerce for the first time and had never previously held office as a member of the House of Representatives or a Senator or a political official. After performing duties for slightly more than 11 months, the respondent received a letter from the applicant requesting for reasons for not having submitted an account but not stating that an account should be submitted. When other

advisors of the Deputy Minister of Commerce (Mr. Phaitoon Kaewthong) were asked whether or not they had submitted accounts, they replied that no accounts were submitted and none had received a notification from the applicant. The respondent assumed that it was likely that he was discriminated against and therefore did not submit a statement to the applicant until two more notifications were received from the applicant when an explanation was given that an account was not submitted because of the overburden of duties and the desire to cease political activities. It was later learnt that the non-submission of accounts carried a criminal penalty under section 119 of the Organic Act on Counter Corruption, B.E. 2542 (1999). As a result, the respondent declared an account of assets and liabilities of himself and his wife to the Constitutional Court in order to display his non-intention to conceal assets. It was submitted that the non-submission of an account was caused by a bona fide defect of reasoning after being misled by other people. The respondent therefore requested the Constitutional Court to rule that he did not intentionally fail to submit an account showing particulars of assets and liabilities and supporting documents to the applicant as prescribed by the Constitution.

The Constitutional Court held that a conclusion could be drawn from the facts in the application and the respondent's statement that the respondent did not submit an account showing particulars of assets and liabilities and supporting documents prescribed by section 291 and section 292 of the Constitution to the applicant. From the respondent's statement that there was an overburden of duties and a desire to cease political activities, as well as the fact that there was knowledge of the sanctions for non-submission of accounts to the applicant in terms of disqualification from holding any political position for a period of five years as from the date of vacation of office, it could be inferred that the respondent was already aware of his duty to submit an account showing particulars of assets and liabilities and supporting documents to the applicant as well as the consequences under section 295 of the Constitution of the non-submission of such accounts.

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

The Constitutional Court held that Mr. Sman Nguansam-ang, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution.

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