

Summary of Constitutional Court Ruling No. 12/2550

Dated 26th September B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Tribunal ruling in the case of Mr. Pirawat Thepsuwan's intentional failure to submit accounts of assets and liabilities and supporting documents.

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1. Summary of Background and Facts

The National Counter Corruption Commission (NCCC), the applicant, filed an application dated 10th January B.E. 2550 (2007) in request of a Constitutional Tribunal ruling under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006), and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006), in the case of Mr. Pirawat Thepsuwan's intentional failure to submit accounts of assets and liabilities and supporting documents on the occasions of taking office, leaving office and the expiration of one year after leaving office.

The facts could be summarized as follows. Mr. Pirawat Thepsuwan, the respondent, was a member of the Narathiwat Municipal Assembly. He was elected on 25th December B.E. 2542 (1999) and his term of office expired on 24th December B.E. 2546 (2003).

Due to the coming into force of section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) and the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organizations for the Determination of Local Administrators and Assembly Members of Local Administrative Organization as Political Position Holders, dated 30th December B.E. 2542 (1999), which came into force as of 1st February B.E. 2543 (2000), which prescribed the revenue criteria for such local administrative organization, local administrators and assembly members of local administrative organizations receiving revenues according to such criteria were under a duty to submit accounts of assets and liabilities of themselves, their spouses and children who had not yet become *sui juris* to the NCCC within thirty days as from the date of taking office, leaving office and the expiration of one year after leaving office.

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In the B.E. 2542 (1999) budget year, Narathiwat Municipality collected total revenues of 443,269,003.19 baht, which was in accordance with the criteria prescribed under the Notification of the NCCC. As a result, administrators and assembly members of the Narathiwat Municipality were under a duty to submit accounts of assets and liabilities under section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) within thirty days of taking office, leaving office and the expiration of one year after leaving office.

The respondent was under a duty to submit an account of assets and liabilities and supporting documents to the NCCC on the occasion of taking office within 30 days as from 1st February B.E. 2543 (2000), such submission being due on 1st March B.E. 2543 (2000). The respondent submitted an account of assets and liabilities and supporting documents within the prescribed period but the submission was incomplete. The Office of the NCCC sent a letter to the respondent requiring an explanation of facts as well as the submission of complete supporting documents, and notified the Governor of Narathiwat Province to examine the facts pertaining to the respondent's incomplete submission of account of assets and liabilities and supporting documents. The respondent explained that he was not able to submit the documents in support of the submission of account of assets and liabilities because he was subject to bankruptcy proceedings commenced by his creditors in the Narathiwat Provincial Court and his assets were pending receivership and debt restructuring. Details on the assets and liabilities were therefore incomplete.

As for the submissions of accounts on the occasion of leaving office and the expiration of one year after leaving office, the respondent did not submit accounts on both occasions.

The applicant considered this matter in meeting no. 15/2549, held on 23rd November B.E. 2549 (2006), and decided by a resolution of 7 votes that the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of taking office, leaving office and the expiration of one year after leaving office to the NCCC within the period prescribed under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999). A ruling of the Constitutional Court under section 34 of the Organic Act on Counter Corruption Commission B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006), was therefore requested. The Constitutional Tribunal, after consideration, held that the case was in accordance with section 35 paragraph one of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) and section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006). The case was therefore admitted for trial.

The respondent submitted a statement in reply to the allegations which could be summarized as follows. The respondent was aware of the duty to submit an account of assets and liabilities and supporting documents in connection with his taking office as member of the Narathiwat Municipal Assembly but such submission was not complete and no remedial actions were taken to secure compliance with the law.

During the trial of this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated on 24th August B.E. 2550 (2007). Section 300 of the Constitution provided that the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) became the Constitutional Court.

2. Issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of taking office, leaving office and the expiration of one year after leaving office under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006), and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 300 paragraph one, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court held as follows. Section 4(9) of the Organic Act on Counter Corruption B.E. 2542 (1999) and the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organizations for the Determination of Local Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders, dated 30th December B.E. 2542 (1999), which came into force as of 1st February B.E. 2543 (2000), provided that administrators and assembly members of municipalities having revenues of not less than two hundred million baht were political position holders and were under a duty to submit accounts of assets and liabilities to the National Counter Corruption Commission under section 32 of the Organic Act on Counter Corruption B.E. 2542 (1999). Once the facts in the application, which were not disputed by the respondent, were accepted that Narathiwat Municipality collected 443,269,003.19 baht in revenues in the B.E. 2542 (1999) budget year, and that the respondent was elected as a member of the Narathiwat Municipal Assembly on 25th December B.E. 2542 (1999), such term expiring on 24th December B.E. 2546 (2003), the respondent therefore had the status of a “political position holder” and was under a duty to submit accounts of assets and liabilities to the National Counter Corruption Commission under section 32 in conjunction with section 4(9) of the Organic Act on Counter Corruption B.E. 2542 (1999). The facts under the application which was not objected by the respondent in the statement in reply to the allegations were settled that the respondent was under a duty to submit an account of assets and liabilities and supporting documents to the NCCC within 30 days as from 1st February B.E. 2543 (2000), the due date for such submission being 1st March B.E. 2543 (2000). The respondent had already submitted an account of assets and liabilities and supporting documents but such submission was incomplete. As for the submissions on the occasion of leaving office and the expiration of one year after leaving office, there did not appear to be any submissions made by the respondent to the NCCC within the periods prescribed by law. It was therefore found

on the facts that the respondent intentionally failed to submit complete documents in support of the submission of account of assets and liabilities on the occasion of taking office and intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of leaving office and the expiration of one year after leaving office.

The provisions of section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) were enacted to implement the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Chapter X Inspection of the Exercise of State Powers, Part 1 Declaration of Accounts Showing Particulars of Assets and Liabilities, section 291 and section 292. The essential principle of such provisions was the creation of a system to efficiently and effectively detect corruptions committed by political position holders. It was therefore provided that holders of political positions should submit accounts of assets and liabilities of themselves, their spouses and children who had not yet become *sui juris* at the date of such account submissions as well as the submission of supporting documents consisting of copies of evidence proving the actual existence of such assets and liabilities, including a copy of personal income tax assessments in the preceding tax year. Moreover, section 33 provided for a timeframe of account submissions by political position holders, requiring altogether 3 submissions. The first submission must be made on the occasion of taking office. The second submission must be made on the occasion of leaving office. Finally, the third submission must be made on the occasion of the expiration of one year after leaving office. The purpose of requiring those submissions was to provide the NCCC with information for examining the assets of the political position holders in order to determine whether or not such political position holder had any unusual increases of assets throughout the period of holding the political position and exercise of state powers in administering public affairs. If there was an unusual increase in assets, the NCCC would notify such political position holder, or heir or estate administrator, as the case may be, to give an explanation on the acquisition of such assets for further proceedings as provided in section 38. Unusual increases of assets would become properties of the State. Therefore, the rules and procedures as well as the timeframe under section 32 and section 33 which required compliance of political position holders in relation to the submission of accounts were fundamental rules which all political position holders must be aware of and realize that strict compliance was required. The respondent or any political position holder could not raise ignorance of the law as an excuse to exonerate legal liabilities. Otherwise, the mechanisms for inspecting corruption and wrongdoings of political position holders provided by the Constitution would be rendered ineffective in the proceedings carried out by the NCCC.

3. Ruling of the Constitutional Court

The Constitutional Court therefore held that Mr. Pirawat Thepsuwan, the respondent, intentionally failed to submit complete documents in support of the submission of account of assets and liabilities on the occasion of taking office, and intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of leaving office and the expiration of one year after leaving office. The respondent was prohibited from

taking a political position for a period of five years as of 24th December B.E. 2546 (2003) pursuant to section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006) and section 300 paragraph one, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
