

# Summary of Constitutional Court Ruling No. 20/2550

**Dated 1<sup>st</sup> November B.E. 2550 (2007)\***

**Re: The National Counter Corruption Commission requested for a Constitutional Tribunal ruling in the case of Miss Anong Machamalmas's intentional failure to submit an account 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, submitted an application, dated 20<sup>th</sup> June B.E. 2550 (2007) to the Constitutional Tribunal, stating that Miss Anong Machamalmas, the respondent, holding the position of member of Chumphon Municipal Assembly, was elected on 5<sup>th</sup> November B.E. 2543 (2000) and left office due to the expiration of membership at the end of Chumphon Municipal Assembly's term on 4<sup>th</sup> November B.E. 2547 (2004).

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 Revenues Criteria of Local Administrative Organizations for the Determination of Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders (No. 2) B.E. 2543 (2000), which came into force as of 1<sup>st</sup> December B.E. 2543 (2000), provided the revenues criteria of local administrative organizations resulting in a determination of administrators and assembly members of local administrative organizations raising revenues meeting the criteria prescribed in such notification as political position holders having the duty to submit an account of assets and liabilities of oneself, his/her spouse and children who had not yet become *sui juris* to the NCCC within thirty days on every occasion of taking office, leaving office and the expiration of one year after leaving office.

It was found upon inspection that in the budget year of B.E. 2546 (2003), Chumphon Municipality raised a total revenue of 264,626,969.64 baht, which was in accordance with the criteria prescribed in the Notification of the NCCC. As a result, administrators and assembly members of Chumphon Municipality were under a duty to submit accounts 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, a total of

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\* Published in the Government Gazette Vol. 125, Part 52a, 25<sup>th</sup> March B.E. 2551 (2008).

three submissions. It was also found that the respondent had submitted an account of assets and liabilities on the occasion of taking office to the applicant on 12<sup>th</sup> November B.E. 2546 (2003), but such submission was not properly made. The Office of the NCCC therefore sent a letter to the respondent asking for an explanation of facts as well as the submission of complete supporting documents. The respondent, however, failed to give any explanation. Subsequently, when the respondent left the office of member of Chumphon Municipal Assembly on 4<sup>th</sup> November B.E. 2547 (2004), the period for submission of accounts being due on 3<sup>rd</sup> December B.E. 2547 (2004), and the one year period after leaving office expired on 4<sup>th</sup> November B.E. 2548 (2005), the period for submission of accounts being due on 3<sup>rd</sup> December B.E. 2548 (2005), the respondent also failed to submit accounts for the occasions of leaving office and the expiration of one year after leaving office. The Office of the NCCC sent letters to the respondent asking for explanations of facts for the failures to submit accounts on such occasions, but the respondent failed to give any explanation on such non-submissions.

The applicant issued an order summoning the respondent and related persons, as witnesses, to give statements. The respondent gave a statement to NCCC officials which could be summarized as follows. The reason for the respondent's non-submission of documents and accounts of assets and liabilities on the occasions of leaving office and the expiration of one year after leaving office was because of her decision to refrain from further political participation and a belief that such non-submissions were inconsequential and that she possessed an insubstantial amount of assets. The respondent affirmed that she received notice of the non-submission of accounts of assets and liabilities on the occasions of leaving office and the expiration of one year after leaving office, as well as the non-submission of supporting documents on the occasion of taking office, from all letters of the NCCC, even though she did not receive the letters in person since Miss Waminee Machamalmas, the respondent's younger sister, had compiled the letters and read them to her over the telephone.

The applicant considered this matter and passed a unanimous resolution in meeting no. 36/2550, held on 17<sup>th</sup> May B.E. 2550 (2007), that the respondent intentionally failed to submit an account of assets and liabilities and supporting documents to the applicant within the period prescribed by law on the occasions of taking, leaving and the expiration of one year after leaving the office of membership of Chumphon Municipal Assembly. The applicant therefore requested for 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 30<sup>th</sup> September B.E. 2549 (2006), and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

## **2. Preliminary Issue**

A preliminary issue which had to be considered by the Constitutional Court was whether or not the Constitutional Court had the power to consider this application.

The Constitutional Tribunal had held that this 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 30<sup>th</sup> September B.E. 2549 (2006). The matter was therefore admitted for trial and adjudication and the respondent was given an opportunity to submit a statement in reply to the allegations. The respondent, however, did not submit any statement.

During the proceedings on this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated wherein section 300 provided for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) to become the Constitutional Court and that all cases or matters pending proceedings in the Constitutional Tribunal would be resumed by the Constitutional Court. The case under this application was therefore within the trial and adjudication powers of the Constitutional Court.

### **3. Issue Considered by the Constitutional Court**

The issue considered by the Constitutional Court was whether or not Miss Anong Machamalmas, the respondent, intentionally failed to submit accounts of assets and liabilities and supporting documents to the applicant on the occasions of taking office, leaving office and the expiration of one year after leaving office as provided 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 30<sup>th</sup> September B.E. 2549 (2006).

Once it was found that Chumphon Municipality raised an aggregate amount of 246,626,969.64 baht in revenues in the budget year B.E. 2546 (2003), the municipality was therefore a local administrative organization which had revenues meeting the criteria prescribed by Notification of the National Counter Corruption Commission Re: Prescription of Revenues Criteria of Local Administrative Organizations for the Determination of Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders (No. 2) B.E. 2543 (2000), dated 18<sup>th</sup> October B.E. 2543 (2000). Such notification provided that where a municipality had revenues of not less than two hundred million baht, the administrators and assembly members would become political position holders who were under a duty to submit accounts of assets and liabilities to the NCCC. Miss Anong Machamalmas, the respondent was a member of Chumphon Municipal Assembly and she took office on 5<sup>th</sup> November B.E. 2543 (2000). Chumphon Municipality raised revenues of not less than two hundred million baht in the budget year B.E. 2546 (2003). The respondent was therefore a political position holder who was under a duty to submit accounts of assets and liabilities on every occasion of taking office, leaving office and the expiration of one year after leaving office under section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999). The respondent was required to

submit an account on the occasion of taking office within thirty days as from 1<sup>st</sup> October B.E. 2546 (2003). The respondent submitted an account on only one occasion, being the occasion of taking office. Such submission was made on 12<sup>th</sup> November B.E. 2546 (2003), but the documents supporting the account of assets and liabilities were not properly and completely submitted. When the respondent left office and at the expiration of one year after leaving office, the respondent did not make any submission of account of assets and liabilities and supporting documents. Moreover, when the Constitutional Tribunal admitted the application for trial and adjudication, an opportunity was given to the respondent to reply to the allegations, but the respondent did not submit any statement in reply. The Constitutional Court therefore found that the respondent intentionally failed to submit documents supporting the account of assets and liabilities on the occasion of taking office, and failed to submit accounts on the occasions of leaving and the expiration of one year after leaving the office of member of Chumphon Municipal Assembly.

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

By virtue of the reasons stated above, the Constitutional Court ruled that Miss Anong Machamamalmas, the respondent, intentionally failed to submit supporting documents for the account of assets and liabilities on the occasion of taking office, and 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 holding a political position for a period of five years as from 4<sup>th</sup> November B.E. 2547 (2004) 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 30<sup>th</sup> September B.E. 2549 (2006).

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