

Summary of Constitutional Court Ruling No. 21/2550

Dated 1st November B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Tribunal ruling in the case of Mr. Chalerm Laosuwan'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 Chairman of the National Counter Corruption Commission (NCCC) (the applicant) submitted an application to the Constitutional Tribunal in request of a ruling in the case of an intentional failure by Mr. Chalerm Laosuwan (the respondent), member of Songkhla Provincial Administrative Organization Assembly, to submit an account of assets and liabilities and supporting documents on the occasion of the expiration of one year after leaving office under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999).

In the budget year B.E. 2542 (1999), Songkhla Provincial Administrative Organization raised a total amount of 153,448,355.61 baht in revenues, which was within the criteria prescribed by the Notification of the NCCC Re: Prescription of Revenue Criteria of Local Administrative Organizations for the Determination of Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders, dated 30th December B.E. 2542 (1999). As result, members of local provincial administrative organizations having revenues of not less than one hundred million baht were under a duty to submit accounts.

The respondent was elected as a member of Songkhla Provincial Administrative Organization Assembly on 5th February B.E. 2543 (2000), and left office at the expiration of term on 4th February B.E. 2547 (2004). The respondent was therefore a political position holder who was under a duty to submit accounts to the applicant. It was found on the facts that the respondent had made two submissions of accounts. The submission on the occasion of taking office made on 3rd March B.E. 2543 (2000) and the submission on the occasion of leaving office made on 4th February B.E. 2547 (2004). As for the occasion of the expiration of one year after leaving office on 4th February B.E. 2548 (2005), the submission of account of assets and liabilities and supporting documents was due on 5th March B.E. 2548 (2005). However, the respondent did not submit any account of assets and liabilities and supporting

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documents. During the proceedings carried out by the applicant, the respondent gave reasons for the non-submission to the applicant that the respondent had not submitted an account on the occasion of the expiration of one year after leaving office because the respondent believed that there was no significance in making such a submission, and that the respondent was aware that non-submission of the account of assets and liabilities and supporting documents carried a criminal penalty and a prohibition from political involvement for a period of 5 years. The respondent was of the opinion that the penalty was slight and did not think he was going to have any further involvement in local politics. Thus, the respondent did not submit an account of assets and liabilities and supporting documents, with a real intention of not submitting an account of assets and liabilities and supporting documents for the said occasion. As for the letter sent by the Office of the NCCC, the respondent became aware from an inquiry of persons in his household that there was such a letter sent to his residence but thought that there was no significance in the document. The respondent therefore did not read the letter sent by the Office of the NCCC.

The applicant requested for a Constitutional Tribunal ruling that the respondent intentionally failed to submit an account of assets and liabilities and supporting documents on the occasion of 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).

2. Preliminary Issue

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

After consideration, it was 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 Constitutional Tribunal therefore had the power to consider this application.

3. Issue Considered by the Constitutional Court

The issue which had to be decided was whether or not the respondent intentionally failed to submit an account of assets and liabilities and supporting documents on the occasion of 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).

After consideration, the Constitutional Court held as follows. 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 adjudicative jurisdiction of the Constitutional Court. In addition, it was found that Songkhla Administrative Organization in the budget year B.E. 2542 (1999) raised a total amount of 153,448,355.61 baht in revenues. Thus, the local administrative organization was deemed as having revenues meeting the criteria prescribed by the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria of Local Administrative Organizations for the Determination of Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders, dated 30th December B.E. 2542 (1999). Administrators and assembly members of Songkhla Provincial Administrative Organization were deemed as political position holders and were under a duty to submit accounts of assets and liabilities and supporting documents to the NCCC within thirty days 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).

From the application and documents of the applicant and the respondent's statement in reply to the allegations, it was settled on the facts that the respondent left the office of member of Songkhla Provincial Administrative Organization on 4th February B.E. 2547 (2004) due to the termination of membership at the term expiration of the Songkhla Provincial Administrative Organization. The respondent submitted an account of assets and liabilities and supporting documents to the applicant on the occasion of taking office on 3rd March B.E. 2543 (2000) and on the occasion of leaving office on 4th March B.E. 2547 (2004). As for the occasion of the expiration of one year after leaving office, on which occasion the submission of account was due on 5th March B.E. 2548 (2005), the respondent did not make any submission of account. The applicant sent a letter to the respondent requesting an explanation of facts for the non-submission of account on the occasion of the expiration of one year after leaving office, as well as directed competent officials of the NCCC to collect additional evidence. In the collection of evidence and interrogation of witnesses, including the respondent, the respondent gave a statement to the applicant stating that the respondent was aware of his duty to submit an account to the applicant on all three occasions, i.e. taking office, leaving office and the expiration of one year after leaving office, because he had attended a lecture delivered by competent officials of the NCCC on the submission of accounts, and the respondent had submitted accounts on the occasion of taking office and on the occasion of leaving office but did not submit an account on the occasion of the expiration of one year after leaving office. The respondent thought there was no significance attached to such submission and was aware that the non-submission of account carried criminal penalties and a prohibition from political involvement for a period of five years. However, the respondent was of the opinion that the penalties were slight and thought that he would

not have any further involvement in local politics, with the intention to not actually submit an account on such occasion. The Constitutional Court therefore found that the respondent intentionally failed to submit an account of assets and liabilities and supporting documents to the NCCC on the occasion of the expiration of one year after leaving the office of member of Songkhla Provincial Administrative Organization Assembly.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that Mr. Chalerm Laosuwan, the respondent, intentionally failed to submit an account of assets and liabilities and supporting documents on the occasion of the expiration of one year after leaving office and that the respondent should be prohibited from holding a political position for a period of five year as from 4th February 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 30th September B.E. 2549 (2006).
