

Summary of Constitutional Court Ruling No. 25/2550

Dated 20th December B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Tribunal Ruling in the case of an intentional failure by Mr. Pornthep Silaraeng, member of Saraburi 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.

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1. Summary of Background and Facts

The National Counter Corruption Commission (NCCC), the applicant, submitted an application dated 27th July B.E. 2550 (2007) to the Constitutional Tribunal in request of a ruling that Mr. Pornthep Silaraeng, 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) and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

The respondent held office as member of Saraburi Provincial Administrative Organization Assembly, being elected on 5th February B.E. 2543 (2000), and retired from office due to the termination of membership at the expiration of term of the Saraburi Provincial Administrative Organization Assembly on 4th February B.E. 2547 (2004). The respondent made only two submissions of accounts, the submission of account on the occasion of taking office made on 3rd March B.E. 2543 (2000) and the submission of account on the occasion of leaving office made on 5th March B.E. 2547 (2004). As for the occasion of the expiration of one year after leaving office, which was due within thirty days as from 4th February B.E. 2548 (2005), the respondent did not make any submission of account and supporting documents to the applicant within the period prescribed by law. The Office of the NCCC therefore sent a total of three letters to the respondent requiring a statement of facts, but it did not appear that the respondent gave any explanation for the non-submission.

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The applicant issued an order summoning the respondent to give a statement. The respondent gave a statement to the applicant stating that the reason for the respondent's non-submission of account on the occasion of the expiration of one year after leaving the office of member of Saraburi Provincial Administrative Organization Assembly for the term B.E. 2543 (2000) was because the respondent was unable to gather documents relating to his spouse's assets. Due to strained relations between the respondent's father and his spouse's father, the respondent did not maintain contacts with his spouse. The respondent was aware of his duties to submit accounts to the applicant, having received 2-3 letters from the Office of the NCCC around the year B.E. 2548 (2005) requiring an explanation of facts, and was aware that failure to submit accounts carried a prohibition from holding a political position for a period of five years as well as criminal penalties.

The applicant considered this matter in meeting no. 39/2550 held on 29th May B.E. 2550 (2007) and passed a unanimous resolution 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 occasion of the expiration of one year after leaving the office of member of Saraburi Provincial Administrative Organization Assembly as required 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). The matter was therefore submitted to the Constitutional Tribunal for trial and adjudication.

The Constitutional Tribunal gave an opportunity to the respondent to submit a statement in reply to the allegations. The respondent submitted a statement in reply to the allegations, dated 27th August B.E. 2550 (2007), to the Constitutional Court which could be summarized as follows. In the budget year B.E. 2542 (1999), there were events which caused ill feeling between the respondent's parents and his spouse's parents. As a result, the respondent lived separately from his spouse. The respondent once made copies of documents pertaining to his spouse's assets and prepared an account on the occasion of taking office as member of Saraburi Provincial Administrative Organization Assembly, which was already submitted to the applicant. Subsequently, the relationship was strained between the respondent's spouse and the respondent, the former refusing to provide copies of documents relating to her assets. Thus, the respondent was unable to prepare accounts pertaining to his spouse's assets for submission to the applicant on the occasion of leaving office in B.E. 2547 (2004) and on the occasion of taking office for another term in B.E. 2547 (2004). The respondent therefore submitted accounts of only his own assets and liabilities. Later, after the respondent received warning letters from the applicant on the submission of accounts and after the respondent gave a statement to the applicant on 3rd April B.E. 2550 (2007), the respondent made several attempts to request copies of documents relating to his spouse's assets, but such consent of his spouse was not given. In April B.E. 2550 (2007), the respondent's father suffered from diabetic symptoms and was frequently admitted for treatment at the hospital until doctors had to amputate his feet, which required care from the respondent until this case was filed. The respondent therefore pleaded with the advisor to the

Chairman of Saraburi Provincial Administrative Organization to assist him in obtaining copies of documents pertaining to his spouse's assets. Once those documents were obtained, the respondent submitted an account for the occasion of the expiration of one year after leaving office and submitted supplemental accounts for the occasion of leaving office in B.E. 2547 (2004) and the occasion of taking office for the B.E. 2547 (2004) term, such submissions being made on 27th August B.E. 2550 (2007).

2. Preliminary Issue

The preliminary issue which had to be decided was whether or not the Constitutional Court had the power to consider this application.

The Constitutional Court held as follows. Whilst pending 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 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).

The final finding of facts from the application and supporting documents submitted by the applicant, and from the respondent's statement in reply to the allegations, could be summarized as follows. The respondent retired from the office of member of Saraburi Provincial Administrative Organization Assembly on 4th February B.E. 2547 (2004) due to the termination of membership at the expiration of Saraburi Provincial Administrative Organization Assembly's term. The respondent made two account submissions, the submission on the occasion of taking office was made on 3rd March B.E. 2543 (2000) and the submission on the occasion of leaving office was made on 5th March B.E. 2547 (2004). As for the occasion of the expiration of one year after leaving office, in which case the submission of account and supporting documents to the applicant had to be made within thirty days as from 4th February B.E. 2548 (2005), the respondent did not submit an account and supporting documents to the applicant within the period prescribed by law. As for the excuse raised by the respondent for the non-submission, which was a result of his inability to gather documents relating to his spouse's assets, due to strained relations between the respondent's parents and his spouse's parents, thus hindering communications between the

respondent and his spouse, the Constitutional Court found that the provisions of section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) laid down rules and procedures, as well as the timeframe, requiring undertakings by the political position holder in relation to the submission of accounts were fundamental rules which all political position holders had to be aware of as well as appreciate that strict compliance of those duties were required. It was therefore unacceptable for the respondent or any political position holder to invoke family relationships or conflicts, and personal reasons as excuses from an intentional violation of such provisions of law in order to avoid legal liabilities. To hold otherwise would undermine the efficiency of NCCC's scrutiny exercised through the mechanisms for detecting corruption and wrongful acts of political position holders as provided by the Constitution. This argument raised by in the respondent's statement was therefore unsustainable.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that Mr. Pornthep Silaraeng, 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 was prohibited from holding a political position for a period of five years 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).
