

# Summary of the Constitutional Court Ruling No. 1/2542

Dated 11<sup>th</sup> February B.E. 2542 (1999)\*

**Re : Twelve members of the House of Representatives submitted an appeal to the Constitutional Court objecting to the resolution of the Prachakorn Thai Party which removed their names from membership register of the Prachakorn Thai Party pursuant to section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## 1. Background and summarized facts

Mr. Wattana Assawahem with his company of twelve members of the House of Representatives from the Prachakorn Thai Party, the applicants, submitted an appeal to the Constitutional Court, dated 12<sup>th</sup> October B.E. 2541 (1998), requesting the Constitutional Court to rule that the resolution of Prachakorn Thai Party, dated 10<sup>th</sup> October B.E. 2541, which removed the applicants' names from the membership register of the Prachakorn Thai Party causing the House of Representatives memberships of the applicants to terminate under section 118(8) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was an improper resolution for being inconsistent with the status and the performance of duties of members of the House of Representatives or for being contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of State as stated in section 47 paragraph three and section 47 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## 2. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the resolution of the Prachakorn Thai Party which removed the applicants' names from the Prachakorn Thai Party membership register was contrary to or inconsistent with the principles under section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that "members of the House of Representatives who are members of a political

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party, shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, have the right to refer it to the Constitutional Court for decision thereon." Such a provision entitled members of the House of Representatives to submit an application for a Constitutional Court ruling on two issues, namely, first of all on whether or not the resolution or regulation of their political party was contrary to the status and performance of duties of members of the House of Representatives under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and secondly, on whether or not the resolution or regulation on any matter of their political party was contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State.

From the facts, it appeared that the essential reason behind Prachakorn Thai Party's resolution to remove the applicants from the membership register of the Prachakorn Thai Party was the applicants' violation of a party resolution in forming a government coalition with Democrat Party and the applicants did not comply with the resolution of the party's Executive Committee when voting in the House of Representatives.

After consideration, it was brought to light that the applicants, who were members of the House of Representatives from Prachakorn Thai Party, supported the appointment of Mr. Chuan Leekpai as Prime Minister from 7<sup>th</sup> November B.E. 2540 (1997). On 9<sup>th</sup> November B.E. 2540 (1997), Mr. Chuan Leekpai became the Prime Minister by Royal appointment. On 14<sup>th</sup> November B.E. 2540 (1997), the Council of Ministers received its Royal appointment, which also consisted of the first applicant, the second applicant, the third applicant and the fourth applicant as Ministers. On 15<sup>th</sup> November B.E. 2540 (1997), the Council of Ministers met the King to give their solemn declaration prior to taking office. On 20<sup>th</sup> November B.E. 2540, after the applicants had already joined the government, Prachakorn Thai Party claimed that it had reached a resolution in meeting No. 6/2540 that the party would not participate in the government of Mr. Chuan Leekpai. Hence, when the applicants joined the government, Prachakorn Thai Part had not yet reached a resolution to not join the government. Nevertheless, under the then applicable regulations of the party, Chapter 9 on Forming a Government, article 34 only stated that it was within the powers of the Executive Committee to determine the individuals that would take up offices in the Council of Ministers in the case of forming a government or joining a governing coalition with other political parties. Under the prevailing regulations, no provision was made for the powers of formation of a government by the Party Executive Committee. As a result, the applicants could not be held to have violated the party's regulations or resolution of the Executive Committee.

As for the case of not complying with the resolution of the Party Executive Committee when voting in the House of Representatives, article 36 of the Prachakorn Thai Party's

regulation stated that voting in the House of Representatives should be in accordance with the resolution of the party's members of the House of Representatives. The Executive Committee did not have the power to resolve that a member of the House of Representatives should cast a vote of confidence or a vote of no-confidence in the Government because that was a direct performance of duty by a member of the House of Representatives. In this regard, even the party's regulation provided for the votes to be in accordance with the resolution of the party's members of the House of Representatives. Therefore, it could not be considered in this case that the applicants did not comply with the Party Executive Committee's resolution.

Another issue considered was whether or not the Prachakorn Thai Party's resolution to remove the applicants' names from the membership register of Prachakorn Thai Party bore the elements in section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Firstly, as regards whether or not a resolution or regulation on any matter of a political party was contrary to or inconsistent with the status and performance of duties of a member of the House of Representatives under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that section 149 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that members of the House of Representatives were representatives of the Thai people and should honestly perform their duties for the common interest of the Thai people. The Prachakorn Thai Party's resolution which removed the applicants' names from the membership register of Prachakorn Thai Party resulted in the termination of the membership to the House of Representatives as from the date of the resolution of the political party under section 118(8) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This was equivalent to the termination of the Thai people's representation and a hindrance to the performance of duties for the common interest of the Thai people. Such a resolution was therefore an apparent inconsistency with the status and the performance of duties of the members of the House of Representatives.

Secondly, regarding whether or not a resolution or regulation on any matter of a political party was contrary to or inconsistent with the fundamental principle of the democratic regime of government with the King as Head of the State, the Constitutional Court held the following opinion on the allegations that the applicants did not comply with the party's resolution in the case of entering their signatures in support of Mr. Chuan Leekpai to become the Prime Minister and in order to join the government. The facts revealed that subsequent to the resolution in support of General Chatchai Chunchawan to become the Prime Minister, there was a change in circumstances as two of the six political parties who once passed a joint resolution to form a government with General Chatchai Chunchawan as Prime Minister announced their withdrawal from the coalition to revert their support to Mr. Chuan Leekpai to become the Prime Minister. The original resolution was therefore expired and compliance no longer required. When the majority of the Prachakorn

Thai Party's members of the House of Representatives, 14 members, from the total of 18 members of the House of Representatives, who were representatives of the Thai people, considered that there was an urgent necessity to support Mr. Chuan Leekpai as Prime Minister in order to remedy the crisis in the State's affairs, such a matter was one which the political party should accept under the fundamental principles of a democratic regime. The resolution to remove the applicants' names from the Prachakorn Thai Party's membership register for the above reasons was therefore contrary to or inconsistent with the fundamental principle of the democratic regime with the King as Head of the State.

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

By virtue of the reasons stated above, the Constitutional Court held that the resolution of Prachakorn Thai party which removed the applicants' names from the Prachakorn Thai Party membership register was contrary to or inconsistent with the principles under section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Other requests in this application did not have to be considered.

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