

# **Summary of Constitutional Court Ruling No. 4/2549**

**Dated 16<sup>th</sup> February B.E. 2549 (2006)\***

**Re: The President of the Senate referred a petition submitted by senators to the Constitutional Court for a ruling that the ministerial office of the Prime Minister had terminated under the Constitution.**

.....

## **1. Summary of Background and Facts**

The President of the Senate submitted the petition of Senator Mr. Kaewsan Atipoti and others numbering a total of twenty-eight persons, dated 6<sup>th</sup> February B.E. 2549 (2006), to the Constitutional Court for a ruling that the ministerial office of the Prime Minister had terminated under section 96 in conjunction with section 216 and section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The facts under the application and documents supporting the application could be summarized as follows.

Section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) prohibited a minister from holding shares in any company over the limit prescribed by law, i.e. five percent, or if the shares were already held, the Minister should not continue to hold those shares. However, if the Minister still wished to retain his/her interests in the shares, the Chairman of the National Counter Corruption Commission should be given notice of such intention within thirty days as from the date of appointment and such shares should be transferred to an asset management juristic person for the further management of such assets, after which the Minister should no longer have any involvement in the management of such shares or the businesses of such company. The provisions of the Constitution which attempted to discontinue the relationship between the Minister and the shares of the company should therefore be interpreted to achieve such unqualified results. The retention of this relationship by a Minister, whether directly or indirectly, was prohibited under section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

Evidence was found that figures had been fabricated in order to evade the rules on shareholding in excess of twenty-five percent under the laws on securities and exchange, which provided that once a person held shares in an aggregate amount exceeding twenty-five percent, the minority shareholders would receive protection by having the right to offer their

---

\* Published in the Government Gazette, Vol. 123, Part 56a, dated 31<sup>st</sup> May B.E. 2549 (2006)

shares for sale to such person at the same price. The Prime Minister had a strong and firm intention of retaining his control over the management of the family's Shin Corporation shares, especially Shin Corporation shares held by Ample Rich, concealed since the year B.E. 2542 (1999) in a money-laundering island which was devoid of any real investments. When notification of the transfer of shares to his children was required, the Prime Minister made further concealments, and no specific information was given in the notice to the National Counter Corruption Commission.

This case required merely the inquisitorial powers of the Constitutional Court to probe the questions and suggested solutions. The important procedural problem, therefore, was the fact that the Constitutional Court in this case was under a duty to act as if it were the Election Commission in an election case, assuming the functions of an investigation official, state attorney and court in one body. The Constitutional Court would have complete powers to find evidence as provided under section 265 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and could order the relevant agencies to submit documents or carry out any investigations. The Constitutional Court could order the Anti-Money Laundering Commission to investigate the financial transactions of a suspect, the Ministry of Foreign Affairs to examine the incorporation documents of Ample Rich at its country of establishment, and the Constitutional Court could also subpoena essential documents from all persons, or establish a special working group to carry out any investigation.

From the first and second terms in office of the Prime Minister, founder of Shin Corporation, which extended over five years, the senators filing this petition had continually monitored this Minister's activities to determine whether there was an actual detachment from the shares and businesses of the company, but no clear evidence had been obtained. At the same time, the senators had witnessed a number of government measures which specifically and continually conferred benefits to subsidiary companies of the Shin Corporation Group, whether in telecommunications, airlines and television businesses domestically and overseas, resulting in a significant increase in the value of such assets. Finally, when such assets, i.e. shares held by the Shinawatra and Damapong families, were sold to the Singapore and Thai capital groups, a financial benefit of up to 73,300 million baht was acquired.

The applicant had conducted studies and compiled evidence in the order of their discovery for a decision on whether or not the circumstances of this Minister still retained "control" over the company. It was found that there was sufficient evidence and concrete clues at present to submit an application for the Constitutional Court to exercise its powers to conduct a fact-finding inquiry in order to make it evident that this Prime Minister was for the whole time still involved in the management of shares and businesses of the company since taking office as Prime Minister from the first term through the second term, and to rule under the powers and duties of the Constitutional Court under section 216(6) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) that the Prime Minister's ministerial office had terminated.

## **2. Preliminary Issue**

The preliminary issue was whether or not the President of the Senate's referral of petition submitted by 28 senators to the Constitutional Court for a ruling on the termination of ministerial office of the Prime Minister under section 96 in conjunction with section 216 and section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was admissible by the Constitutional Court for ruling.

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

After examination of the application and supporting documents submitted by the applicant, the Constitutional Court held that it had the power to rule on the termination of ministerial office of the Prime Minister in the event of the commission of a prohibited act under section 216 in conjunction with section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), in which case the applicant had to present facts and circumstances pertaining to the accused, who was the Prime Minister, as well as reasonably clear evidence to the Constitutional Court. As regards the applicant's request for the Constitutional Court to conduct its own inquiry, even though it was recognized that the Constitutional Court had the power to subpoena relevant documents or evidence from any person, or summon any person to testify in the interest of the proceedings as provided under section 265 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), nonetheless the trial proceedings of the Constitutional Court required an inquiry which was principally in keeping with the clear and unambiguous allegations presented in the application, and that a copy of the application had to be sent to the respondent to enable the latter to submit a statement in reply of the allegations. The issues of the case would then be determined and evidence would be examined according to the issues in the application. In any case, the application had to be sufficiently clear for the respondent to understand the allegations as to how the offence under section 216 paragraph one subparagraph (6) in conjunction with section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had been committed. This application, however, failed to show that the acts of the Prime Minister was characteristic of management with respect to the shares or businesses of a partnership or company, or a retention of partnership interests or shareholding in any partnership or company in excess of the limit prescribed by law, or a failure to notify the Chairman of the National Counter Corruption Commission in the case of the Prime Minister's intention to receive benefits as a partner or shareholder in a partnership or company or to continue to retain partnership interests or shareholdings in a partnership or company, which was an essential condition for a ruling that the ministerial office of the Prime Minister terminated under section 216 paragraph one subparagraph (6) in conjunction with section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The applicant's application also failed to state the relevant facts or circumstances which showed how the Prime Minister had violated section 216 paragraph one subparagraph (6) in conjunction with section 209 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Thus, the application was not made in accordance with clause 6 of the Rules of the Constitutional Court on Constitutional

Court Procedures B.E. 2546 (2003), which stated that “an application must be made in writing using polite words and containing the following items... (3) a specification of the matter which constitutes the cause for exercising the right, including the relevant facts and circumstances; (4) a request specifying an intention for the Court to proceed in a certain manner as well as clear supporting reasons,” in conjunction with clause 12 paragraph two which stated that “upon issuing a Court order to accept the application under paragraph one, the Court may concurrently issue an order to accept the application for trial or dismiss the application.” Such Rules of the Constitutional Court were issued under section 269 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). As a result, the Constitutional Court was unable to admit the application for ruling. Nevertheless, this did not prejudice the rights of the applicants in their capacities as senators to file another petition to the President of the Senate if sufficient relevant facts or circumstances became evident for the Constitutional Court to admit the application for ruling under section 209 and section 216 paragraph one subparagraph (6) and paragraph two in conjunction with section 96 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

---