

# Summary of Constitutional Court Ruling No. 12-14/2553 (2010)

Dated 3<sup>rd</sup> November B.E. 2553 (2010)\*

**Re: Whether or not senators and members of the House of Representatives violated a prohibition which caused their memberships to terminate under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)?**

.....

## 1. Summary of background and facts

The Election Commission reached a decision to refer a matter to the President of the Senate and President of the House of Representatives for the submission of applications to the Constitutional Court for a ruling on the membership of forty-five senators and members of the House of Representatives. It was alleged that those persons had violated prohibitions under the Constitution of the Kingdom of Thailand thereby causing their memberships of the Senate and House of Representatives to terminate under section 91 paragraph three, section 119(5) and section 106(6) in conjunction with section 265 paragraph one (2) and (4) and section 48. The President of the Senate and President of the House of Representatives subsequently submitted a total of 3 applications of the Election Commission to the Constitutional Court for a ruling on whether or not the Senate membership of 16 persons and House of Representatives membership of 29 persons terminated under the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found that all three applications raised the same issues. An order was therefore given to consolidate case no. 26/2552 (2009), case no. 28/2552 (2009) and case no. 44/2552 (2009) into one trial in order to facilitate proceedings. The President of the Senate was referred to as the first applicant and the President of the House of Representatives as the second and third applicants. The 16 Senators constituting the respondents in case no. 26/2552 (2009) were referred to as the first to sixteenth respondents. The 13 members of the House of Representatives constituting the respondents in case no. 28/2552 (2009) were referred to as the seventeenth to twenty-ninth respondents. The 16 members of the House of Representatives constituting the respondents in case no. 44/2552 (2009) were referred to as the thirtieth to forty-fifth respondents.

## 2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit these applications for trial and adjudication under section 91 of the Constitution of

---

\* Published in the Government Gazette Vol. 128, Part 15 a , dated 9<sup>th</sup> March B.E. 2554 (2011).

the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found as follows. Upon the Election Commission finding that all forty-five respondents had committed a violation of a prohibition under section 265 paragraph one (2) and (4) in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) thereby causing the membership of all forty-five senators and members of the House of Representatives to terminate under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and after passing a resolution to refer the matter to the President of the Senate and President of the House of Representatives followed by submissions by the Presidents of both Houses to the Constitutional Court, the case was in accordance with section 91 paragraph three of the Constitution in conjunction with article 17(3) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore had the competence to admit all three applications for trial and adjudication.

### **3. Summary of reply statement and inquisitorial proceedings**

The following facts appeared in the application, reply statement and inquisitorial proceedings.

During the trial proceedings, Mr. Suthep Thaugsuban, the seventeenth respondent, resigned from membership of the House of Representatives on 17<sup>th</sup> July B.E. 2552 (2009). The Constitutional Court therefore ordered the expungement of the case only in regard to the seventeenth respondent from the dockets.

The shareholdings of all forty-four respondents were as follows. The first respondent, by her spouse, held shares in True Corporation Public Company Limited. The second respondent held shares in TPI Polene Public Company Limited. The third respondent and his spouse held shares in Sahacogen (Chonburi) Public Company Limited. The fourth respondent, by his spouse, held shares in TPI Polene Public Company Limited. The fifth respondent, by her spouse, held shares in PTT Chemical Public Company Limited. The sixth respondent, by his spouse, held shares in Ratchaburi Electricity Generating Holding Public Company Limited. The seventh respondent, by his spouse, held shares in Bangkok Expressway Public Company Limited. The eighth respondent held shares in Thaicom Public Company Limited. The ninth respondent held shares in PTT Public Company Limited. The tenth respondent, by her spouse, held shares in TPI Polene Public Company Limited, PTT Chemical Public Company Limited, Thaicom Public Company Limited and TT&T Public Company Limited. The eleventh respondent held shares in PTT Public Company Limited, PTT Exploration and Production Public Company Limited and Electricity Generating Public Company Limited. The twelfth respondent held shares in Bangkok Mass Transit System Public Company Limited and his spouse held shares in PTT Chemical Public Company Limited. The thirteenth respondent, by her spouse, held shares in TPI Polene Public Company Limited. The fourteenth respondent held shares in Shin Corporation Public Company Limited. The fifteenth respondent and his spouse held shares in TT&T Public

Company Limited and his spouse held shares in PTT Public Company Limited, True Corporation Public Company Limited and PTT Exploration and Production Public Company Limited. The sixteenth respondent held shares in TPI Polene Public Company Limited, PTT Chemical Public Company Limited and her spouse held shares in Manager Company Limited. The eighteenth respondent held shares in Total Access Communication Public Company Limited and Bangkok Expressway Public Company Limited. The nineteenth respondent held shares in PTT Public Company Limited, PTT Exploration and Production Public Company Limited and his son held shares in Nation Multimedia Group Public Company Limited. The twentieth respondent held shares in Total Access Communication Public Company Limited. The twenty-first respondent held shares in MCOT Public Company Limited. The twenty-second respondent held shares in Electricity Generating Public Company Limited. The twenty-third respondent held shares in Electricity Generating Public Company Limited. The twenty-fourth respondent held shares in TPI Polene Public Company Limited and his spouse held shares in True Corporation Public Company Limited, Thaicom Public Company Limited, TT&T Public Company Limited and Jasmine International Public Company Limited. The twenty-fifth respondent, by his spouse, held shares in True Corporation Public Company Limited and Glow Energy Public Company Limited. The twenty-sixth respondent, by his spouse, held shares in PTT Public Company Limited. The twenty-seventh respondent, by her spouse, held shares in Bangkok Metro Public Company Limited. The twenty-eighth respondent, by his spouse, held shares in PTT Public Company Limited. The twenty-ninth respondent held shares in True Corporation Public Company Limited and TT&T Public Company Limited. The thirtieth respondent, by his spouse, held shares in PTT Exploration and Production Public Company Limited. The thirty-first respondent held shares in PTA Construction Company Limited. The thirty-second respondent, by his spouse, held shares in Bangkok Expressway Public Company Limited. The thirty-third respondent held shares in PTT Public Company Limited, PTT Exploration and Production Public Company Limited, Siam Cement Public Company Limited and Siam City Cement Public Company Limited. The thirty-fourth respondent, by his spouse, held shares in PTT Exploration and Production Public Company Limited. The thirty-fifth respondent held shares in TPI Polene Public Company Limited and TT&T Public Company Limited. The thirty-sixth respondent held shares in TT&T Public Company Limited. The thirty-seventh respondent held shares in PTT Public Company Limited, Shin Corporation Public Company Limited, Thaicom Public Company Limited, Banpu Public Company Limited, Silamaneer Marble Company Limited, Sahacogen (Chonburi) Public Company Limited, Internet Thailand Public Company Limited, Econnews Company Limited, Advanced Info Service Public Company Limited, United Communication Industry Public Company Limited and Siam Cement Public Company Limited. The thirty-eighth respondent held shares in Asia Cement Public Company Limited. The thirty-ninth respondent held shares in Glow Energy Public Company Limited. The fortieth respondent, by his spouse, held shares in PTT Exploration and Production Public Company Limited and IRPC Public Company Limited. The forty-first respondent held shares in Shin Corporation Public Company Limited, Thaicom Public Company Limited and CS Loxinfo Public Company Limited. The forty-second respondent held shares in PTT Public Company Limited, PTT Exploration and Production

Public Company Limited and MCOT Public Company Limited. The forty-third respondent, by his spouse, held shares in True Visions Public Company Limited. The forty-fourth respondent held shares in TT&T Public Company Limited. Lastly, the forty-fifth respondent held shares in PTT Exploration and Production Public Company Limited, TPI Polene Public Company Limited and True Corporation Public Company Limited.

#### **4. The issues considered by the Constitutional Court**

**The first issue** was whether or not the proceedings and decision of the Election Commission were lawful.

The Constitutional Court found as follows. Section 236(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Election Commission to have the power to conduct fact-finding investigations and give decisions on problems or objections arising under the Organic Act on Election of Members of the House of Representatives and Installation of Senators B.E. 2550 (2007), Organic Act on Political Parties B.E. 2550 (2007), Organic Act on Election Commission B.E. 2550 (2007) and Organic Act on Referendums B.E. 2552 (2009). Thus, the Election Commission's conduct of fact-finding investigations and decisions on problems or objections had to be subject to section 24 paragraph two of the Organic Act on Election Commission B.E. 2550 (2007). In other words, the Election Commission had to give the applicant, challenged person or alleged person an opportunity to know the cause of application, challenge or allegation, to submit a written statement of facts and evidence as well as to have an opportunity to give an oral statement to the Election Commission. In the case where the applicant, challenged person or alleged person did not submit a written statement of facts, evidence or appeared in person to give an oral statement as determined by the Election Commission without reasonable cause, such person shall be deemed as having waived the right to submit a statement, present evidence or give an oral statement and the Election Commission would be able to proceed with further proceedings. The aforesaid principles were also provided in article 43 of the Rules of the Election Commission on Investigations and Decisions B.E. 2550 (2007). The exercise of powers by the Election Commission to conduct an investigation and reach a decision in this case was an exercise of powers as provided under the Constitution and law. It was also found on the facts that the Election Commission had given the respondents opportunities to submit facts and it was evident from the inquisitorial proceedings that most of the respondents had already submitted facts in regard to the allegations to the Election Commission. There remained only a few respondents who did not submit statements for various reasons. It was therefore held in this case that the Election Commission had already given such opportunities to all respondents. The respondents' objections were therefore unsustainable.

**The second issue** was whether or not the companies in which shares were held by the respondents and their spouses and children were prohibited companies under section 265 paragraph one (2) and (4) and paragraph three in conjunction with section 48 of the

Constitution of the Kingdom of Thailand B.E. 2550 (2007); and **the third issue** was whether or not each item of shareholding of the respondents and their spouses and children was prohibited under the Constitution of the Kingdom of Thailand B.E. 2550 (2007). These issues could be considered together and the Constitutional Court found it appropriate to organise its decision in the following order.

Section 265 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was a provision on the prohibitions imposed on members of the House of Representatives and senators with respect to acts constituting conflicts of interests. The prohibited acts under section 265 paragraph one (2) and (4) in conjunction with section 48 could be summarised as follows:

1. prohibition from receiving or intervening or interfering with a concession from the state, government agency, state agency or state enterprise or entering into a monopolistic contract with the state, government agency, state agency or state enterprise;
2. prohibition from becoming a partner or shareholder in a partnership or company awarded with a concession or which was a party to a monopolistic contract;
3. prohibition from committing acts under 1 and 2, whether directly or indirectly;
4. prohibition from being an owner of a business or shareholder in a newspaper, radio or television broadcasting or telecommunications business, whether held in one's own name or owned or held by others on one's own behalf, or from acting by other means, directly or indirectly, to administer such a business as if he/she were the owner or shareholder of the business.

The first point considered was the meaning of any act which directly or indirectly enabled the administration of a business as if one were the business owner or shareholder under section 48, and the receiving of a concession, entering into a contract or being a shareholder, directly or indirectly, as stated under section 265 paragraph one (2).

The Constitutional Court found that the prohibition of any such direct or indirect act was intended to prevent a member of the House of Representatives or senator from committing an act which would constitute the prohibited use or exploitation of one's status or functions in order to acquire involvement in a company's business. The provisions in both sections therefore included shareholding in a company which did not directly engage in a prohibited business. If the company held sufficient shares in another company (holding company) engaged in a prohibited business to exercise influence over the latter, such an instance would constitute an indirect act within the meaning of section 48 and section 265 paragraph one (2).

The following point considered was the intent behind the prohibition of members of the House of Representatives and senators under the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Upon examination, it was found that the purpose behind such provision was the prevention of unlawful exploitation of benefits through the discharge of functions as members of the National Assembly. Such an act constituted a conflict of interests in the office of the legislature tasked with the scrutiny of powers exercised by the executive and other organs, i.e. an exploitation of one's functions through intervention in the acquisition of concessions or monopolistic contracts or the exercise of legislative functions to confer benefits upon a company within the scope of section 265 paragraph one or section 48 and consequentially benefitting the member of the National Assembly indirectly as a result of shareholdings in the said company, or otherwise being involved in the use of information acquired from one's official functions for personal gains, or the use of one's office to influence decisions made by others. In any case, however, such principles shall not prejudice the rights and liberties of a person beyond the extent of necessity as recognized under section 29 of the Constitution, namely the personal rights to property under section 41 paragraph one which provided that a person's right to property was protected and that the scope and restriction of such right would be as provided by law. Hence, the shareholding prohibited under such constitutional provisions should not restrict the rights and liberties of persons in excess of the law's intent.

The following point considered was whether or not the shareholdings stated in section 48 and section 265 paragraph one (2) included shareholdings acquired prior to taking office as a member of the House of Representatives and senator.

The Constitutional Court found that the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) not only provided for shareholdings of a political office holder in section 48 and section 265 paragraph one (2), but also for the event of shareholdings of the Prime Minister and Ministers in section 269. Section 269 prohibited the Prime Minister and Ministers not only from holding shares in a company, but also clearly provided that they should not remain as shareholders in the company. Thus, if the Constitution intended to prohibit members of the House of Representatives and senators from remaining as shareholders, clear provisions as in section 269 were also required.

Moreover, the prohibition of shareholdings and retention of shares by the Prime Minister and Ministers were not absolute. If the Prime Minister and Ministers wished to retain shares, the law offered an opportunity to express such a desire to the Chairman of the National Anti-Corruption Commission within thirty days as from the date of taking office. Such an opportunity was granted in spite of the fact that a person holding the office of Prime Minister or Minister was an exerciser of executive powers who was in a position more capable of exploiting gains than a member of the House of Representatives or senator who were members of the legislature. The prohibition of shareholdings by members of the House of Representatives and senators should therefore be more lenient and relaxed than the prohibition of shareholdings by the Prime Minister and Minister.

Also, the consequences of violating a prohibition under section 265 in conjunction with section 48 was the termination of membership of the House of Representatives and the

Senate as provided under section 106(6) and section 119(5), which meant that the member of the House of Representatives and senator had to acquire membership prior to the termination of such membership. Thus, the violation which could result in the termination of membership had to be committed subsequent to the acquisition of membership of the House of Representatives and the Senate. If the law intended for the prohibition to include acts committed prior to the acquisition of political status, clear provisions would have to be enacted such as in section 269.

In addition, a review of the qualifications and disqualifications of a candidate for election to become a member of the House of Representatives or senator under section 101 and section 115 of the Constitution also showed no prohibition on holding shares in the companies provided under section 48 and section 265 paragraph one (2). Such company shareholdings therefore did not disqualify candidates for election as members of the House of Representatives and senators. An interpretation of shareholding to include the retention of shares would be unjust for candidates in elections of members of the House of Representatives and Senators since membership of the House of Representatives and Senate would commence as from the election date or the date of announcement of senator selection by the Election Commission in the case of a senator installed by selection under section 105 and section 117.

An interpretation of shareholding to include the retention of shares would mean that a candidate in an election of a member of the House of Representatives or senator or a candidate for selection of senator would have to sell shares prior to the election day or the day of announcement of selection results by the Election Commission. Failure to sell the shares prior to the election day or the date of announcement of selection results by the Election Commission would result in the immediate termination of membership of the elected or selected person on the election day or on the day of announcement of selection results by the Election Commission. Such an interpretation would be too strict a literal reading of the legal provisions that was disproportionate to the case.

After examining the origins of the provisions in section 265 paragraph one (2) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), it was evident that the provisions had existed in several previous constitutions. Certain constitutions imposed a ban on the retention of prior shareholding. Other constitutions did not impose a ban on retention of prior shareholding such as the Constitution of the Kingdom of Thailand B.E. 2534 (1991) which originally did not ban the retention of a concession or a prohibited contract with the state in section 108 paragraph one (2) but was subsequently amended to widen the scope of prohibition to include concessions and contracts with the state by means of a constitutional amendment stating the prohibition on retention of concessions or monopolistic contracts with the state. The amendments were enacted in section 114 paragraph one (2) of the Constitution of the Kingdom of Thailand Amendment (No. 5) B.E. 2538 (1995). Otherwise, in the case of section 110 paragraph one (2) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), there was no ban on retention of shares in a company having the prohibited characteristics. There were proposals in the drafting stage and deliberations of the Constitutional

Drafting Committee to include provisions on the ban of retention of shares in companies having the prohibited characteristics, but if a person wished to retain such shares, notice would have to be given to the National Anti-Corruption Commission and the shares transferred to the custody of an asset management juristic person. The Constituent Assembly, however, did not concur and passed a resolution to delete the provisions banning the retention of shareholdings in companies having the prohibited characteristics, as recorded in the minutes of the Constituent Assembly Meeting No. 19 on 15<sup>th</sup> July B.E. 2540 (1997), exhibit 2 attached to the opinion of Mr. Bavornsak Uwanno, witness of the first applicant, pages 224 thru page 255. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) therefore did not ban the retention of shares in a company having the prohibited characteristics. During the preparation of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), there was no intent to alter the prohibition under section 265 paragraph one (2) so as to deviate from the Constitution of the Kingdom of Thailand B.E. 2540 (1997). As a result, there were no provisions on the prohibition of retention of shares. As for section 48, since similar wordings were used to section 265 paragraph one (2), a consistent interpretation should therefore be adopted.

**The Constitutional Court therefore held by a majority vote (6 to 2) that the prohibited act under section 265 paragraph one (2) and (4) and paragraph three in conjunction with section 48 did not include the retention of shares acquired prior to the election day or the day of announcement of senator selection results by the Election Commission.**

The following point considered was the prohibited characteristics of a company under section 265 paragraph one (2) and (4) in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court found that companies having the prohibited characteristics under section 265 paragraph one (2) and (4) in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) could be divided into 2 categories, viz.

(1) companies operating the business of newspapers, radio and television broadcasts or telecommunications;

(2) companies receiving a concession from the state, government agencies, state agencies or state enterprises or companies which were parties to monopolistic contracts with the state, government agencies, state agencies or state enterprises.

A state concession meant the grant of rights by the state to a private party to utilize national resources or public privileges. Concessions therefore included mining concessions regardless of whether or not the right of exclusive.

The subsequent point considered was whether or not the forty-four respondents had committed a prohibited act under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) by retaining shares in prohibited companies.



The Constitutional Court found it appropriate to consider the membership of members of the House of Representatives and senators first.

Section 105 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the membership of a member of the House of Representatives commenced as of the election date. In other words, the term commenced as of the general election, which in this case was 23<sup>rd</sup> December B.E. 2550 (2007), and also included the re-election date in the case of a re-election, which in this case was 20<sup>th</sup> January B.E. 2551 (2008). As for the membership of senators, section 117 paragraph one provided for the commencement of term as of the election date of the elected senators, which in this case was 2<sup>nd</sup> March B.E. 2551 (2008), but as for selected senators the membership commenced as of the date of announcement of selection results by the Election Commission, which in this case was 19<sup>th</sup> February B.E. 2551 (2008).

In the case of shareholdings by Mr. Kamthorn Pringsulka, the spouse of the twenty-seventh respondent (Mrs. Nipa Pringsulka), the application claimed that there were shareholdings in Bangkok Expressway Public Company Limited. It was, however, found on the facts that the spouse of the twenty-seventh respondent did not hold shares in Bangkok Expressway Public Company Limited as determined by the Election Commission, but instead held shares in Bangkok Metro Public Company Limited ever since prior to the election as a member of House of Representatives. The act therefore did not constitute a violation of section 265 paragraph one (2) and paragraph three of the Constitution.

As for the first to sixteenth, eighteenth, twentieth to twenty-ninth, thirty-first to thirty-second, thirty-fourth to thirty-ninth, forty-first, forty-third and forty-fifth respondents, it was found on the facts that they had been shareholders ever since prior to the election or selection as members of the House of Representatives or senators, as the case may be. The retention of those shares subsequent to attainment of membership of the House of Representatives or Senate was not prohibited under section 265 paragraph one (2) and (4) and paragraph three in conjunction with section 48 of the Constitution.

As for the nineteenth, thirtieth, thirty-third, fortieth, forty-second and forty-fourth respondents, who were members of the House of Representatives, it was found on the facts that the alleged company shares constituting violations under section 265 paragraph one (2) and (4) and paragraph three in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), as the case may be, were acquired subsequent to the commencement of membership of the House of Representatives.

The nineteenth respondent (Mr. Somkiat Chantawanich) purchased shares in PTT Public Company Limited in the amount of 20,000 shares on 2<sup>nd</sup> January B.E. 2551 (2008), 20,000 shares on 23<sup>rd</sup> January B.E. 2551 (2008) and 10,000 shares on 18<sup>th</sup> September B.E. 2551 (2008) as evidenced by the transaction report sent by Asia Plus Securities Public Company Limited to the nineteenth respondent, annexed to the nineteenth respondent's statement affirming facts dated 10<sup>th</sup> September B.E. 2553 (2010).

The thirtieth respondent (Mr. Kuakul Danchaiwijit), whose spouse was Mrs. Nalini Danchaiwijit, purchased shares in PTT Exploration and Production Public Company Limited in the amount of 1,000 shares on 21<sup>st</sup> January B.E. 2551 (2008) as evidenced by the thirtieth respondent's statement affirming facts dated 10<sup>th</sup> September B.E. 2553 (2010) and the statement of details on the dates of securities transaction annexed to such respondent's statement.

The thirty-third respondent (Mrs. Maliwan Thanyasakulkij) purchased shares in PTT Public Company Limited in the amount of 500 shares on 28<sup>th</sup> May B.E. 2551 (2008), 300 shares on 29<sup>th</sup> July B.E. 2551 (2008), 300 shares on 30<sup>th</sup> July B.E. 2551 (2008), 300 shares on 1<sup>st</sup> August B.E. 2551 (2008) and 1,000 shares on 1<sup>st</sup> December B.E. 2551 (2008). In addition, shares of PTT Exploration and Production Public Company Limited were purchased in the amount of 1,000 shares on 6<sup>th</sup> August B.E. 2551 (2008), 500 shares on 4<sup>th</sup> September B.E. 2551 (2008) and 2,000 shares on 6<sup>th</sup> January B.E. 2552 (2009), and shares of TT&T Public Company Limited were purchased on 28<sup>th</sup> May B.E. 2551 (2008) in the amount of 50,000 shares as evidenced by the securities transaction report attached to the thirty-third respondent's reply to the Fact-Finding Committee of the Election Commission as appendix 3, appendix 5 and appendix 9 respectively.

The fortieth respondent (Mr. Boonjong Wongtrairat), whose spouse was Mrs. Kanchana Wongtrairat, purchased shares in PTT Exploration and Production Public Company Limited in the amount of 10,000 shares on 9<sup>th</sup> May B.E. 2551 (2008), 20,000 shares on 13<sup>th</sup> May B.E. 2551 (2008), 10,000 shares on 15<sup>th</sup> May B.E. 2551 (2008), 10,000 shares on 10<sup>th</sup> June B.E. 2551 (2008), and 10,000 shares on 16<sup>th</sup> June B.E. 2551 (2008) as stated in the closing statement of the fortieth respondent, pages 10 and 13, together with the supplemental statement of facts dated 1<sup>st</sup> July B.E. 2552 (2009) submitted by the respondent to the Fact-Finding Subcommittee of the Election Commission and the transaction report in the sheet 1 of the annex to such supplemental statement of facts.

The forty-second respondent (Lieutenant Preechapol Pongpanich) purchased shares in PTT Public Company Limited in the amount of 30,000 shares during the month of June B.E. 2551 (2008) as evidenced by the supplemental statement of facts dated 3<sup>rd</sup> July B.E. 2552 (2009), page 4, submitted by the forty-second respondent to the Chairman of the Fact-Finding Committee of the Election Commission. The facts were consistent with the testimony of Mr. Supoj Laosu-apa, Manager of the Legal Division of PTT Public Company Limited given to the Fact-Finding Committee of the Election Commission on 28<sup>th</sup> May B.E. 2552 (2009) and the List of Shareholdings of Members of the House of Representatives, page 2/2.

The forty-fourth respondent (Mom Rajawongse Kittiwatana (Chaiyan) Pokmontri) purchased shares in Thai Telephone and Telecommunication Public Company Limited, currently re-named to TT&T Public Company Limited, in the amount of 50,000 shares on 2<sup>nd</sup> January B.E. 2551 (2008), as stated in the forty-fourth respondent's statement affirming facts. As for the forty-fourth respondent's claim that the shares had been held ever since

prior to his membership of the House of Representatives, it appeared otherwise in the forty-fourth respondent's record of testimony to the Chairman of the Fact-Finding Committee of the Election Commission that he became a proportional representation member of the House of Representatives as of 23<sup>rd</sup> December B.E. 2550 (2007), which was the election date. It was therefore found that the forty-fourth respondent acquired such shares subsequent to the commencement of his membership of the House of Representatives.

The shareholdings of the nineteenth, thirty-third, forty-second and forty-fourth respondents, who were members of the House of Representatives, and shareholdings of the spouses of the thirtieth and fortieth respondents, were shareholdings acquired subsequent to the six respondents' election as members of the House of Representatives.

The following question which had to be determined was therefore whether or not the shareholdings of all six respondents acquired subsequent to membership of the House of Representatives were shareholdings in companies having the prohibited characteristics under section 265 paragraph one (2) and (4) in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court found as follows. PTT Public Company Limited operated the business of energy trading. Although the company did not receive any concession nor had any monopolistic contract with the state, PTT Public Company Limited was an investor in other companies (Holding Company), such as the shareholder of PTT Exploration and Production Public Company Limited, which was a concessionaire in the exploration and drilling of oil from the Ministry of Energy, in the proportion of 65.42 percent, or a shareholder of PTT Chemical Public Company Limited, which was a concessionaire for the production and distribution of tap water and electricity from the Ministry of Natural Resources and Environment and the Ministry of Energy respectively, in the proportion of 49.16 percent, being sufficient shareholding proportions to control the businesses. As PTT Exploration and Production Public Company Limited and PTT Chemical Public Company Limited were concessionaires of state agencies, they were thus companies having the prohibited characteristics under section 265 paragraph one (2). Shareholdings in PTT Public Company Limited therefore constituted indirect shareholdings in prohibited companies.

PTT Exploration and Production Public Company Limited operated the business of exploration and production of petroleum under an oil exploration and drilling concession granted by the Ministry of Energy. The company therefore had the prohibited characteristics under section 265 paragraph one (2).

TT&T Public Company Limited operated the businesses of telephone services under a concession from the Telephone Organization of Thailand, currently securitized to TOT Public Company Limited and having the status of a state agency. Apart from receiving a concession with the state, TT & T Public Company Limited remained its business operation in telephone services. The company therefore had the prohibited characteristics under section 265 paragraph one (4) in conjunction with section 48.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) banned the holding of shares in prohibited companies specifying neither the amount of shares nor whether or not the power to administer or control the business should also be obtained. Hence, holding just one share would suffice within the meaning of the Constitution even though the shareholder had no power to administer or control the business. The explicit constitutional prohibition on shareholder was provided in order to prevent a political office holder, including members of the House of Representatives and senators from having channels for exploitation of their office or from being exploited for any unlawful gains.

Therefore, the shareholdings of the nineteenth, thirtieth, thirty-third, fortieth, forty-second and forty-fourth respondents or the spouses thereof, despite being purchased in the Stock Exchange, and even though they were short-term investments or speculative purchases, constituted violations of section 265 paragraph one (2) and (4) and paragraph three in conjunction with section 48 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) as the case may be.

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

By virtue of the aforesaid reasons, the Constitutional Court held by a majority vote (7 to 1) that the nineteenth, thirty-third and forty-second respondents had committed violations of section 265 paragraph one (2) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the thirtieth and fortieth respondents committed violations of section 265 paragraph one (2) and paragraph three, and the forty-fourth respondent committed a violation of section 265 paragraph one (4) in conjunction with section 48. These violations constituted causes for the memberships of Mr. Somkiat Chantavanich, the nineteenth respondent, Mr. Kuakul Danchaiwijit, the thirtieth respondent, Mrs. Maliwan Thanyasakulkij, the thirty-third respondent, Mr. Boonjong Wongtrairat, the fortieth respondent, Lieutenant Preechapol Pongpanich, the forty-second respondent, and Mom Rajawongse Kittiwatana (Chaiyan) Pokmontri, the forty-fourth respondent, to terminate under section 106(6) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) as from the day of ruling by the Constitutional Court.

---