

Summary of Constitutional Court Ruling No. 13/2555 (2012)

Dated 18th May B.E. 2555 (2012)*

Re: The President of the House of Representatives referred a matter of the Election Commission to the Constitutional Court for a ruling on whether or not the membership of the House of Representatives of Mr. Jatuporn Prompan terminated under section 106(4) in conjunction with section 101(3) of the Constitution.

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1. Summary of background and facts

The President of the House of Representatives, applicant, referred a matter raised by the Election Commission under section 91 paragraph three of the Constitution to the Constitutional Court for a ruling on whether or not the membership of the House of Representatives of Mr. Jatuporn Prompan, respondent, terminated under section 106(4) in conjunction with section 101(3) of the Constitution.

The facts could be summarised as follows. The Election Commission held a general election of members of the House of Representatives on Sunday, 3rd July B.E. 2554 (2001). The respondent was Pheu Thai Party candidate number 8 in the election of party-list members of the House of Representatives. The Election Commission ruled by a majority resolution that the respondent had been on remand by court order, resulting in the termination of the respondent's membership of Pheu Thai Party. As a consequence the respondent's membership of the House of Representatives terminated under section 106(4) in conjunction with section 101(3) of the Constitution due to non-membership of a political party on the Election Day. The matter was therefore referred to the applicant for submission to the Constitutional Court pursuant to section 91 paragraph three of the Constitution.

The respondent submitted a reply which could be summarised as follows. The respondent was on remand under a court order during a court trial from prior to the Election Day until the Election Day, as well as thereafter until the announcement of election results. This did not constitute a cause for termination of the respondent's membership of Pheu Thai Party which would terminate the respondent's membership of the House of Representatives under section 106(4) in conjunction with section 101(3) of the Constitution as alleged under the application.

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Before the commencement of trial, Mr. Charun Pukditanakul, Constitutional Court Justice, recused himself from adjudication of the case. The Court granted leave of recusal for Mr. Charun Pukditanakul. Leave of recusal was, however, not granted to Mr. Jaroon Inthajarn, Mr. Supoj Kaimook and Mr. Chalernpol Ake-uru, due to the causes of recusal not being in accordance with the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) and the Civil Procedure Code.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 91 of the Constitution.

The issue raised in the respondent's reply stated that the Election Commission did not have legal competence to rule on the respondent's qualifications as a candidate in the election of Members of the House of Representatives since the Election Commission had already examined the respondent's qualifications in the application process and had already announced the verification of complete qualifications, which till present showed no change. The Constitutional Court found that proceedings of the Election Commission were taken pursuant to section 45 in conjunction with section 40 of the Organic Act on Elections of Members of the House of Representatives and Obtaining of Senators B.E. 2550 (2007) to examine the qualifications and disqualifications of party-list candidates in the election of Members of the House of Representatives prior to the election. However, this application referred the Election Commission's matter to the Constitutional Court for a ruling that the respondent's membership of the House of Representatives terminated, being a request for an examination of membership status in the House of Representatives, which was within the competence of the Constitutional Court as conferred upon it under section 91 paragraph three of the Constitution. The respondent's argument on this issue was therefore dismissed.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the respondent's membership of the House of Representatives terminated under section 106(4) in conjunction with section 101(3) of the Constitution.

The facts could be summarized as follows. The respondent was a member of Pheu Thai Party since 13th December B.E. 2551 (2008). The respondent was elected as a party-list Member of the House of Representatives in the general election on 23rd December B.E. 2550 (2007). The respondent was subsequently prosecuted on charges of conspiracy to commit terrorism, public speech, assembly with ten or more persons for an unlawful purpose, use of force or otherwise to cause public disorder with at least one member carrying arms, and participation in an assembly or mob in violation of regulations issued under the provisions of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), pursuant to Case No. 2542/2553 of the Criminal Court. The respondent, however, enjoyed a

constitutional immunity from arrest during the House of Representatives session and was temporarily released during trial. After the enactment of the Royal Decree Dissolving the House of Representatives B.E. 2554 (2011), the House of Representatives was dissolved and new elections were called. A general election of Members of the House of Representatives was scheduled on Sunday 3rd July B.E. 2554 (2011). The court revoked bail and remanded the respondent in custody at the Bangkok Remand Prison as of 12th May B.E. 2554 (2011). Thereafter, upon the Election Commission's announcement of application dates for candidates in the election of party-list Members of the House of Representatives between 19th to 23rd May B.E. 2554 (2011), Pheu Thai Party submitted its list of 125 candidates for the election of party-list Members of the House of Representatives on 19th May B.E. 2554 (2011). The respondent was number 8 on the list. The Election Commission announced the list of candidates for the election of party-list Members of the House of Representatives for Pheu Thai Party on 2nd June B.E. 2554 (2011). The respondent was included as a candidate for election of party-list Member of the House of Representatives.

Prior to the general election of Members of the House of Representatives on 3rd July B.E. 2554 (2011), the respondent filed a motion for temporary release to the court in order to exercise election rights. The court, however, denied the motion for temporary release. The respondent thus did not exercise voting rights on the Election Day and submitted a written notice of reasons for failing to exercise voting rights. After the election results were revealed, the applicant filed a protest against the endorsement of the respondent's membership of the House of Representatives. The Election Commission, after deliberations, adopted a majority resolution to refer the matter to the President of the House of Representatives for submission to the Constitutional Court for a ruling under section 91 of the Constitution on whether or not the respondent's membership of the House of Representatives terminated under section 106(4) in conjunction with section 101(3) of the Constitution.

The preliminary issue was whether or not the respondent's voting right was abrogated under section 100 of the Constitution.

The Constitutional Court found that the respondent had been prosecuted on charges of conspiracy to commit terrorism, public speech, assembly with ten or more persons for an unlawful purpose, use of force or otherwise to cause public disorder with at least one member carrying arms, and participation in an assembly or mob in violation of regulations issued under the provisions of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005). The respondent was temporarily released during trial. However, upon the enactment of the Royal Decree Dissolving the House of Representatives B.E. 2554 (2011), the court ordered the revocation of bail and the respondent was remanded in custody at the Bangkok Remand Prison on 12th May B.E. 2554 (2011). Before the day of the general election of Members of the House of Representatives on 3rd July B.E. 2554 (2011), the respondent filed a motion for temporary release to the court in order to exercise voting rights. The court denied the motion. Therefore, on 3rd July B.E. 2554 (2011), which was the Election Day, the respondent remained on remand in prison pursuant to a court order

in the criminal proceedings. The respondent was therefore prohibited from exercising voting rights due to his being on remand pursuant to a court order pursuant to section 100(3) of the Constitution.

The next question to be considered was whether or not a person prohibited from exercising voting rights under section 100(3) of the Constitution was disqualified from being a member of a political party and resulting in the termination of membership of the House of Representatives under section 20 paragraph one (3) in conjunction with section 19 paragraph one and section 8 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007).

After consideration, the Constitutional Court found as follows. The prohibition on a person on remand pursuant to a court order or lawful order on an Election Day from exercising voting rights was provided for the first time in the Constitution of the Kingdom of Thailand B.E. 2492 (1949). Subsequent constitutions also contained a similar provision. As for the law on political parties, the first to be enacted was the Political Parties Act B.E. 2498 (1955). Such Act was later repealed and replaced by subsequent Political Parties Acts, i.e. Political Parties Act B.E. 2511 (1968), Political Parties Act B.E. 2517 (1974), Political Parties Act B.E. 2524 (1981) and Organic Act on Political Parties B.E. 2541 (1998). As for the provisions of the Act on Political Parties pertaining to membership of a political party, the qualifications and disqualifications of an applicant for membership of the political party were provided. In particular, the only disqualifications were for monks, novices, hermit or priest. The Organic Act on Political Parties B.E. 2541 (1998) and Organic Act on Political Parties B.E. 2550 (2007) provided similar disqualifications. Section 19 paragraph one in conjunction with section 8 of the Organic Act on Political Parties B.E. 2550 (2007) specifically stated provisions consistent with section 100 of the Constitution. In other words, there was a disqualification on the prohibition of voting rights exercise under the Constitution. This disqualification of applicant for political party membership departed from the previous Political Parties Acts, and incorporated all four disqualifications as stated under the Constitution. There was a specific provision on the disqualification of a person detained by court order or lawful order from becoming a member of a political party. This disqualification was intended to ensure that a political party member remained in compliance with the framework of the law and disciplinary rules of the political party. Being on remand during trial without permission of the court for temporary release showed that there was a possibility of a serious offence and a cause for the court to deny temporary release, hence the purpose of providing such a disqualification. Moreover, a political party member disqualified by a prohibition from exercising voting rights under the Constitution had shown hostility towards the fulfilment of a political party member's duties in regard to political participation, especially the exercise of voting rights, deemed to be an even more important duty for a political party member than others who were not political party members. Therefore, when a political party member failed to act within the law, resulting in criminal prosecution and remand in custody by court order or lawful order, without temporary release on the Election Day, becoming a person prohibited from exercising voting

rights under section 100(3) of the Constitution, such a conduct would also be deemed to constitute a disqualification from political party membership. Thus, a person prohibited from exercising voting rights under section 100(3) of the Constitution was disqualified from becoming a member of a political party pursuant to section 19 paragraph one in conjunction with section 8 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). Upon an examination of the provisions in section 20 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), the Constitutional Court found that a person applying for membership of a political party, apart from not having a disqualification at the time of political party membership application, should also not have a disqualification throughout the period of political party membership. If a political party member subsequently acquired a disqualification, the political party membership of such person would terminate. Hence, the respondent, who was remanded in custody pursuant to a court order as per section 100(3) of the Constitution, was therefore disqualified from exercising voting rights under the Constitution, constituting also a disqualification from political party membership pursuant to section 19 paragraph one in conjunction with section 8 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), resulting in the termination of the respondent's Pheu Thai Party membership pursuant to section 20 paragraph one (3).

The next issue considered was whether or not the termination of the respondent's political party membership constituted a disqualification under section 101 (3) of the Constitution and a cause for termination of the respondent's membership of the House of Representatives pursuant to section 106(4) of the Constitution.

The Constitutional Court found as follows. Section 101 of the Constitution provided that "a candidate for an election of Members of the House of Representatives had to be a member of only one political party for a consecutive period of not less than ninety days up to the Election Day, except in the case of a general election following dissolution of the Assembly, in which case a candidate had to be a member of only one political party for a consecutive period of not less than thirty days up to the Election Day." Section 106 of the Constitution provided that membership of the House of Representatives terminated upon disqualification under section 101. The Constitutional Court found that the constitutional provisions on the requirement of political party membership for a candidate in an election of Members of the House of Representatives, as well as the period of membership prior to the election, were intended to ensure the political party member's discipline, commitment to the political will and engagement in political activities with the political party for an indefinite period, and empowerment of the political party as a principal institution for the democratic form of government with the King as head of state. Thus, the qualifications of a political party member should exist not only at the time of application of candidacy in the election of Members of the House of Representatives, but should also continue to exist throughout the entire period of membership of the House of Representatives. As for the case of a person remanded in custody pursuant to a court order or by a lawful order as provided under section 100(3) of the Constitution, even though section 102(3) did not provide a disqualification for candidacy in the election of Members of the House of Representatives, the application for

election candidacy and exercise of voting rights were processes occurring at differing times. A person remanded in custody by court order could apply for election candidacy, as not being disqualified, but the exercise of voting rights and the termination of membership of the House of Representatives were different instances. If, on the Election Day, such a person remained in custody, it should be regarded that the person was disqualified from exercising voting rights under section 100(3) of the Constitution. Upon consideration of the qualifications of a Member of the House of Representatives which included being a member of any one political party, being also the qualifications of an applicant for candidacy in the election of Members of the House of Representatives as provided under section 101(3) in conjunction with section 106(4) of the Constitution, which provided for the termination of membership of a Member of the House of Representatives upon disqualification under section 101, the Constitutional Court found that the qualifications of an applicant for candidacy in an election of Members of the House of Representatives which required membership of only one political party should exist not only at the time of application for election candidacy, but should continue to exist throughout the period of membership of the House of Representatives. If a member of the House of Representatives was not a member of a political party at any point of time, his/her membership of the House of Representatives would terminate.

As for considerations pertaining to membership of a political party, the constitutional provisions only provided the core principles relating to rules on national governance. The Constitution stated that details of the core principles would be elaborated by organic legislation. To this effect, details on political parties had been provided by the Organic Act on Political Parties B.E. 2550 (2007). After examining the provisions of the said Organic Act in relation to the qualifications, disqualifications and termination of political party membership as provided under section 8, section 19 and section 20, it was found that, since the Constitution provided that details pertaining to political party membership were to be provided in the Organic Act, therefore any determination on political party membership, particularly on matters relating to qualifications, disqualifications and termination of political party membership would be made in accordance with the provisions of section 8, section 19 and section 20 of the Organic Act on Political Parties B.E. 2550 (2007). The provisions of section 106 of the Constitution provided broad rules on the termination of membership of the House of Representatives. A decision on the lack of qualifications or a disqualification of a Member of the House of Representatives that would lead to the termination of membership of such Member of the House of Representatives, however, had to be in accordance with the applicable law. These details could not be found in the Constitution. It was therefore necessary to apply other laws to the consideration in order to apply the constitutional provisions in accordance with its true spirits. This was not a case where a subsidiary law with contrary or inconsistent provisions were applied to the detriment of a person as claimed by the respondent. Furthermore, this was not a stipulation of a new cause, since the cause was linked to membership of the political party, which had to exist throughout the period of membership of the House of Representatives. If a Member of the House of Representatives was not a member of a political party, the membership of the

Member of the House of Representatives would terminate under section 106(4) in conjunction with section 101(3) of the Constitution. Hence, termination of the respondent's membership of Pheu Thai Party constituted a disqualification under section 101(3) of the Constitution and a cause for termination of membership of the House of Representatives under section 106(4) of the Constitution.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court held by the majority (7 votes to 1 vote) that the membership of the House of Representatives of Mr. Jatuporn Prompan terminated under section 106(4) in conjunction with section 101(3) of the Constitution as from the date of Constitutional Court Ruling.
