The Constitutional Court
The Kingdom of Thailand

Constitutional Court Ruling
No. 6/2564 (2021)

Dated 5th May B.E. 2564 (2021)

Between **President of the House of Representatives** **Applicant**

Captain Thamanat Prompow, Member of the House of Representatives and Deputy Minister of Agriculture and Cooperatives **Respondent**

Re: **The President of the House of Representatives referred an application to the Constitutional Court for a ruling under section 82 paragraph one and section 170 paragraph three in conjunction with section 82 of the Constitution on whether or not the House of Representatives membership of Captain Thamanat Prompow terminated under section 101(6) in conjunction with section 98(10) of the Constitution and whether or not the individual ministerial office of Captain Thamanat Prompow, Deputy Minister of Agriculture and Cooperatives terminated under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution.**

The President of the House of Representatives (applicant) referred an application to the Constitutional Court for a ruling under section 82 paragraph one and section 170 paragraph three in conjunction with section 82 of the Constitution. The facts under the application and supporting documents may be summarized as follows.

Mr. Pita Limjaroenrat, Member of the House of Representatives, and others, a total of 51 persons, entered their name in a petition to the applicant that the House of Representatives membership of Captain Thamanat Prompow (respondent), constituency Member of the House of Representatives, Palang Pracharath Party, Phayao Province, constituency 1, and Deputy Minister of Agriculture and Cooperatives, terminated under section 101(6) of the Constitution, which also

constituted a cause for termination of his individual ministerial office of Deputy Minister of Agriculture and Cooperatives pursuant to section 170 paragraph one (4) in conjunction with section 160 (6) and section 98(10) of the Constitution. This was due to the fact that on 10th March B.E. 2538 (1995), while bearing the name "Mr. Manat Bophlom", was subject to a final judgment convicting him for offences under the narcotic drugs law, specifically for producing, importing, exporting or dealing pursuant to judgment of the New South Wales Court of Criminal Appeal No. 60449/94 and 60434/64 (the correct citation being /94), dated 10th March B.E. 2538 (1995). For the commission of said offences, the New South Wales Court of Criminal Appeal sentenced "Captain Thamanat Prompow" or "Mr. Manat Bophlom" to a six-year term of imprisonment, with a minimum period of four years and a further non-release period of two years. Details of the conviction were evidenced by a copy of the judgment and translation of the judgment of the New South Wales Court of Criminal Appeal. Due to the conviction by final judgment or lawful order for the offences of producing, importing, exporting or dealing with narcotic drugs, despite the judgment being delivered by a court of a foreign country, such person was barred from holding the office of Member of the House of Representatives, thus constituting a cause for termination of the respondent's membership of the House of Representatives under section 98(10) in conjunction with section 101(6) of the Constitution and also constituting a cause for termination of individual ministerial office under section 170 paragraph one (4) in conjunction with section 160(6) of the Constitution.

The applicant verified the signatures of the petitioners and found that the number of Members of the House of Representatives who entered their names in the application constituted not less than one-tenth of the total number of existing Members of the House of Representatives pursuant to section 82 paragraph one of the Constitution. The applicant therefore proceeded to refer the application to the Constitutional Court for a ruling under section 82 paragraph one and section 170 paragraph three in conjunction with section 82 of the Constitution, as follows.

1. That the House of Representatives membership of the respondent terminated under section 101(6) in conjunction with section 98(10) of the Constitution and that the individual ministerial office of the respondent terminated under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution.

2. That a restraining order be issued against the respondent to cease performing duties as a Member of the House of Representatives and Deputy Minister of Agriculture and Cooperatives until a ruling of the Constitutional Court under section 82 paragraph two of the Constitution.

The preliminary issue that had to be decided by the Constitutional Court was whether or not the Constitutional Court had the competence to accept this application for a ruling under section 82 paragraph one and section 170 paragraph three in conjunction with section 82 of the Constitution. The Constitutional Court found as follows. The facts in the application and supporting documents showed that this was a case where 51 Members of the House of Representatives, being a number not less than one-tenth of the total number of existing Members of the House of Representatives petitioned the applicant for the referral of an application to the Constitutional Court for a ruling that the respondent's membership of the House of Representatives terminated under section 101(6) in conjunction with section 98(10) of the Constitution and that the respondent's individual ministerial office terminated under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution, and the applicant had submitted the application to the Constitutional Court. This case was in accordance with section 82 paragraph one and section 170 paragraph three in conjunction with section 82 paragraph one of the Constitution and section 7(5) and (9) of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The Constitutional Court therefore ordered the acceptance of this application for a ruling and directed the respondent to submit a reply to the allegations. As for the issue on whether or not to restrain the respondent from performing duties as a Member of the House of Representatives and Minister pursuant to section 82 paragraph two of the Constitution, the Constitutional Court found that the facts in the application and supporting documents did not show cause for suspicion that would call for a restraining order against the respondent to cease performing duties as a Member of the House of Representatives and Minister. Hence, the Constitutional Court ordered that the respondent did not have to cease performing duties pursuant to section 82 paragraph two of the Constitution.

The respondent submitted a reply to the allegations and supporting documents which could be summarised as follows. The copy of New South Wales Court of Criminal Appeal No. 60449/94 and 60434/64 (the correct citation being /94), dated 10th March B.E. 2538 (1995), and translation annexed to the petition to the applicant was a document copy that had not been certified by the court or could not be verified or certified by an officer of New South Wales. Furthermore, the translation had not been certified for accuracy as required by law. Such document was not the judgment in the case to which the respondent was accused as claimed by the applicant, but was merely a copy of an application to extend the period for filing an appeal. The respondent refused to certify the accuracy or authenticity of such document and translation. The respondent affirmed that he had never been

arrested, detained, prosecuted or tried for allegations or charges of producing, importing, exporting or dealing with narcotic drugs, whether in the Kingdom of Thailand or the state of New South Wales, Commonwealth of Australia. The respondent also denied having any previous criminal convictions for producing, importing, exporting or dealing with narcotic drugs. The respondent affirmed that in the New South Wales case, he was arrested, prosecuted and tried for allegations or charges of "conspiracy to import" as evidenced in the copy of the judgment of the New South Wales Court of Criminal Appeal in the first paragraph, which was an offence under the law of the Commonwealth of Australia. The applicant did not show any judgment of the New South Wales Court deciding on the allegations against the respondent. The offence for which the respondent was accused, arrested and tried was conspiracy to commit a serious offence and failing to alert an officer, which was an offence under the law of the Commonwealth of Australia. Such offence did not constitute an offence under Thai laws. The text of section 98(10) of the Constitution stated "offence under the law" and "convicted by a final judgment", which stipulated only the laws of the Kingdom of Thailand and final judgment of a court in the Kingdom of Thailand. If the Constitution intended to include judgments of courts in other states, a clear and explicit provision would be required. Moreover, when considering whether or not a criminal case judgment of a foreign court would affect proceedings in a Thai court on the same offence, in practice, a Thai court would only deem the judgment of the foreign court as evidence. The said judgment did not bind or mandate the Thai court to adhere or comply in any manner due to the principle of sovereignty and independence of each state. In addition, section 98(10) of the Constitution was a provision which restricted a person's right, thus the said provision had to be construed strictly and could not apply to an event that had occurred prior to the day of the Constitution coming into effect since that would entail a retroactive application of the law. Nonetheless, even though the respondent's case was not subject to section 98(10) of the Constitution and the respondent had the constitutional right to remain in office as a Member of the House of Representatives and Minister, the respondent remained politically accountable. For instance, the respondent had to give an explanation to the House of Representatives or House Committee on Prevention and Suppression of Corruption and Wrongful Conducts, House of Representatives.

In the interest of these proceedings, by virtue of section 27 paragraph three of the Organic Act on Procedures of Constitutional Court B.E. 2561 (2018), the Constitutional Court issued summons to the applicant, respondent and Permanent Secretary of the Ministry of Foreign Affairs (to take action through diplomatic channels) to produce an officially verified copy of the judgment of the New South

Wales District Court, Commonwealth of Australia, dated 31st March B.E. 2537 (1994) and copy of the judgment of the New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995) as well as other relevant documents.

The applicant submitted a copy of the judgment of the New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995), verified by Mr. Nattacha Boonchaiinsawat, Member of the House of Representatives for Move Forward Party, and a translation certified by Assistant Professor Dr. Carina Chotirawe. As for the copy of the judgment of New South Wales District Court, Commonwealth of Australia, dated 31st March B.E. 2537 (1994), the applicant explained that his document was not in the applicant's possession.

The respondent explained that he did not have a copy of the judgment of New South Wales District Court, Commonwealth of Australia, dated 31st March B.E. 2537 (1994), and a copy of the judgment of New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995), since at the time of trial, the respondent did not have sufficient comprehension of the English language in relation to the law and did not understand the trial proceedings in the New South Wales District Court and New South Wales Court of Criminal Appeal in the Commonwealth of Australia. Also, a period of more than 25 years had elapsed. Nevertheless, the respondent had sent a letter to the Permanent Secretary of the Ministry of Foreign Affairs requesting for assistance to inspect such judgments of the New South Wales District Court and New South Wales Court of Criminal Appeal, Commonwealth of Australia, but had not received copies of such judgments.

The Permanent Secretary of the Ministry of Foreign Affairs explained that the copy of the judgment of New South Wales District Court, Commonwealth of Australia, dated 31st March B.E. 2537 (1994), and a copy of the judgment of New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995), were official records of Australia and were documents not in the possession of the Ministry of Foreign Affairs that could be submitted to the Constitutional Court.

The Constitutional Court considered the application, reply to allegations, statements of relevant agencies and supporting documents and found that this case raised a question of law and there was sufficient evidence for a decision to be made. The Constitutional Court therefore ended its inquiry pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018) and determined that the following issues had to be decided.

The first issue was whether or not, and as from when, the House of Representatives membership of the respondent terminated under section 101(6) in conjunction with section 98(10) of the Constitution.

The second issue was whether or not, and as from when, the respondent's individual ministerial office terminated under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution.

After deliberations, the Constitutional Court finds as follows. Section 101 of the Constitution provides that "membership of a Member of the House of Representatives terminates upon ... (6) having a prohibition under section 98 ..." Section 98 provides that "a person with the following characteristics is prohibited from exercising the right to apply for candidacy in an election of Members of the House of Representatives ... (10) having been convicted by a final judgment for an offence of malfeasance of official duties or judicial duties, or an offence under the law on wrongdoing of employee in a state organisation or agency, or an offence under the Penal Code relating to property committed dishonestly, an offence under the law on fraudulent borrowing of funds from the public, law on narcotic drugs with respect to the offence of producing, import, export or dealing, law on gambling with respect to the offence of being a dealer or controller, law on anti-human trafficking or law on anti-money laundering for the offence of money laundering ..."

In this case, the applicant claimed that the respondent was convicted by a final judgment of a court of the state of New South Wales, Commonwealth of Australia, for the offence of producing, importation, exportation or dealing of narcotic drugs. The respondent argued that the respondent he was tried only for a charge of "having knowledge of importation" of narcotic drugs. The respondent had never been convicted for the offences alleged by the applicant. The supporting document was not a copy of the judgment of a court of the state of New South Wales, Commonwealth of Australia, and had not been verified. Hence, the judgment of the New South Wales court, Commonwealth of Australia, was of the essence for deciding this case. In spite of that, no party could produce a copy of the judgment of the New South Wales Court, Commonwealth of Australia, to the Constitutional Court. Although the Constitutional Court applied an inquisitorial procedure, the parties also had the duty to present preliminary evidence to support an application or reply to allegations to the Constitutional Court. As the parties did not take action, the Constitutional Court therefore proceeded to conduct an inquiry by issuing letters to relevant persons to submit a copy of such judgment that had been verified by an official authority, as well as directed the Permanent Secretary of the Ministry of Foreign Affairs to pursue diplomatic channels to obtain a copy of the judgment. Thereafter, the Constitutional Court examined the documentary evidence on record

and found that the document annexed to the application and document submitted by the applicant pursuant to the summons, which was claimed to be a copy of the judgment of New South Wales District Court, Commonwealth of Australia, dated 31st March B.E. 2537 (1994), and a copy of judgment of the New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995), which in actual fact was only a copy of a motion to appeal after the lapse of deadline for appeal, dated 10th March B.E. 2538 (1995), and a copy of the order of the New South Wales Court of Criminal Appeal, Commonwealth of Australia, dated 10th March B.E. 2538 (1995), which rejected leave to appeal, was verified by a senior professional legal officer of the House of Representatives, not an officer of the court of New South Wales, Commonwealth of Australia, or an officer of the Royal Thai Embassy in Canberra, Commonwealth of Australia. The respondent had requested to inspect such judgment but did not obtain a copy of the judgment for submission to the Constitutional Court. The Ministry of Foreign Affairs also could not obtain a copy of the judgment for submission to the Constitutional Court. Upon the absence of a copy of the judgment of the court of New South Wales, Commonwealth of Australia, verified by that court, there was a lack of essential evidence. Based on the evidence available on record, the only finding of facts that could be made was that the respondent was a constituency Member of the House of Representatives for Phayao Province, constituency 1, from Palang Pracharat Party, and held the office of Deputy Minister of Agriculture and Cooperatives. Prior to the respondent's election to become a Member of the House of Representatives, the respondent admitted that he had been convicted by a judgment of the New South Wales District Court, Commonwealth of Australia. The court of New South Wales, Commonwealth of Australia had, as a matter of fact, tried this case. However, details of the trial, rulings on evidence and whether or not the offence stated in the conviction was in accordance with section 98(10) of the Constitution, was unclear. Nevertheless, once the Constitutional Court ordered the acceptance of this application for ruling, there remained important legal issues which had to be decided.

The first issue was whether or not, and from when, the respondent's membership of the House of Representatives terminated under section 101(6) in conjunction with section 98(10) of the Constitution.

The question which had to be decided was whether or not the term "having been convicted by final judgment" under section 98(10) of the Constitution, which provided a prohibition for candidacy in an election of Member of the House of Representatives, referred only a judgment of a Thai court.

The Constitutional Court finds as follows. Section 3 paragraph one provides that "Sovereign powers belong to the Thai people. The King, as head of state,

exercises such powers through the National Assembly, Council of Ministers and courts pursuant to the provisions of the Constitution." Paragraph two provides that "the National Assembly, Council of Ministers, courts, independent organs and state agencies must perform duties in accordance with the Constitution, laws and the rule of law for the common benefit of the nation and general wellbeing of the people." It could be implied from such provisions that sovereign powers are the highest powers for governing a country. An important characteristic of sovereign power is its absoluteness, free from influence or control of other states. Sovereign powers may be categorized according to the nature of duties into 3 different branches, namely legislative powers, executive powers and judicial powers. The trial and adjudication of cases constitutes an exercise of judicial powers, which is a part of sovereign powers that cannot be under the influence or control of judicial powers of other states. Under the principle of national administration with absolute sovereignty, there is a key principle of non-interference with the domestic affairs of other countries and non-interference of domestic affairs by other countries without agreement or consent. Therefore, a direct enforcement of a foreign court judgment or interpretation of judgment of a foreign court as having equal status to a judgment of a Thai court is inconsistent with such principle.

According to the principle of state sovereignty under international law, a judgment of a court of any state would only have effect in the territories of such state. In certain cases, a state may recognise the judgment of the court of another state and may enforce such judgment. However, this would require a treaty of recognition and enforcement under the principle of consideration, which mostly applies to civil cases, family cases and succession cases. Criminal cases may be recognised in cases of extradition or transfer of prisoners subject to an important condition under the principle of consideration in the treaty that a state party shall be bound to respect and comply with the ruling in the judgment of the other state party. Therefore, both the principles and practices of states relating to the exercise of judicial powers are provided in the constitution of each country to affirm the principle of judicial independence and the sanctity of judgments. When the provisions of the Constitution refer to a judgment, they shall only refer to the judgment of a court of such state or country, and shall not include the judgment of a foreign court.

The enactment of criminal laws in country differently stipulate actions which constitutes wrongdoings, elements of offences, offences and conditions for punishments. For a certain action, the laws of some countries might stipulate wrongdoing whereas Thai laws may not provide for the same action to be a wrongdoing. Moreover, an interpretation of section 98(10) of the Constitution that

"having been convicted by a final judgment" as including the judgment of a foreign court would incorporate the final judgments for wrongdoings under several other laws as specified by section 98(10), in respect of which certain laws stipulated offences while certain other laws did not stipulate offences, but merely mentioned the title of the law, such as the law on anti-human trafficking. Such an interpretation would entail an extensive recognition of judicial powers of other states, which would prevent screening or review of rule of law in the judicial proceedings of such foreign country, and be contrary to the abovementioned principle of reciprocity, significantly prejudicing the sovereign powers of Thai courts.

Even though it was found on the facts that the respondent had been convicted by judgment of New South Wales District Court, Commonwealth of Australia, prior to apply for candidacy in the election of Members of the House of Representatives, the conviction was not delivered by judgment of a Thai court. The respondent was therefore not prohibited under section 98(10) of the Constitution. The respondent's membership of the House of Representatives did not terminate under section 101(6) in conjunction with section 98(10) of the Constitution.

The second issue was whether or not, and from when, the respondent's individual ministerial office terminated under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution.

Section 170 paragraph one of the Constitution provides that "an individual ministerial office terminates upon ... (4) lacking a qualification or being prohibited under section 160 ..." Section 160 provides that "a Minister must ... (6) not be prohibited under section 98 ..." and Section 98 provides that "a person having the following characteristics are prohibited from exercising the right to apply for candidacy in an election of Members of the House of Representatives ... (10) having been convicted by a final judgment for an offence of malfeasance of official duties or judicial duties, or an offence under the law on offences of employees in a state organization or agency, or an offence relating to property that has been committed dishonestly under the Penal Code, an offence under the law on borrowing funds constituting fraud on the public, law on narcotic drugs for an offence of producing, importation, exportation or dealing, law on gambling for an offence of dealing or controlling premises, law on anti-human trafficking or law on anti-money laundering for an offence of money laundering ..."

The Constitutional Court finds that upon a ruling on the first issue that the respondent was not prohibited under section 98(10) of the Constitution, there was no cause for termination of the respondent's individual ministerial office under section 160(6) of the Constitution. The respondent's individual ministerial office did not terminate under section 170 paragraph one (4) of the Constitution. The question

of whether or not the claim in the application raised issues of suitability for political office was not within the adjudicative competence of the Constitutional Court.

By virtue of the aforesaid reasons, it is held that the respondent's membership of the House of Representatives did not terminate under section 101(6) in conjunction with section 98(10) of the Constitution, and the respondent's individual ministerial office did not terminate under section 170 paragraph one (4) in conjunction with section 160(6) and section 98(10) of the Constitution.