

The facts under the application and supporting documents may be summarised, as follows:

1. The applicant was elected to become a Member of the House of Representatives for Constituency 1, Saraburi Province, of the People's Power Party, on 23rd December B.E. 2550 (2007). Thereafter, on 2nd December 2551 (2008), the Constitutional Court ordered the dissolution of the People's Power Party. The applicant applied for membership of the respondent party and the respondent party passed a resolution to admit the membership on 13th December B.E. 2551 (2008).

2. On 23rd July B.E. 2552 (2009), the respondent sent letter no. PT.0429/2552 notifying the applicant of an allegation by a party member that the applicant had committed a disciplinary breach and violated the party's code of conduct. The applicant was instructed to submit a reply to the Disciplinary and Conduct Committee within 7 days as from the date of receiving the letter. In this regard, the applicant had already submitted a letter in reply to the allegations to the Disciplinary and Conduct Committee. Thereafter, on 7th September B.E. 2553 (2010), the respondent held a joint meeting between the Executive Committee and the party's Members of the House of Representatives to deliberate on a resolution to expel the applicant from membership of the respondent party pursuant to article 23 of the Pheu Thai Party Rules B.E. 2551 (2008). The meeting passed a resolution by 178 votes, which were not less than three-fourths of the total present at the meeting of party executives and the party's Members of the House of Representatives. The legal implication was the termination of the applicant's membership of the respondent party. The resolution stated an allegation that the applicant had committed a serious disciplinary breach and violation of the code of conduct by failing to comply with the party's policies, rules, resolutions of the Party Executive Committee, orders issued by the person in charge of the party, and also making injurious criticisms of fellow members or the party's administration to third parties. It was further alleged that the applicant failed to adhere to the spirits, ideologies and policies of the party, and that the applicant became a member of another political party or held a position in another political party while remaining a member of the

party, as well as failed to comply with the Rules of Procedure of the House of Representatives.

3. The applicant was of the opinion that the respondent party's resolution had apparent characteristics of being inconsistent with the status and functions of a Member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as Head of State as provided under section 65 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In other words, other than being a member of the political party, the applicant also held the office of Member of the House of Representatives. The applicant had performed functions as a Member of the House of Representatives under the Constitution in collaboration with other Members of the House of Representatives in the introduction and deliberation of various legislation, control of the state's administration by directing questions at the Prime Minister or Ministers, and entered in the motion for a no-confidence debate on the Council of Ministers and individual Ministers. The respondent party's resolution not only terminated the applicant's membership of the respondent party, but also resulted in the termination of the applicant's membership of the House of Representatives as from the date of resolution by the respondent pursuant to section 106(7) of the Constitution. As a result, the applicant was no longer able to perform functions for the collective benefit of the Thai people. The respondent party's resolution therefore had the characteristics stated in section 65 paragraph three of the Constitution. The Constitutional Court had already decided in Constitutional Court Ruling No. 1/2542 (1999) on such an allegation.

4. Moreover, the applicant was of the opinion that the respondent party's resolution was intended to persecute the applicant, motivated by the party executives' dissatisfaction of the applicant's absence from extra-parliamentary political activities held by party members and conflicts with the conduct of political activities carried out the party which were not in accordance with democracy and dominated by Police Lieutenant Colonel Thaksin Shinawatra and his family. Also, the acts of the respondent and executives of the respondent party followed an approach which was not consistent with democratic means, showed dishonor of the

Royal Institution, employed violent mobs in order to overthrow the government of Mr. Abhisit Vejjajiva, caused severe disharmony in the Thai society and the nation, such conducts being inconsistent with the Constitution. As a result, the applicant was unable to participate in the respondent party's political activities amounting to extra-parliamentary movements. The applicant found that the respondent's administration of the party was clearly inconsistent with section 10 of the Organic Act on Political Parties B.E. 2550 (2007). Thus, the applicant was unable to comply with the unlawful acts of the respondent. In any event, the applicant had never made detrimental criticisms on fellow members or the party's administration to a third party. The press releases to the mass media were honest factual reports. The applicant had never become a member of another political party or held an office in another political party whilst being a member of the respondent party. While the applicant participated in Bhumjaithai Party's political activity, the applicant did not apply for membership of Bhumjaithai Party and had never encouraged any person to become a member of Bhumjaithai Party. Nevertheless, as a representative of the Thai people and a fellow citizen, the applicant had political rights and liberties as provided under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), whether that might be the rights and liberties of assembly and association, expression, opinions, participation in an activity with a person or entity, irrespective of whether such entity was a political party, without restriction of the rights and liberties due to the applicant's membership of any one political party. The respondent party's resolution to terminate the applicant's party membership was therefore inconsistent with the status and functions of a Member of the House of Representatives under the Constitution and inconsistent with or contrary to the fundamental principles of the democratic form of government with the King as Head of State as provided under section 65 paragraph three of the Constitution.

The preliminary issue to be ruled upon by the Constitutional Court was whether or not the Constitutional Court had the competence to admit this application for a ruling pursuant to section 106(7) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). After deliberations, it was found that section 106 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the membership of the House of Representatives terminated upon... (7) resignation

from the political party of one's membership or the political party of one's membership passing a resolution by the votes of not less than three-fourths of the joint meeting of the Executive Committee of such political party and Members of the House of Representatives affiliated to such political party, terminating one's membership of the political party; in such a case, membership would be deemed to have terminated as from the date of the resignation or the resolution of the political party except where such Member of the House of Representatives appealed to the Constitutional Court within thirty days as from the date of the resolution of the political party, raising an objection that such resolution was of such nature as specified in section 65 paragraph three; if the Constitutional Court decided that the said resolution was not of the nature as specified in section 65 paragraph three, membership would be deemed to have terminated as from the date of the decision of the Constitutional Court; if the Constitutional Court decided that the said resolution was of such nature as specified in section 65 paragraph three, that Member of the House of Representatives could become a member of another political party within thirty days as from the date of the decision of the Constitutional Court. Section 65 paragraph three provided that Members of the House of Representatives who were members of a political party, members of the Executive Committee of a political party, or members of a political party, in a number not less than that prescribed by the Organic Act on Political Parties, who found that their political party's resolution or regulation on any matter was contrary to the status and functions of a Member of the House of Representatives under this Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State, had the right to refer the matter to the Constitutional Court for a decision thereon. Therefore, upon the respondent's resolution to expel the applicant from membership of the respondent party, and the applicant's submission of an application to the Constitutional Court to appeal against the said resolution as having the nature specified under section 65 paragraph three, the case was therefore in accordance with section 106(7) of the Constitution and clause 17(4) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court thus had the competence to admit this application for ruling.

The respondent submitted a statement in reply to the allegations and supporting documents, which may be summarised as follows:

1. The respondent, as a political party, had rights and duties under the Constitution and the Organic Act on Political Parties B.E. 2550 (2007) as well as other relevant laws. The issuance of the Pheu Thai Party Rules B.E. 2551 (2008), in particular, were rules consistent with the fundamental principles of the democratic form of government with the King as Head of State and in accordance with section 10 of the Organic Act on Political Parties B.E. 2550 (2007). The rules had been published in the Government Gazette and were therefore applicable to the respondent's members. When the applicant applied for membership of the respondent party on his own accord, he was therefore bound to act within the scope of the party rules as with other members. The applicant, being both a party member and a Member of the House of Representatives, was required to conduct himself in an exemplary manner for other members. He should not commit any act which was in violation of the party rules. The applicant, however, neglected the party's ideologies and policies for personal gains.

2. Between 5th-7th June B.E. 2552 (2009), Bhumjaithai Party organized a seminar in Sakon Nakhon Province. The applicant, who held membership of the House of Representatives in affiliation with the respondent party, participated in such event and clearly presented himself to the public via the mass media that he was intending to enter political activities with Bhumjaithai Party. He gave a self-introductory statement and posted a large billboard displaying himself and the Bhumjaithai Party logo. In a press interview, he also stated that his body was with Pheu Thai Party, but his soul was with Bhumjaithai Party. The applicant added that the reason why he joined Bhumjaithai Party was because the latter was a political party with a future potential to develop into a political institution. Most importantly, the applicant found that most of the party's key personnel showed more professionalism than Pheu Thai Party. The applicant also participated in 2 meetings of Bhumjaithai Party. Moreover, the applicant neglected duties owed to the respondent party by not participating in political activities both within the party and activities organized in other places. The applicant was absent from meetings of the

party's Members of the House of Representatives from January B.E. 2552 (2009) till present, an aggregate of up to 54 absences from meetings thru May B.E. 2553 (2010).

3. Thereafter, 34 members of the respondent party submitted a letter to the Disciplinary and Conducts Committee alleging that such conduct of the applicant constituted a serious disciplinary offence and violation of the code of conduct under the party rules. The Disciplinary and Conducts Committee gave the applicant notice of the allegations and an opportunity for the applicant to give a statement as well as present evidence in reply to the allegations pursuant to the Regulation on Rules and Procedures for Fact-Finding and Determination of Allegations and Appeals B.E. 2552 (2009). The Disciplinary and Conducts Committee examined the applicant's reply to the allegations as well as the evidence submitted by the allegers and passed a resolution that the applicant had committed an act inconsistent with article 9, article 9(4), article 10(7), article 12, article 13(3), article 16(3), (5), (6), (7) and (8), and article 19(2), (4) and (9) of the Pheu Thai Party Rules B.E. 2551 (2008). Consequently, on 7th September B.E. 2553 (2010), a joint meeting of the Executive Committee and the party's Members of the House of Representatives passed a resolution in meeting no. 1/2553 by secret ballot, with 178 votes and 2 abstentions (of 11 party executives and 189 Members of the House of Representatives of the party, a total of 200 persons), thus constituting not fewer than three-fourths of the party executives and the party's Members of the House of Representatives, in favour of the termination of the applicant's membership of the respondent party.

4. On the applicant's claim that the respondent party's resolution terminating the applicant's membership of the respondent party was inconsistent with the applicant's status and functions as a Member of the House of Representatives, the respondent was of the opinion that, as the applicant was a member of the respondent party, he was bound to adhere to the ideologies, policies, rules and regulations of the party and should also conduct himself within the party's disciplinary rules and code of conduct. At any time ever since the establishment of the respondent party, no member who was a Member of the House of Representatives, including the applicant, had ever argued or objected that the respondent party's resolution or rules

were inconsistent with the status and functions of a Member of the House of Representatives, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State. The applicant's claim that the applicant was a Member of the House of Representatives and therefore held the status of a representative of the Thai people charged with the honest performance of functions as a Member of the House of Representatives without being bound by any mandate, entrustment or domination for the collective benefit of the Thai people under section 122 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) ran contrary to the facts constituting the cause for disciplinary and conducts proceedings against the applicant which related as a matter of fact to the personal conduct and circumstances of the applicant. The applicant also exhibited a conduct of neglect of the party's ideologies and activities by presenting himself as a member of another political party whilst directing injurious criticisms against the party, members of the party and the party's administration, as well as failing to attend the party's meetings. These facts were not relevant to the applicant's status and functions as a Member of the House of Representatives.

As for the applicant's argument that the party resolution expelling the applicant from membership of the party resulted in the termination of the applicant's membership of the House of Representatives in addition to the party membership, thus preventing the applicant from performing duties for the collective benefit of the Thai people, and therefore the respondent party's resolution was clearly inconsistent with the applicant's status and functions as a Member of the House of Representatives under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the matter had to be considered in the light of the cause for the resolution and not merely on the outcome of the resolution. The termination of the applicant's membership of the respondent party and membership of the House of Representatives in this case were merely the legal implications of the respondent's resolution to terminate party membership. The cause for termination of party membership, however, was not related to the applicant's status and functions as a Member of the House of Representatives.

5. On whether or not the respondent party's resolution to terminate the applicant's membership was contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State under section 65 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the basis for such a finding should be a resolution which was contrary to or inconsistent with one or several fundamental principles of the democratic form of government. However, the respondent's expulsion of the applicant from party membership due to an offence of the party rules by the commission of a serious disciplinary breach and violation of the code of conduct amounted merely to the application of the party rules to impose a sanction on the applicant for a violation of the party rules. Such a matter was instigated by the applicant himself. Since the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the law provided that a Member of the House of Representatives had to be affiliated to a political party, and that a Member of the House of Representatives had to comply with the resolutions and party rules, those principles were therefore deemed as fundamental principles of the democratic form of government with the King as Head of State with respect to the conduct and discharge of functions of a person in a political organ. The applicant, by holding the office of Member of the House of Representatives and membership of the respondent party and failing to adhere to the party rules, was therefore deemed to have himself committed an act that was contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State.

6. The Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), and the Organic Act on Political Parties B.E. 2550 (2007) gave significance to political parties. This showed that the Constitution and the law intended to establish strong political parties to act as key political organs or institutions in the development and strengthening of democracy and the national government. A political party should therefore have an organizational structure, internal administration, ethical standards, discipline and proper conduct, which would promote the people's faith in the political party. The proper discipline and conduct of political party members were of great significance to the institution since

they were key tools for controlling the party members' compliance with policies. If political party members lacked order, the development and strengthening of the political party would be prejudiced. Therefore, a political party member who was a Member of the House of Representatives should adhere more strictly to the resolutions and rules of the party than other members generally since the termination of membership of the political party could result in the termination of membership of the House of Representatives.

7. The respondent affirmed that the respondent party's resolution terminating the applicant from membership was made pursuant to the framework of the Constitution, laws and party rules and commensurate to the seriousness of the applicant's conduct. The applicant, holding the high office of Member of the House of Representatives, should maintain discipline and adhere to party rules. Yet, apart from neglecting any interest in complying with party rules, the applicant violated the party rules by abandoning the ideologies and policies of the party whilst also directing injurious criticisms against the party and other members by declaring his membership of another political party and openly participating in the political activities of another party. The applicant's conduct was therefore a personal conduct which was not related to the status and functions of a Member of the House of Representatives. Whereas the party member violated party rules which constituted a serious disciplinary offence and violation of the code of conduct, the respondent party's resolution terminating the applicant's membership therefore did not have the characteristics under section 65 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

As there were sufficient facts in the case for a decision, the Constitutional Court refrained from conducting an inquiry. The issue which had to be ruled upon was whether or not the resolution of Pheu Thai Party, the respondent, on 7th September B.E. 2553 (2010) terminating the Pheu Thai Party membership of Second Lieutenant Porapol Adireksarn, the applicant, had the characteristics of being inconsistent with the applicant's status and functions as a Member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head

of State pursuant to section 65 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The facts under the application, statement in reply to the allegations, and supporting documents were as follows. The applicant was elected to become a Member of the House of Representatives for Constituency 1, Saraburi Province, of the People's Power Party on 23rd December B.E. 2550 (2007). Thereafter, on 2nd December B.E. 2551 (2008), the Constitutional Court ordered the dissolution of the People's Power Party. The applicant applied for membership of the respondent party and the respondent party passed a resolution to admit the applicant as a member on 13th December B.E. 2551 (2008). On 14th July B.E. 2552 (2009), 34 members of the respondent party submitted a letter to the respondent party's Disciplinary and Conducts Committee, alleging the applicant of a serious disciplinary offence and violation of the code of conduct. The Disciplinary and Conducts Committee thus carried out an investigation and determined a disciplinary sanction on the applicant in regard to such matter pursuant to the Regulation on Rules and Procedures for Fact-Finding and Determination of Allegations and Appeals B.E. 2552 (2009). It was found that the applicant had committed a serious disciplinary offence and violation of the code of conduct as well as the respondent's party rules, thus constituting a breach of article 9, article 9(4), article 10(7), article 12, article 13(3), article 16(3), (5), (6), (7) and (8) and article 19(2), (4) and (9) of the Pheu Thai Party Rules B.E. 2551 (2008). It was found that the applicant showed an open interest and exhibited a behaviour leaning towards membership of another political party, posted advertisements on billboards that he was affiliated to another party, participated in the political activities of another political party, and failed to attend the weekly meetings of Members of the House of Representatives of Pheu Thai Party (being absent from a total of 54 meetings). The applicant also explicitly expressed to the public that he held membership of Pheu Thai Party only by name so as to avoid termination of membership of the House of Representatives, but was in actual fact a member of Bhumjaithai Party. The Disciplinary and Conducts Committee thence held that the applicant's party membership should be terminated. In the joint meeting between party executives and the party's Members of the House of Representatives no. 1/2553 on 7th September B.E. 2553 (2010), the joint meeting

between party executives and Members of the House of Representatives deliberated on the matter and found that the applicant had committed a serious disciplinary offence and violated the code of conduct as provided under the respondent party rules. A resolution was thus passed by secret ballot to terminate the applicant's membership of the respondent party by 178 votes, which was an amount not fewer than three-fourths of those present at the joint meeting between the party executives and the party's Members of the House of Representatives as provided under section 106(7) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 20 of the Organic Act on Political Parties B.E. 2551 (2008) and article 23 of the Pheu Thai Party Rules.

After deliberations, the Constitutional Court held that section 122 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for a Member of the House of Representatives to represent the Thai people and to discharge functions honestly for the latter's collective benefit. In the performance of such functions associated with being a representative of the Thai people, the Constitution granted independence in decisions pertaining to the vote or approval of a person to an office, law-making within the competence of the Legislature and control of the Executive's administration of the state pursuant to the policies declared to the National Assembly, whether by way of questions, debate or vote of no confidence. Nevertheless, section 101(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that a Member of the House of Representatives had to be a member of any one political party for a consecutive period of not less than ninety days at the election date, except in the event of a general election consequential of a parliamentary dissolution where he/she must be a member of any one political party for a consecutive period of not less than thirty days at the election date. Moreover, section 106(7) of the Constitution provided that the membership of a Member of the House of Representatives terminated upon resignation from the political party of one's membership or upon the political party of one's membership passing a resolution by the votes of not less than three-fourths of the joint meeting of party executives and the party's Members of the House of Representatives to terminate the political party membership of one's membership, in which case the Member of the House of Representatives had the right to file an appeal against the political

party resolution to the Constitutional Court on the grounds that it had the characteristics under section 65 paragraph three. In other words, an appeal could be made on the grounds that the political party resolution was inconsistent with the status and functions of a Member of the House of Representatives as provided under the Constitution, or that it was contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State. It was therefore discernable in this case that the Constitution of the Kingdom of Thailand B.E. 2550 (2007) intended to promote the political party as a strong political organ under the Constitution and a firm foundation for the democratic form of government. A Member of the House of Representatives has been provided with the important functions of introducing and deliberating on legislation, constitutional amendment, endorsement of Emergency Decrees, controls on the administration of the state by means of questions, debates and votes of no confidence, proposal of agendas, including the appointment of committees, as well as petitions to control the constitutionality of laws. In addition, a Member of the House of Representatives had to be a member of a political party. At the same time, however, so as to prevent a Member of the House of Representatives from the domination or influence of the political party to the extent of depriving his/her independence in the performance of functions or decision-making thus posing an obstacle to the functions of the people's representative, the Constitution provided in section 122 that a Member of the House of Representatives was a representative of the Thai people and should not be bound by any mandate, entrustment or domination and should perform functions honestly for the collective benefit of the Thai people free from any conflict of interests. This principle was reiterated in section 162 paragraph two, which stated that a Member of the House of Representatives was independent from the political party resolution in regard to the questioning, debate and vote of no confidence. It could thus be said that the provision of the Constitution which provided that a Member of the House of Representatives should be a member of a political party was an initiating provision for public political participation and political activities through the exercise of state powers by a political party, being an essential principle of the democratic form of government. Such a provision did not restrict the rights of a person participating in the political party by requiring compliance with political party resolutions in all cases. If a Member of the House of Representatives, including the party executives

or members of the political party, found that a resolution of the political party had the characteristics under section 65 paragraph three, the right to refer to the Constitutional Court for a ruling could be exercised without such person having to resign from membership of the political party. On the other hand, a political party was able to screen the persons embarking on the same political ideologies who would join in the strengthening of the political party thereby leading to the creation of a political institution, which was of great essence to the democratic form of government with the King as Head of State. The Constitution therefore provided for a political party to install a process for terminating the membership of a party member if it is found that such member pursued ideas or practices that were inconsistent with his/her political party's policy guidelines.

After considering the causes for the respondent party to pass a resolution to terminate the applicant's party membership, it was found that such causes essentially consisting of the applicant's participation in a seminar organized by Bhumjaithai Party in Sakon Nakhon Province and the public appearance with self-introductory remarks and the posting of a large roadside billboard presenting himself as a member of Bhumjaithai Party. The applicant also gave a press release to the mass media that he would participate in Bhumjaithai Party's political undertakings. The applicant's case according to the facts stated above related to the applicant's personal conduct in presenting himself as a member of another political party despite not having formally applied for membership of the other political party. The only reason why the applicant did not resign from the respondent party and file for membership of the other political party was merely to retain his membership of the House of Representatives. Such conduct of the applicant was a personal matter which did not relate to the performance of functions as a Member of the House of Representatives. The respondent party's finding that the applicant's action constituted a serious breach of party rules and the resolution terminating the applicant's party membership were therefore not matters having characteristics that were inconsistent with the status and functions of a Member of the House of Representatives, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State. As for the Constitutional Court Ruling No. 1/2542 (1999) raised by the applicant, such a case

involved the Prachakorn Thai Party removing a party member from the Prachakorn Thai Party membership register due to his exercise of vote in the House of Representatives, which was a matter on the performance of functions in the House of Representatives and not a matter of personal conduct. The facts in that case were therefore dissimilar to the applicant's case.

By virtue of the foregoing reasons, the Constitutional Court finds that the resolution of Pheu Thai Party, the respondent, on 7th September B.E. 2553 (2010), which terminated the Pheu Thai Party membership of Second Lieutenant Porapol Adireksarn, the applicant, did not have a characteristic that was inconsistent with the applicant's status and functions as a Member of the House of Representatives under the Constitution, or that was contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as Head of State as provided under section 65 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The applicant's membership of the House of Representatives is deemed as terminated as from the date of Constitutional Court ruling.

Mr. Chut Chonlavorn
President of the Constitutional Court

Mr. Jaran Pukditanakul
Justice of the Constitutional Court

Mr. Charoon Intachan
Justice of the Constitutional Court

Mr. Chalernpol Ake-uru
Justice of the Constitutional Court

Mr. Nurak Marpraneet
Justice of the Constitutional Court

Mr. Boonsong Kulbupar
Justice of the Constitutional Court

Mr. Wasan Soypisut
Justice of the Constitutional Court

Mr. Suphot Kaimuk
Justice of the Constitutional Court

Mr. Udomsak Nitimontree
Justice of the Constitutional Court