(23)

Constitutional Court Ruling

In the Name of the King
Constitutional Court

Ruling No. 21/2567 Case No. 17/2567

Dated 14th August B.E. 2567 (2024)

Between
- President of the Senate — Applicant
- Mr. Srettha Thavisin, Prime Minister, 1st
- Mr. Pichit Chuenban, Minister Attached to the Prime Minister's Office, 2nd Respondents

Re: The President of the Senate requested for a Constitutional Court ruling under section 170 paragraph three in conjunction with section 82 of the Constitution, on whether the ministerships of Mr. Srettha Thavisin, the Prime Minister, and Mr. Pichit Chuenban, the Minister Attached to the Prime Minister's Office, individually terminated under section 170 paragraph one (4) in conjunction with section 160 (4) and (5) of the Constitution.

The President of the Senate (applicant) requested for the Constitutional Court ruling under section 170 paragraph three in conjunction with section 82 of the Constitution. The facts of the application and documents accompanying the application could be summarised as follows.

Mr. Somchai Swangkarn, a Senator and others, 40 in total signed a petition to the applicant regarding whether the ministerships of Mr. Srettha Thavisin (the first respondent), the Prime Minister, and Mr. Pichit Chuenban (the second respondent), the Minister Attached to the Prime Minister's Office, individually terminated under section 170 paragraph one (4) in conjunction with section 160 (4) and (5). It was stated that the first respondent was appointed by the Royal Proclamation to be the Prime Minister from the date of 22nd August, B.E. 2566

(2023). Afterwards, upon the Proclamation removing and appointing ministers dated 27th April B.E. 2567 (2024), it appeared that the second respondent was appointed as Minister Attached to the Prime Minister's Office. The Senators who signed the petition were of the opinion that on 10th June B.E. 2551 (2008), while the second respondent worked as a lawyer and represented Mr. Thaksin Shinawatra, who was sued before the Criminal Division for Persons Holding of Political Positions in the Supreme Court and must report himself to the Court on that day, a law clerk accompanying the second respondent's group delivered a court officer a paper bag and informed him that it was a souvenir. When opened to look inside the paper bag, one-thousand-baht banknotes each, totaling two million baht, were found therein. In this case, the President of the Supreme Court appointed a panel for investigation and then issued Supreme Court Order No. 4599/2551, Re: Contempt of Court, dated 25th June B.E. 2551 (2008). In this Order, the Court determined that the law clerk and the second respondent had engaged in improper behaviour in the court premises, which constituted an offence of contempt of court under section 31 (1) and section 33 of the Civil Procedure Code in conjunction with section 83 of the Penal Code. It also was likely to constitute an offence of bribery of competent officials under section 144 of the Penal Code or other offences against competent officials. The second respondent's actions would affect the trust and faith in the performance of duties of personnel in the judiciary. Severe punishment should be imposed in order not to treat as an example. The second respondent must be liable for imprisonment for a term of six months. Regarding the offence of bribery of competent officials under section 144 of the Penal Code or other offences against competent officials, the accuser had to pursue lawsuit against the second respondent and persons involved. As a result of the said Order, the Professional Conduct Committee, the Lawyers Council, and the Chancellor of the Lawyers Council issued the final order that the second respondent's actions constituted serious lawyer misconduct and undermined the dignity and honour of the profession as provided in clause 6 in Chapter 2 and clause 18 in Chapter 4 of the Lawyers Council Regulation on the Professional Conduct of Lawyers, B.E. 2529 (1986). Consequently, the name of the second respondent shall be removed from the lawyer's register pursuant to section 52 paragraph one (3) of the Lawyers Act, B.E. 2528 (1985). The Senators who signed the petition were of the opinion that the second respondent was the person who committed the dishonest act, maintained behaviour that seriously violated or failed to comply with ethical standards, lacked qualifications, and had prohibitions of a person holding a ministerial position under section 160 (4) and (5) of the Constitution.

While the appointment of the Council of Ministers was being considered, there were objections from the public, the media, and academics against the appointment of the second respondent to the position of minister due to the view that the second respondent lacked qualifications and had prohibitions from being a minister. The Secretariat of the Cabinet delivered a secret and most urgent letter, No. PM 0503/*tor* 4797, dated 30th August B.E. 2566 (2023), seeking advice regarding the qualifications and prohibitions of the minister under section 160 (6) in conjunction with section 98 (7) and section 160 (7) of the Constitution. The Office of the Council of State delivered in reply a secret and most urgent letter, No. PM 0904/152, dated 1st September B.E. 2566 (2023), concluding that section 160 (6) of the Constitution provided that the minister must not have a prohibition under section 98 (7) stipulating that such person shall not be discharged for a period of less than ten years up to the date of election after being imprisoned except for an offence committed through negligence or a petty offence. Being imprisoned, whether by judgment or any order, is considered having a prohibition to hold a ministerial position. A person who had previously been imprisoned for the offence of contempt of court was therefore a person having the said prohibition, unless that person had been discharged from such punishment for more than ten years. Section 160 (7) of the Constitution provided that the minister must not be sentenced to imprisonment, even if the case was not yet final or the punishment was suspended, except for an offence committed through negligence, a petty offence, or the offence of defamation. Such provisions did not include an order to imprisonment. Therefore, the person who would be appointed to the position of minister and who held such position must not be the person who was sentenced by a judgment to imprisonment. These opinions were replied in the scope of the explanation provided by the representative of the Secretariat of the Cabinet to the Council of State (Special Committee) that it desired to seek opinion only under section 160 (6) in conjunction with section 98 (7) and section 160 (7) of the Constitution. Upon the Royal Proclamation dated 1st of September B.E. 2566 (2023), appointing the Council of Ministers, the first respondent did not nominate the name of the second respondent to be the minister.

Between February B.E. 2567 (2024) and April B.E. 2567 (2024), the first respondent met Mr. Thaksin Shinawatra. Subsequently, His Majesty the King was informed by the the first respondent in order to appoint the second respondent as the Minister Attached to the Prime Minister's Office, and the first respondent gave an interview to the media that the issue of whether the second respondent lacked qualifications or had prohibitions from being the minister under section 160 (4) and (5) of the Constitution had already been consulted with

the Council of State. This was even though the first respondent knew or should have known that the Council of State provided opinions only on the matter of qualifications and prohibitions to be a minister under section 160 (6) and (7) of the Constitution but not on the matter of qualifications and prohibitions to be a minister under section 160 (4) and (5) of the Constitution. Moreover, the facts did not appear that the first respondent inquired the Council of State for additional opinions. The Senators who signed the petition were of the opinion that the first respondent nominated the name of the second respondent to be appointed as the minister, even though he knew or should have known that the second respondent lacked qualifications or had prohibitions of being a minister under section 160 (4) and (5) of the Constitution, constituted dishonest action towards one's position, circumstances of knowing or allowing others to employ one's own position to seek illegal benefits, either direct or indirect conflict of interests between oneself and the public dishonouring the position of the Prime Minister, and the association with a person with misbehaviour or notoriety, which may undermine trust and faith of the people in performing the duties. The first respondent lacked qualifications or had prohibitions of being the minister under section 160 (4) and (5) of the Constitution due to violation of or failure to comply with clause 7 and clause 8 in Chapter 1, and clause 11, clause 17, and clause 19 in Chapter 2 of the Ethical Standards of the Justices of the Constitutional Court, Persons Holding Positions in the Independent Organs, the Auditor-General, and Heads of the Secretariats of the Constitutional Court and the Independent Organs, B.E. 2561 (2018) in conjunction with section 219 paragraph two of the Constitution.

The applicant examined the signatures of the Senators who signed the petition that they were not less than one-tenth of the total number of existing Senators according to section 170 paragraph three in conjunction with section 82 paragraph one of the Constitution. The applicant therefore submitted an application to request the Constitutional Court to decide that the ministerships of the first and the second respondents were individually terminated pursuant to section 170 paragraph one (4) in conjunction with section 160 (4) and (5) of the Constitution.

The preliminary issue which the Constitutional Court must consider was whether the Constitutional Court had the power to admit the application for a ruling under section 170 paragraph three in conjunction with section 82 paragraph one of the Constitution. The Court was of the opinion that, based on the facts of the application and documents accompanying the application, this was a case where the 40 Senators, which were not less than one-tenth of the total number of existing members of the Senate, signed their names requesting the applicant to submit the application to the Constitutional Court for ruling on whether the

ministerships of the first and the second respondents individually terminated under section 170 paragraph one (4) in conjunction with section 160 (4) and (5) of the Constitution. This was pursuant to section 170 paragraph three in conjunction with section 82 paragraph one of the Constitution and section 7 (9) of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). The Constitutional Court therefore issued an order to admit the application in the case of the first respondent for the Court's consideration and adjudication and instructed the first respondent to submit a statement of reply.

Regarding the application for consideration of individual termination of the second respondent's ministership, as the fact appeared that the second respondent, the Minister Attached to the Prime Minister's Office, requested to resign from the position from the date of 21st May B.E. 2567 (2024), the ministership of the second respondent was individually terminated under section 170 paragraph one (2) of the Constitution. Consequently, there was no ground to further adjudicate this case in accordance with section 51 of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). This case was not in compliance with section 170 paragraph three in conjunction with section 82 paragraph one of the Constitution. The Constitutional Court, therefore issued an order denying to admit the application in the case of the second respondent.

Regarding whether the first respondent would be ordered to cease the performance of his duties as the Prime Minister under section 82 paragraph two of the Constitution, the Constitutional Court was of the opinion not to order the first respondent to cease his duties at this stage.

The first respondent submitted the statement of reply and accompanying documents, which could be summarised as follows.

1. In the appointment of the second respondent to be the Minister Attached to the Prime Minister's Office, the first respondent was not under external influence or did not favour benefits to the second respondent and Mr. Thaksin Shinawatra.

The applicant's allegations were unfounded and merely anticipated with bias. The meeting between Mr. Thaksin Shinawatra and the first respondent was typical of acquaintances.

2. The first respondent behaved neither in violation of nor non-compliance with clause 7 of the Ethical Standards, which stated that "the interests of the nation must be prevailed personal interests."

The first respondent nominated the second respondent to be the Minister Attached to the Prime Minister's Office because the former realised that the latter's knowledge would

be beneficial to the public, and he had to sustain a coalition government of various political parties and factions in order to collaborate. The first respondent had never sought or favoured benefits to any persons by nominating the second respondent as the minister. The first respondent's actions upheld the interests of the nation rather than personal interests and supported the coalition government in its full capacities for public interests.

3. The first respondent behaved neither in violation of nor non-compliance with clause 8 of the Ethical Standards, which stated that "one must perform duties with honesty, must not seek illegal benefits for oneself or others, or must not enter into circumstances of acknowledging or allowing others to employ one's own position to seek illegal benefits."

The first respondent nominated the second respondent to be the minister under the procedures and practices of the Secretariat of the Cabinet in the examination of qualifications and prohibitions, which were equally conducted with other people without interference for discrimination. Also, the appointment of Minister Attached to the Prime Minister's Office directly in charge of legal matters for the government was for the sake of administration of the State affairs. The first respondent acted with honesty and significantly took into account the sake of administration of the State affairs without acknowledging or allowing any persons to employ one's own position to seek illegal benefits.

4. The first respondent behaved neither in violation of nor non-compliance with clause 11 of the Ethical Standards, which stated that "one must not act with conflict between public and personal interests, whether directly or indirectly."

The fact that the first respondent nominated the second respondent to be the minister in order that he would apply his legal knowledge for the sake of administration of the State affairs to be effective was the act for public interests in the first place. It did not appear to be the conflict between public and personal interests. Once the second respondent was appointed to be the minister, he performed his duties well without causing damage to the public and being complained on account of his performance. In addition, after the application had been submitted to the Constitutional Court for consideration, the second respondent resigned from the position of minister according to the political norms, and it was evident that administration of the State affairs had not yet been damaged, and there was no corruption, fraud, or any enactment of law that was contrary to the democratic regime of government with the King as Head of State.

5. The first respondent behaved neither in violation of nor non-compliance with clause 17 of the Ethical Standards, which stated that "one must not do any act that harmed the integrity of holding the position."

The first respondent nominated the second respondent to be the Minister Attached to the Prime Minister's Office in good faith. His decision was not under the influence of any persons; thus, he did not behave or do any act that harmed the integrity of holding the position of the Prime Minister as alleged by the applicant.

6. The first respondent behaved neither in violation of nor non-compliance with clause 19 of the Ethical Standards, which stated that "one must not associate with a disputing party, an offender, an influential person, or a person with misbehaviour or notoriety, which may undermine public trust and faith in performing the duties."

Upon the first respondent's opinions, the second respondent was a Member of the House of Representatives from party lists in B.E. 2554 (2011). This demonstrated the public trust in his participation in exercising sovereign power. The nomination of the second respondent to be the minister could not affect the public trust and faith in performing the first respondent's duties. In addition, the examination of qualifications and prohibitions by the Secretariat of the Cabinet according to the standard procedures and practices had been accepted in society.

Furthermore, the examination of qualifications and prohibitions of the second respondent was the procedures and practices that had been applied by the Secretariat of the Cabinet since the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), came into force. Upon the said examination, no issue appeared that the second respondent lacked qualifications or had prohibitions to be the minister. The matter concerning the second respondent was over for more than 15 years. The first respondent had a business background and aimed to perform the duties with all his ability for the nation, but with limited experience in politics and administration of the State affairs and a lack of knowledge in law or political science, he could not determine whether the second respondent lacked qualifications or had prohibitions of ministership under the Constitution.

For the sake of the consideration, by virtue of section 60 of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018), the Constitutional Court directed the parties to submit lists of evidence to the Court.

1. The applicant submitted a list of evidence and a statement of objection against the first respondent, which could be summarised as follows.

(1) The first respondent did not nominate the second respondent for the Royal Proclamation appointing him to be a minister on 1st September B.E. 2566 (2023) as the second respondent informed of refusing to be appointed as the minister because he intended for the expeditious appointment of the Council of Ministers for administration of

the State affairs. This sounded unreasonable because, in the normality of a person having full qualifications and no prohibitions to be a minister, the withdrawal from ministerial appointment could not be possible. The first respondent therefore knew or should have known that the second respondent lacked qualifications and had prohibitions under section 160 (4) and (5) of the Constitution.

(2) Section 160 (4), (5), (6), and (7) of the Constitution were the provisions that must be applied for the examination of the qualifications and prohibitions of a nominee to be a minister. The allegation of the first respondent that section 160 (4) and (5) of the Constitution constituted factual issues that needed not to be further consulted with the Council of State was contradictory. This was because section 160 (4), (5), (6), and (7) of the Constitution were all the same provisions concerning the examination of qualifications and prohibitions of a nominee to be a minister, but the first respondent chose to consult only for section 160 (6) and (7) of the Constitution.

(3) For the qualifications and prohibitions of ministership under the Constitution, the first respondent claimed that the second respondent had already been punished according to the Supreme Court Order and had his name removed from the lawyers' register, which was over for more than 15 years before the Constitution came into force. In Constitutional Court Ruling No. 24/2564, as for comparison, the Court laid down the principle that section 101 (6) in conjunction with section 98 (10) of the Constitution was added to specify certain prohibitions of a person in order not to exercise the right to stand for election to be a Member of the House of Representatives. They intended to prevent a person who lacked credibility in integrity or had committed an offence against the public interest from holding a political position. They also aimed to guarantee that such a person would perform the duties with integrity, that his behaviour and qualifications in all respects would be accepted and relied upon by the public, and that one would be free from defects. Rehabilitation was the effacement of punishment in the way that one had never been sentenced to imprisonment, but it did not efface the commission of an offence and the final sentence. However, the behaviour and commission of an offence as sentenced by the court still remained. This case had also occurred before this Constitution came into force for more than 28 years as from the date the Constitutional Court rendered the decision.

2. The first respondent submitted a list of witnesses.

For the sake of the consideration, by virtue of section 27 paragraph three of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018), the Constitutional Court directed relevant persons to provide opinions on issues specified by the Court and

submit information together with relevant documents and evidence to the Constitutional Court as follows.

1. The first respondent's explanation was as follows. According to the first respondent's statement, he internally consulted before the appointment of the second respondent as the Minister Attached to the Prime Minister's Office under the Royal Proclamation dated 27th April B.E. 2567 (2024). With whom or what agency did the first respondent consult with, and what was the substance thereof?

The first respondent gave a statement that before the appointment of the second respondent as the Minister Attached to the Prime Minister's Office under the Royal Proclamation dated 27th April B.E. 2567 (2024), he internally consulted with Adjunct Professor Tongthong Chandransu as the Prime Minister's advisor and Mr. Prommin Lertsuridej, M.D. as the Secretary-General to the Prime Minister. The consultation could be summarised as follows.

(1) Adjunct Professor Tongthong Chandransu was of the following opinions. Conditions for ministership on evident integrity and ethical qualifications under the current Constitution were provided in an abstract manner, and its consideration depended on the individual's perspective and thoughts. The case of the second respondent was over for more than 15 years, which at the time the current Constitution and ethical standards had not yet come into force. In this regard, the issue to be considered was to what extent the proportionality of time would cause the second respondent to lack qualifications or had prohibitions. In addition, there had never been a decision of the Constitutional Court indicating that the second respondent lacked qualifications of integrity or ethical standards; therefore, no one could decide that the second respondent lacked qualifications or had prohibitions as aforesaid.

(2) Mr. Prommin Lertsuridej, M.D. was of the following opinions. The Secretariat of the Cabinet examined qualifications and prohibitions of the second respondent when the Council of Ministers was appointed on 1st September B.E. 2566 (2023), but it did not find that the second respondent lacked qualifications or had prohibitions to be a minister. The Secretariat of the Cabinet internally coordinated with the Secretary-General of the Council of State, and it was informed of opinions that the issues concerning qualifications and prohibitions on evident integrity and ethical standards were based on the subjective perspective of each person. The Office of the Council of State and the agencies in executive branch did not have the power to decide. In addition, at present, the Secretariat of the Cabinet did not have any rule to examine qualifications or prohibitions of ministership.

Therefore, it should be deemed that the second respondent at this time did not lack qualifications or have prohibitions of ministership.

2. Mr. Somchai Swangkarn submitted a statement of facts under the application and gave a statement against the first respondent that the first respondent was deemed to behave with evident disintegrity and in serious violation of ethical standards.

Mr. Somchai Swangkarn gave the following statement. The Supreme Court ordered the second respondent to be sentenced a six-month period for the offence of contempt of court, and the Lawyers Council passed a resolution removing the second respondent's name from the lawyers' register. These demonstrated that the second respondent was a person committing a seriously dishonest act and then lacking qualifications of ministership under section 160 (4) of the Constitution. His behaviour was also in serious violation of ethical standards, so he had prohibitions of ministership under section 160 (5) of the Constitution. As for the reasons, the qualifications of a person to hold a position of minister must be scrutinised in order to guarantee that such a person would perform the duties with integrity, maintain behaviour and qualifications that the public accepted and trusted, and preserve morality, ethics, and good governance. The first respondent knew or should have known that the second respondent lacked qualifications or had prohibitions for being a minister under section 160 (4) and (5) of the Constitution. Moreover, no evidence appeared that the first respondent additionally consulted with the Council of State regarding the qualifications of the second respondent's ministership. The fact that the first respondent allowed the second respondent to remove his name from the list of ministers to be appointed on 1st September B.E. 2566 (2023) indicated that the first respondent knew or should have known of the second respondent being a person committing a dishonest act and seriously violating ethical standards and a person lacking qualifications or having prohibitions for being a minister. The action of the first respondent, that he submitted the appointment of the second respondent to be a minister on 27th April B.E. 2567 (2024), constituted circumstances that were deemed as a lack of evident integrity, a serious violation of ethical standards, and bad-faith intention to deviate, conceal, and distort essential facts despite knowing or being likely to know that the second respondent lacked qualifications or had prohibitions for being a minister. The first respondent knew and allowed the second respondent or other persons to illegally employ the first respondent's position of the Prime Minister in order to hold a ministerial position. His action constituted a conflict between personal and public interests, causing damage to the dignity of the position of the Prime Minister. He associated with the second respondent, who maintained misbehaviour or notoriety that may affect the public trust and faith in the

performance of the Prime Minister's duties, and he therefore lacked qualifications of ministership under section 160 (4) and (5) of the Constitution.

3. Mrs. Natjaree Anuntasilpa submitted a statement of following issues.

(1) What were the reasons for delivering the letter seeking opinions of the Council of State in the case to appoint the second respondent to be the Minister Attached to the Prime Minister's Office, which specified only the qualifications and prohibitions under section 160 (6) and (7) of the Constitution? Was it done on any person's advice?

Mrs. Natjaree Anuntasilpa gave the following statement. The Secretariat of the Cabinet was entrusted by the Prime Minister to examine qualifications and prohibitions of a person who was nominated as a minister in order to be preliminary information for consideration by the Prime Minister. The examination was conducted based on a personal profile, together with a declaration form of qualifications and prohibitions, prepared and certified by the nominee himself, and the Secretariat of the Cabinet also made enquiries with relevant agencies.

As regards the delivery of the letter requesting for opinions of the Council of State in the case of the second respondent, which specified only the qualifications and prohibitions under section 160 (6) and (7) of the Constitution, it was because the Secretariat of the Cabinet was, in light of its consideration, suspicious on the legal issue of whether the terms "had been sentenced to imprisonment," which constituted the prohibited person from holding a ministerial position under section 160 (6) in conjunction with section 98 (7) of the Constitution, meant only sentencing for a criminal offence or included the imprisonment for the offence of contempt of court. In addition, it was whether section 160 (7) of the Constitution applied to a person being sentenced while holding the ministerial position or to a person who would be appointed to hold the ministerial position. The examination of qualifications and prohibitions for being a minister under section 160 (4) and (5) was not the legal issue but rather the factual issue that could not be requested for examination or consultation with the Council of State pursuant to section 7 of the Council of State Act, B.E. 2522 (1979), which provided that the Council of State had power and duties to provide only legal opinion. The Secretary-General to the Cabinet internally consulted with the Secretary-General of the Council of State, and the latter was of the opinion that the matters were a subjective perspective of each person and depended on the facts on a case-by-case basis. The Office of the Council of State did not have the power and duties to determine those matters, and no agencies in the executive branch could decide either.

(2) Was there any consideration to proceed with the matters in accordance with the letter of the Secretariat of the Cabinet, No. PM 0508/*wor* 3447, dated 7th December B.E. 2564 (2021), that was similar to the submission for appointing other ministers?

Mrs. Natjaree Anuntasilpa gave the following statement. As regards the letter of the Secretariat of the Cabinet, No. PM 0508/*wor* 101, dated 23rd February B.E. 2561 (2018), Re: Practical Guidelines to Submit the Matters for the Royal Grace, and the letter of the Secretariat of the Cabinet, No. PM 0508/*wor* 3447, dated 7th December B.E. 2564 (2021), Re: Reminder of Practical Guidelines to Submit the Matters for the Royal Grace, both letters were intended for government agencies to verify before submission of the matters concerning the appointment of a government officer, a member of a committee under the law, and a person to hold a position in order that the submission would be proceeded properly. Those letters did not intend to be applied as the rules for examination of qualifications of a person to hold a ministerial position. However, the Secretariat of the Cabinet had practical guidelines to examine a nominee to be appointed as a minister in accordance with the aforesaid letters and based upon caution and strictness in both the examination by itself and coordination to examine in secret to avoid irritating the King, especially the part stating that there must not be a pending lawsuit in court. The issue to be the case was that of the second respondent and another nominee whose cases were final. Because the suspicion of legal issue existed, it therefore consulted with the Office of the Council of State.

4. Mr. Meechai Ruchuphan submitted the opinions on what the reasons and differences were regarding the provisions of qualifications and prohibitions under section 160 (4) and (5) of the Constitution and the consideration by the Constitutional Court and the Supreme Court on the case of serious violation of ethical standards.

Mr. Meechai Ruchuphan was of the following opinions. The Constitution Drafting Commission (CDC) aimed to require ministers to maintain higher qualifications than Members of the House of Representatives. Section 160 of the Constitution provided that a minister, apart from the prohibitions under section 98 of the Constitution, must have graduated with not lower than a bachelor's degree or its equivalent (section 160 (3)), be of evident integrity (section 160 (4)), and not have behaviour that was a serious violation of or failure to comply with ethical standards (section 160 (5)), as well as must not have prohibitions under section 160 (7) and (8) of the Constitution. In the consideration of whether a person had evident integrity under section 160 (4) of the Constitution and had no behaviour that was a serious violation of or failure to comply with ethical standards under section 160 (5) of the

Constitution, it was under the Prime Minister's discretion as the one responsible for submitting the matter for ministerial appointment by taking into account the standard of ordinary people or a reasonable man. Moreover, qualifications under section 160 (4) and prohibitions under section 160 (5) of the Constitution were applied at the time of submission for ministerial appointment and throughout the period of being a minister. As for the case of a serious violation of ethical standards, for the purpose of enhancing the strength of merit and ethical systems as appeared in the Constitution's Preamble, section 219 provided that the Constitutional Court and Independent Organs responsible for inspecting the exercise of State power jointly prescribed ethical standards applicable to the justices of the Constitutional Court and persons holding positions in the Independent Organs, including the Auditor-General and heads of the secretariats of the Constitutional Court and the Independent Organs, and also provided to be applied to Members of the House of Representatives, Senators, and the Council of Ministers. However, it did not prohibit the House of Representatives, the Senate, or the Council of Ministers from stipulating additional ethics to be appropriate for the performance of duties of each organ. Section 219, section 234 paragraph one (1), section 235 paragraph one (1), section 236, and section 226 of the Constitution provided that the Supreme Court had jurisdiction to consider and adjudicate the matter of the behaviour of a person holding political positions, whereas this case was not the matter of the constitutionality that fell in the jurisdiction of the Constitutional Court.

5. The Secretariat of the Cabinet submitted the copy of the summary to the examination of the second respondent's personal profile that was reported to the Prime Minister in order to propose the draft Royal Proclamation of appointment (every occurrence). It also gave the following statement. Because the previous process to examine qualifications of a nominee to be a minister would spend time for not more than 5 days, including the period of the self-examination and self-certification of that person, and it was done in secret, the proceeding was in the expeditious manner. When the Secretariat of the Cabinet examined and suspected the legal issue regarding qualifications and prohibitions of ministership of the nominee on 29th August B.E. 2566 (2023), it reported to the Prime Minister. The Prime Minister, then, directed the Secretariat of the Cabinet to consult with the Office of the Council of State to find the final solution. The Secretariat of the Cabinet informed the Secretary-General of the Council of State of that matter, and then the former delivered its letter to the Office of the Council of State to consult on legal issues regarding qualifications and prohibitions of ministership under the provisions of the Constitution on 30th August B.E. 2566 (2023). Because of the expeditious matter as aforesaid, there were no copies of the

memorandum, the cover letter, or the draft letter of the Bureau of Legal Affairs, but only the Secretariat of the Cabinet's letter was delivered to the Office of the Council of State.

6. The Secretary-General of the Council of State submitted a copy of the memorandum or internal official note, an original file of the submitted letter of the Office of the Council of State, secret, most urgent, No. PM 0904/192 dated 1st September B.E. 2566 (2023), Re: Consultation on Qualifications and Prohibitions of a Minister under the Provisions of the Constitution, which was composed of the copy of the Secretariat of the Cabinet's letter, secret, most urgent, No. PM 0503/*tor* 1797 dated 30th August B.E. 2566 (2023), the copy of the Officials' Record of Opinions, secret, Re: Qualifications and Prohibitions of a Minister under the Provisions of the Constitution, that proposed to the Council of State (Special Committee) to be considered on Friday the 1st September B.E. 2566 (2023), the copy of the Office of the Council of State's letter, secret, most urgent, No. PM 0904/152 dated 1st September B.E. 2566 (2023) (Final File No. 1014/2566), and the copy of the daily meeting resolution summary of the Council of State (Special Committee), secret, Re: Consultation on Qualifications and Prohibitions of a Minister under the Provisions of the Constitution, on Friday the 1st September B.E. 2566 (2023). The said copy of the daily meeting summary was summarised as follows. A representative of the Office of the Judiciary gave an additional statement regarding the differences between a judgment and an order. The judgment was the final decision on the issue of the case, while the order was proceedings other than judgment. However, both the judgment and the order to imprisonment did not cause any differences in terms of their effects. The offence of contempt of court under the Civil Procedure Code was involved in the order to imprisonment, as well as a warrant of imprisonment. A representative of the Secretariat of the Cabinet gave an additional statement of facts as follows. The Secretariat of the Cabinet intended to consult only on section 160 (6) in conjunction with section 98 (7) and section 160 (7) of the Constitution. Upon its consideration, the Council of State (Special Committee) was of the opinion only on the issues the Secretariat of the Cabinet intended to consult with. It did not consider and provide opinions on other qualifications and prohibitions. The issue concerned the consideration of the provision of the Constitution that was the duties and powers of the Constitutional Court. Therefore, providing opinions in this case was only for the sake of the administration of the State affairs. In any case, the final decision was the duties and powers of the Constitutional Court.

7. The Lawyers Council submitted a copy of the Office of the Judiciary's letter, No. CJ 016/26383 dated 30th June B.E. 2551 (2008), a copy of Supreme Court Order

No. 4599/2551 dated 25th June B.E. 2551 (2008), a copy of the Committee of the Lawyers Council's final order dated 25th September B.E. 2552 (2009), and a copy of the Chancellor of the Lawyers Council's order No. 6/2553 dated 15th March B.E. 2553 (2010), which could be summarised as follows.

The removal of the second respondent's name and the other two alleged persons from the lawyers' register resulted from the decision of the Supreme Court that the three alleged persons jointly committed the contempt of court. Their actions disrespected the judicial power. This deterioration of the power of the courts or the judges, affected the credibility of the Thai justice system, undermining the institution and professionalism of lawyers, and constituting circumstances of lawyer misconduct pursuant to clause 6 in Chapter 2 and clause 18 in Chapter 4 of the Lawyers Council Regulation on the Professional Conduct of Lawyers, B.E. 2529 (1986). Despite the first-time wrongdoing, it was a serious case and had no reasonable ground for mercy in punishment. Therefore, the sentencing order was issued against the three alleged persons, namely that their names must be removed from the lawyers' register under section 52 paragraph one (3) of the Lawyers Act, B.E. 2528 (1985). Later, after considering section 69 of the Lawyers Act, B.E. 2528 (1985), the Lawyer Council Committee agreed with the reasons of the Professional Conduct Committee and therefore passed the resolution confirming the final order of the Professional Conduct Committee.

8. The Office of the Attorney-General submitted a copy of the inquiry report of case No. 1872(*sor*)/2551 dated 28th November B.E. 2551 (2008). The inquiry concerned the Office of the Judiciary, the accuser, and the second respondent as well as the others, in a total of three, as the accused, of jointly committing the offence of giving, offering, or promising to give property or any other benefits to a competent official in order to induce such person to carry out or abstain from carrying out or delay in carrying out any act which was improper performance of duty under section 144 in conjunction with section 83 of the Penal Code. An inquiry official was of the opinion not to prosecute all the three accused. As for the reasons, the third accused was merely a person responsible for coordinating the appearance of Mr. Thaksin Shinawatra and Lady Potjaman Shinawatra at the court and providing security to both of them. He did not have a duty on case proceedings, so he was not in the position to assist Mr. Thaksin Shinawatra and Lady Potjaman Shinawatra with the discharging of the case. The fact that the third accused delivered a paper bag containing money in a sum of two million baht to a Supreme Court official established the belief that the third accused delivered the paper bag with the understanding that it was a bag of chocolate. Because the

person who received the bag of cash was the official, not a judge responsible for the case, there were no grounds for the third accused to give money. In addition, that Supreme Court official had not affirmed that the third accused gave him money to bring to the judge responsible for the case for the purpose of inducing him to carry out or abstain from carrying out any act which was performance of duty, and there were none of the witnesses to confirm that. It was not admissible that the third accused gave the money to the Supreme Court official or any official to induce him to carry out or abstain from carrying out any act which was performance of duty. The elements to constitute the offence under section 144 of the Penal Code were incomplete. When the actions of the third accused did not constitute the offence, the second respondent could not jointly commit the offence. Therefore, the public prosecutor issued the order not to prosecute against the second respondent on that accusation.

The first respondent submitted a closing statement, which could be summarised as follows. The application was unreliable because it lacked evidence, and sufficient supportive reasons. It referred to non-verified information from the internet or public news which was inconsistent with the allegations the applicant claimed as evidence of this case. The applicant submitted the case to the Constitutional Court for adjudication with the expectation based merely on bias and without legal grounds to individually terminate the ministership of the first respondent as the Prime Minister under section 160 (4) and (5) of the Constitution.

Having considered the application, statement of reply, statements and documents of relevant persons and agencies, letters of statement, the closing statement, and accompanying documents, the Constitutional Court was of the opinion that the case entailed sufficient facts and evidence to render a ruling and thus ceased the inquiry under section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). The Court specified an issue to be considered and adjudicated, whether the ministership of the first respondent as the Prime Minister was individually terminated under section 170 paragraph one (4) in conjunction with section 160 (4) and (5) of the Constitution.

The Court was of the opinion that section 160 and section 170 of the Constitution were the provisions in Chapter 8 : the Council of Ministers. Section 160 provided that "[a] minister must ... (4) be of evident integrity, (5) not have behaviour which was a serious violation of or failure to comply with ethical standards ... ." Section 170 paragraph one provided that "[t]he ministership of an individual Minister terminated upon ... (4) being disqualified or being under any of the prohibitions under section 160 ... ." Regarding

qualifications and prohibitions under section 160 (5), section 219 paragraph one of the Constitution provided that "[t]he Constitutional Court and Independent Organs shall jointly prescribe ethical standards applicable to the justices of the Constitutional Court and persons holding positions in the Independent Organs, including the Auditor-General and heads of the secretariats of the Constitutional Court and the Independent Organs, and the ethical standards shall come into force upon their publication in the Government Gazette. Such ethical standards shall include the upholding of honour and interests of the nation, and shall also explicitly specify the type of violation or non-compliance of ethical standards which was of a serious nature", and paragraph two provided that "[i]n preparing the ethical standards under paragraph one, opinions of the House of Representatives, the Senate, and the Council of Ministers shall also be taken into consideration. Upon their promulgation, they shall apply to Members of the House of Representatives, Senators and the Council of Ministers. However, this did not preclude the House of Representatives, the Senate or the Council of Ministers from prescribing additional ethics suitable to its performance of duties and not contrary to or inconsistent with the ethical standards under paragraph one, and shall be published in the Government Gazette." Clause 3 paragraph two of the Ethical Standards of the Justices of the Constitutional Court and Persons Holding Positions in the Independent Organs, including the Auditor-General and Heads of the Secretariats of the Constitutional Court and the Independent Organs, B.E. 2561 (2018) provided that "[t]hese Ethical Standards shall also apply to ... the Council of Ministers under section 219 paragraph two of the Constitution"; clause 7 provided that "must consider the interests of the nation above personal interests"; clause 8 provided that "must perform duties with integrity, without seeking illegal benefits for himself or others, or without circumstances of knowing or allowing others to employ his duties for seeking illegal benefits"; clause 11 provided that "must not do any act that causes conflicts between personal and public interests, whether directly or indirectly"; clause 17 provided that "must not do any act that dishonours a position holding"; clause 19 provided that "must not associate with a disputing party, a legal offender, an influential person, or a person with misbehaviour or notoriety, which may undermine trust and faith of the people in performing the duties"; clause 27 paragraph one provided that "[t]he violation of or non-compliance with the ethical standards under Chapter 1 shall be deemed serious.", and paragraph two provided that "whether the violation of or non-compliance with the ethical standards under Chapter 2 and Chapter 3 shall be deemed serious or not, there shall be considered the behaviours of violation or non-compliance, intention, and the seriousness of damage caused by such violation or non-compliance."

Furthermore, the spirit of the Constitution appeared in the Preamble that this Constitution established strict and absolute mechanisms to prevent, examine and eliminate corruption and misconduct in order not to allow executives who lacked morals, ethics and good governance to govern the country or employ the power arbitrarily. Accordingly, the qualifications and prohibitions of a person holding ministerial position were provided in section 170 of the Constitution. It was additional to the prohibitions of a person to exercise the right to stand for election of Members of the House of Representatives under section 98 of the Constitution. In this regard, a minister must have graduated with no lower than a bachelor's degree or its equivalent, be of evident integrity, and not have behaviour that was a serious violation of or failure to comply with ethical standards, including not having any prohibitions under section 160 (7) and (8) of the Constitution. This was consistent with the spirit of the Constitution that required a person to hold a ministerial position to have higher qualifications than a person to be a member of the House of Representatives, because a minister was a high-ranking executive of an administrative and government agency of the country. As regards the differences between qualifications and prohibitions under section 160 (4) and (5) of the Constitution, section 160 (4) was, in general, integrity of a person that appeared to the society, while section 160 (5) was the specific to the ethical standards. The consideration of a person with evident integrity under section 160 (4) of the Constitution and no behaviour that was a serious violation of or failure to comply with ethical standards under section 160 (5) of the Constitution fell under the Prime Minister's discretion, as he was responsible for submitting the matter for the Royal appointment of a minister and for countersigning such appointment. The countersigning person must always be responsible for the operation that he countersigned his name, since the King signed his name only when one conferred the advice. The responsibilities were composed of correctness and completeness according to protocol and process, accuracy of the statement to be submitted for the royal signature, and accuracy of substance, constitutionality, and laws on administration of the State affairs.

Facts could be founded as follows. The second respondent had been sentenced pursuant to Supreme Court Order No. 4599/2551 which determined that the law clerk who coordinated with the second respondent brought the paper bag of cash to the Supreme Court official and knew or should have known that the cash was inside the paper bag. The second respondent was under circumstances to believe that he knowingly engaged in such action in the manner of a co-principal, namely that he intended to motivate the Supreme Court official to carry out an act which was improper preformance of duty, which may

connect to favour a defendant in a black case No. CP 1/2550, who was represented by the second respondent. Those actions were improper behaviour in the court premises, which constituted the offence of contempt of court under section 31 (1) and section 33 of the Civil Procedure Code in conjunction with section 83 of the Penal Code. It also was likely to constitute bribery of a competent official under section 144 of the Penal Code or other offences against a competent official. The second respondent, who engaged in a lawyer profession and legal counsellor, would firmly realise that the aforementioned actions would cause damage to the Courts of Justice and affect the trust and faith in the performance of duties of judicial personnel. Severe punishment should therefore be imposed; that was the second respondent and the other two alleged persons, in a total of three, were sentenced to six-month imprisonment each. In September B.E. 2552 (2009), upon its consideration, the professional conduct committee of the Lawyers Council was of the opinion that the action of the second respondent who was punished for the offence of contempt of court under the abovementioned Supreme Court Order demonstrated disrespect for and degradation of the judicial power or the judge, as well as an impact on the credibility of the Thai justice system. They established guilt under clause 6 and clause 18 of the Lawyers Council Regulation on the Professional Conduct of Lawyers, B.E. 2529 (1986). Therefore, the names of the second respondent and relevant alleged persons must be removed from the lawyers' register. Later, there was the Royal Proclamation appointing the first respondent as the Prime Minister, dated 22nd August B.E. 2566 (2023), and the Royal Proclamation appointing the Ministers, dated 1st September B.E. 2566 (2023), in which the latter did not include the name of the second respondent as a minister. However, in the Royal Proclamation vacating ministers from ministership and appointing ministers, dated 27th April B.E. 2567 (2024), the first respondent submitted the statement to the King that certain ministerial positions should be reallocated in order for suitability and the interest of administration of the State affairs, and the name of the second respondent appeared to be appointed as the Minister Attached to the Prime Minister's Office. Accordingly, those grounds established the issue the Constitutional Court must consider; whether the ministership of the first respondent as the Prime Minister was individually terminated due to no evident integrity and behaving in serious violation of or failure to comply with the ethical standards under section 170 paragraph one (4) in conjunction with section 160 (4) and (5) of the Constitution on the grounds of nominating the second respondent as a minister.

Regarding the allegation of the applicant, the first respondent knew or should have known that the second respondent lacked qualifications or had prohibitions to hold a

ministerial position under section 160 (4) and (5) of the Constitution, because the second respondent had been sentenced to six-month imprisonment for the offence of contempt of court together with other alleged persons in a total of three pursuant to Supreme Court Order NO. 4599/2551, and the Lawyers Council ordered their names to be removed from the lawyers' register. Even though the Council of State was of the opinion that the punishment under the court imprisonment order in that case that had been discharged for more than ten years deemed an exception under the Constitution and not under the prohibitions to be a minister, the said opinion was provided only for the case of qualifications and prohibitions under section 160 (6) in conjunction with section 98 (7) and section 160 (7) of the Constitution, excluding prohibitions under section 160 (4) and (5) of the Constitution. The Royal Proclamation appointing ministers, dated 1st September B.E. 2566 (2023), did not include the name of the second respondent as a minister but later his name appeared to be appointed as the Minister Attached to the Prime Minister's Office in the Royal Proclamation appointing ministers, dated 27th April B.E. 2567 (2024). This established the factual issue to be primarily considered whether the first respondent knew or should have known the facts regarding the circumstances of the second respondent as he was alleged of having evident prohibitions under any subsections of section 160 of the Constitution.

According to the enquiry of the first respondent and Mrs. Natjaree Anuntasilpa, the Secretary-General to the Cabinet, they gave the following statement. The initial process for the nomination of persons to be submitted for graciously appointing ministers was to examine qualifications and prohibitions of a nominee to be a minister. The Secretariat of the Cabinet was the agency responsible for preparing "a personal profile and a form declaring qualifications of a nominee to be a minister for the royal consideration." Those forms were filled in by a nominee for self-examination as well as certification, and then they were submitted to the Secretariat of the Cabinet for examination and affirmation of his or her qualifications and prohibitions, such as being bankrupt or being involved in civil or criminal cases. In case of incomplete information, the nominee would be invited to provide an explanation or to be consulted with. In case of finding legal issues concerning the qualifications or prohibitions, those would be proceeded to the Council of State for seeking opinion. Afterwards, the Secretariat of the Cabinet prepared a summary document of such examination and reported to the Prime Minister for submitting the matter for ministerial appointment. Considering the aforementioned process, it was ensured that the first respondent certainly knew the background including qualifications and prohibitions of the second respondent from the summary document of the examination submitted by the

Secretariat of the Cabinet. In addition, explaining in the statement of reply, the first respondent had considered the facts that the second respondent had been sentenced to imprisonment for the offence of contempt of court under Supreme Court Order No. 4599/2551 since the year of B.E. 2551 (2008) and that his name had been removed from the lawyers' register due to lawyer misconduct since the year of B.E. 2552 (2009). Furthermore, no other new circumstances or action of the second respondent was raised for argument, and any special circumstances or action of the second respondent or criminal prosecution was not founded. It was therefore the case where the first respondent considered the facts and exercised discretion to determine the circumstances of the second respondent, and then he was of the opinion that the second respondent did not lack qualifications or have prohibitions for ministerial appointment. The facts were consistent with the statement of the Secretariat of the Cabinet that, after considering and having suspicion in legal issues concerning qualifications and prohibitions on 29th August B.E. 2566 (2023), the Secretariat of the Cabinet reported to the first respondent, and it was requested by the first respondent to expeditiously consult with the Council of State for a final resolution. The above-mentioned facts could be founded that the first respondent knew or should have known the facts regarding the circumstances of the second respondent according to the allegation of his probability of lacking qualifications or having prohibitions under any of the subsections of section 160 of the Constitution before deciding to propose the appointment of the second respondent as a minister.

The next consideration was whether the facts that the first respondent knew or should have known the circumstances of the second respondent but still nominated him to be the Minister Attached to the Prime Minister's Office according to the Royal Proclamation appointing ministers, dated 27th April B.E. 2567 (2024), constituted the case where the first respondent was not of evident integrity to be disqualified under section 160 (4) of the Constitution.

The Court held the opinion as follows. The circumstances that the second respondent was sentenced to imprisonment and his name was removed from the lawyers' register due to lawyer misconduct undermined the institution and professionalism of lawyers and seriously deteriorated dignity and honour of lawyers. These demonstrated that the second respondent was a dishonest person who lacked the qualification under section 160 (4) of the Constitution. The meaning of the words "integrity" or "good faith" did not merely concern the act of dishonesty or misconduct, but a person with integrity must be generally admired by a reasonable man because of his or her circumstances or action. This would be

deemed as a person with evident integrity. When the second respondent lacked the qualification under section 160 (4) of the Constitution, his nomination by the first respondent to be the Minister Attached to the Prime Minister's Office therefore constituted non-compliance with the Constitution due to the submission of an improper person to be a minister upon the royal appointment. The first respondent's argument that he maintained a business background, had limited experience in politics and administration of the State affairs, lacked knowledge in laws and political science, and was not able to determine whether the second respondent lacked qualifications or had prohibitions of ministership under the Constitution could not be sustained. As for the reasons, the Prime Minister was the head of the executive branch. Since every of his decision affected the country, he had to take responsibility for every action. In addition, the rules for considering the issue of integrity, credibility, and public trust were the factual issues being evident by objective nature, but it was not the legal issue that relied on expertise, educational degree, or specific experience. The mere realisation set by the standards of a reasonable man or the general public in society was sufficient for determination. In this regard, all the facts on the circumstances of the second respondent, as aforementioned, were the facts generally known by the public. The actions of the second respondent that caused the Supreme Court to issue the imprisonment order established the evident circumstances of extreme inappropriateness and deviation from normal behaviour of a reasonable man. The first respondent was the Prime Minister and the one who countersigned the Royal Proclamation. Despite evident facts that the second respondent lacked the qualification or had the prohibition under section 160 (4) of the Constitution, the Prime Minister still submitted the matter without exercising discretion as a reasonable man or even taking into account standards of ordinary people as well as the provisions of the Constitution.

The nomination of any person to be a minister by the Prime Minister did not rely only on the actual personal trust. Not only must the Council of Ministers, as the executive branch, gain the trust of the House of Representatives in accordance with the democratic regime of government with the King as Head of State under the parliamentary system, but also it -- including the Prime Minister and each minister -- must gain credibility and trust, in reality, from the general public or the people who actually owned the sovereign power. Especially, the current Constitution of the Kingdom of Thailand had a significant spirit to prevent a person without morality, ethics, and good governance from possessing the power to govern and administer the country as provided by section 160 (4) and (5) that a minister must be of evident integrity and not have behaviour that was a serious violation of or failure to comply

with ethical standards. Those were, therefore, important qualifications and prohibitions added in this Constitution which were different from the ones in the previous Constitutions. Consequently, although the Prime Minister could decide to nominate a person he had trust in and viewed as having knowledge and ability to be a minister as he thought appropriate or as according to the way of political tradition, such a person must have qualifications and no prohibitions as the legal issue to be clearly determined under section 160 of the Constitution. In addition, he must be a person of credibility and public trust or the people under the standard of a reasonable man.

According to the allegation of the applicant, in the second submission of the appointment of the Council of Ministers, the Office of the Council of State provided opinions for the appointment of the Council of Ministers on 1st September B.E. 2566 (2023) only in the case of qualifications and prohibitions under section 160 (6) and (7) of the Constitution. However, in the submission of the appointment of the second respondent as a minister on 27th April B.E. 2567 (2024), no evidence appeared that the first respondent additionally consulted with the Council of State on the second respondent's qualifications of ministership.

According to the statements given by the first respondent and Mrs Natjaree Anuntasilpa, the Secretary-General to the Cabinet, on those issues, together with documentary evidence from the Secretary-General of the Council of State, it was founded as follows. The nomination of persons to hold ministerial positions under the Royal Proclamations appointing ministers, dated 1st September B.E. 2566 (2023) and dated 27th April B.E. 2567 (2024), was in accordance with the process of examination of qualifications and prohibitions by an agency having duties and powers to carry out government affairs for the Council of Ministers, namely the Secretariat of the Cabinet. It examined qualifications and prohibitions of a nominee to be a minister under the scope of its duties and powers. When it had suspicion on the legal issue regarding qualifications and prohibitions of any of the nominees to be a minister, it reported to the Prime Minister in order to consult with the Council of State. When the Council of State already provided opinions on the legal issue regarding qualifications and prohibitions, the Prime Minister would further follow such opinions.

The Court held the opinion as follows. In the submission for the appointment of ministers, besides considering legal opinion or consultation from relevant agencies or organisations, the first respondent, as the Prime Minister, must exercise discretion in selecting a person acknowledged by a reasonable man to be of credible and trustworthy.

The argument by the first respondent that he was a person with a business background, limited experience in politics and administration of the State affairs, and without knowledge in laws and political science, and that he could not determine whether the second respondent lacked qualifications or had prohibitions under the Constitution, could not be sustained. This was because the rules for considering the matter of integrity, credibility, or public trust were not the issue of law that must rely on expertise, educational degree, or specific experience. The mere realisation set by the standards of a reasonable man or the general public in society was sufficient for determination. In this regard, the facts on the circumstances of the second respondent, which appeared in Supreme Court Order No. 4599/2551 sentencing the second respondent for contempt of court, were the facts generally known by the public. In that case, even a public prosecutor ordered non-prosecution against the second respondent and others for the bribery of competent official or other criminal offences, a criminal prosecution was a legal proceeding that aimed to accuse and sentence a person to a criminal punishment that was against life, freedom, body, or property of a person, which seriously affected the rights and liberties of a person. The standards for considering prosecution or criminal sentencing against any person were therefore a proof of guilt so as to completely find the elements of an offence. The non-prosecution order of the public prosecutor did not mean that such a person was free from issues regarding political credibility or trust being able to be considered by the reasonable man's standards. The action of the second respondent that caused the Supreme Court to issue the imprisonment order constituted evident circumstances of extreme inappropriateness, as well as deviation from normal behaviour of a reasonable man. For example, putting cash of two million baht into a paper bag and bringing it to the Supreme Court official with the excuse of alternating –by accident-- with a bag of chocolate demonstrated hardly believable circumstances by the reasonable man. Moreover, the couriers were the persons working for the second respondent, so the second respondent could not deny that he had not been aware of those action. The person who had maintained the said behaviour would lack credibility and trust to hold a ministerial position. Despite having known all those facts, the first respondent nominated the second respondent to be the Minister Attached to the Prime Minister's Office according to the Royal Proclamation appointing ministers dated 27th April B.E. 2567 (2024). Therefore, the first respondent was not of evident integrity and lacked the qualification under section 160 (4) of the Constitution.

Regarding the allegation of the applicant that the first respondent had behaviour that was a serious violation of or failure to comply with ethical standards under the prohibition

stipulated in section 160 (5) of the Constitution, the applicant alleged as follows. The first respondent submitted the matter for the appointment of the second respondent as the Minister Attached to the Prime Minister's Office, even though he had removed the second respondent's name or requested the second respondent to withdraw his name from the nomination list of ministers in the submission on 1st September B.E. 2566 (2023). This circumstance demonstrated that the first respondent had no evident integrity and seriously violated ethical standards. His action established upholding personal interest above national interest, conflict of interest between personal and public interest, whether directly or indirectly, undermining the honour of the position of the Prime Minister, and violating clause 7, clause 8, clause 11, clause 17, and clause 19 of the Ethical Standards of the Justices of the Constitutional Court and Persons Holding Positions in the Independent Organs, including the Auditor-General and Heads of the Secretariat of the Constitutional Court and the Independent Organs, B.E. 2561 (2018), which were applicable to the Council of Ministers under section 219 paragraph two of the Constitution. The first respondent therefore had the prohibition under section 160 (5) of the Constitution.

The Court was of the opinion as follows. The adjudication that any minister had behaviour in a serious violation of or failure to comply with ethical standards under section 160 (5) of the Constitution, was under the duties and powers of the Constitutional Court. The adjudication of whether the ministership of that minister must be terminated under section 170 paragraph three in conjunction with section 82 of the Constitution was truly a constitutional case where the Constitutional Court must proceed with the proceedings to be in accordance with the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). In addition, the Supreme Court also had duties and powers under section 234 paragraph one (1) in conjunction with section 235 paragraph one (1) of the Constitution, which also provided the Supreme Court the competence to decide a case of serious violation of ethical standards. The Supreme Court must proceed with the proceedings pursuant to the rules of the plenary meeting of the Supreme Court under section 226 paragraph seven of the Constitution. In the case where the Supreme Court rendered the judgment that an accused was involved in the circumstances or had committed the offence as accused, there must be a permanent revocation of the right to stand for election as a Member of the House of Representatives, a Senator, a member of a local assembly, or a local administrator, as well as the right to hold any political position. In this connection, if the Constitutional Court adjudicated that the action of the first respondent constituted the serious violation of or failure to comply with the ethical standards, sanction under section

170 paragraph three in conjunction with section 82 of the Constitution must be applied. If the Supreme Court rendered a judgment under section 235 paragraph one (1), sanction under section 235 paragraph three and paragraph four of the Constitution must be applied. Consequently, even though the facts derived from the same grounds had been considered, they still were different types of cases due to different procedures, objectives of the proceedings, and sanction.

The facts were founded that the first respondent knew or should have known the facts regarding the circumstances of the second respondent thoroughly. However, he still submitted the matter for the second respondent to be appointed as the Minister Attached to the Prime Minister's Office by countersigning the Royal Proclamation. The first respondent must be responsible for the accuracy of substances in the said Royal Proclamation countersigned by him. Despite evident facts of being the case of prohibition under section 160 (4) of the Constitution, the first respondent had neither exercised discretion as a reasonable man nor even taken into account the standards of general people and the provisions of the Constitution, representing that the first respondent was not of evident integrity and lacked the qualification under section 160 (4) of the Constitution. This constituted the act in violation of and failure to comply with clause 8, to be honest in performing duties, in Chapter 1 of the Ethical Standards of the Justices of the Constitutional Court and Persons Holding Positions in the Independent Organs, including the Auditor-General and Heads of the Secretariat of the Constitutional Court and the Independent Organs, B.E. 2561 (2018), which clause 27 paragraph one stipulated that the violation of or failure to comply with ethical standards under Chapter 1 must be deemed serious nature, which also was the prohibition under section 160 (5) of the Constitution. As for other allegations regarding various motives as stated in the application, since the Court had already adjudicated that the first respondent had behaviour in serious violation of or failure to comply with ethical standards, it was unnecessary to adjudicate those alleged issues, and the result of which could not be changed.

By virtue of the aforementioned reasons, the Justices of the Constitutional Court with a majority of 5 to 4 adjudicated that the ministership of the first respondent, Prime Minister, was individually terminated under section 170 paragraph one (4) of the Constitution due to the lack of evident integrity and the qualification under section 160 (4), and having behaviour in serious violation of or failure to comply with ethical standards that was the prohibition under section 160 (5). Upon the termination of the ministership of the Prime Minister under section 170 paragraph one (4), ministers must therefore vacate office

en masse under section 167 paragraph one (1), and section 168 paragraph one (1) must be applied to the performance of duties of the vacated Council of Ministers.