

PERSPECTIVE

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Singapore | 22 June 2023

Formidable Obstacles Blocking Move Forward Party Leader's Quest for Thai Premiership

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Move Forward Party leader and prime ministerial candidate Pita Limjaroenrat giving a press conference at the party headquarter in Bangkok on 15 May 2023. Photo: Jack TAYLOR/AFP.

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EXECUTIVE SUMMARY

- Move Forward party leader Pita Limjaroenrat's quest for the Thai premiership has hit its first obstacle.
- The Election Commission is investigating whether he has been in violation of the election law. He has also been accused of unlawfully advertising liquor products on TV.
- If found guilty of either of these two alleged crimes, he can be disqualified from both the House membership and the premiership.
- If he survives the disqualification battles, Pita's qualifications as an MP may still be challenged in the Constitutional Court.
- And finally, Pita also faces a seemingly insurmountable last obstacle: Not enough support in the Senate for him to gain the premiership.
- If Pita fails, new options for Pheu Thai, the second largest party, will emerge.

INTRODUCTION

Move Forward party leader Pita Limjaroenrat's arduous quest for the Thai premiership has hit its first obstacle. The Election Commission on 9 June decided to set up a team to probe whether he had broken the election law.

The Election Commission's decision – a unanimous one from all six commissioners – came with a new twist. At first it dismissed all three complaints against Pita for holding shares in a media business; but then, it formed a team to determine whether Pita violated Section 151¹ of the election law, by entering himself in the general election despite knowing that he had in his name 42,000 shares of iTV (a dormant TV station which stopped broadcasting on 8 March 2007, but which has not been dissolved as a media business entity).²

In order to stand for election to the House of Representatives, one of the qualifications of every candidate is not to own or to hold shares in a newspaper or any other media business. Penalties for violating this law – which is deemed a crime – include imprisonment ranging from one year to 10 years, a fine ranging from 20,000 baht to 200,000 baht, and worst of all, a suspension of the right to vote for 20 years. The suspension will automatically disqualify the violator from running for or holding the House membership and/or vying for the premiership.

The first of the three complaints against Pita was filed on 10 May, whereas Pita's candidacy registrations (for both a party-list House seat, and as the MFP's only candidate for the premiership) were done on 3 April. The two follow-up complaints came after 14 May, the election day. Therefore, the Election Commission considered them as having been overtaken by events, and coming too late to stop Pita from entering the polls.

However, based on information from the three complaints, the Election Commission found “manifested” fact to start a probe into whether Pita violated Section 151.

SMALL MISSTEP CAN RUIN EVERYTHING

The 42,000 shares in iTV originally belonged to Pita's father, Pongsak, who passed away in September 2006. The shares, worth just about one baht each, became part of Pita's family estate, of which Pita has been the trustee. However, records in iTV showed that the 42,000 shares were in Pita's name, without stating that he held them in his capacity as the trustee.

At first, Pita's line of defence was quite straightforward: iTV had stopped broadcasting since 8 March 2007; the 42,000 shares in question constituted only about 0.000035% of the public media firm which had more than 1,206.7 million shares³ (and the Stock Exchange of Thailand delisted iTV on 24 July 2014); iTV has maintained its status as a media business entity only because of a pending lawsuit seeking 2,890 million baht of compensation from the Office of the Permanent Secretary of the Prime Minister's Office for abruptly cancelling a service agreement between iTV and the Office following the coup on 19 September 2006; the case is

now in the Supreme Administration Court, and iTV has won its case against the Office in the Central Administration Court.

More importantly, supporters of Pita and the MFP would point out that in this modern digital world, social media have been more effective than conventional TV broadcasting in election campaigns. And yet there is no law prohibiting election campaigning through social media. On 25 May 2023, Pita transferred the shares in question to his younger brother, Pasin. He did so in the wake of what he suspected was a new movement to revive iTV.⁴ At an online meeting of iTV shareholders on 26 April 2023, the meeting records state that iTV has remained in operation in accordance with the firm's objectives. iTV has also continued to submit its balance sheet and file its business tax returns normally.⁵

It is common sense that Pita could not have used his shares in iTV to his advantage in the election campaign. But there is no denying the "manifested" fact that he had the iTV shares under his name when he applied on 3 April to stand for a party-list House seat and when he accepted his party's nomination of him as its sole candidate for the premiership.

Nevertheless, as archaic as it may appear now, Section 42 (3) of the election law includes a prohibition for anyone wanting to stand in a House election not to own or hold shares in any newspaper or other media businesses. Violation of this prohibition will lead to a breach of Section 151 of the election law, punishable with a 20-year suspension of the voting right.

Losing the voting right, in turn, will disqualify oneself from standing for House election as well as from vying for the premiership, according to the 2017 Constitution's Section 160 (6). This constitutional provision bars anyone whose voting right has been suspended from assuming any posts in a cabinet, including the premiership.

Undoubtedly, it is difficult to prove beyond any reasonable doubt in a criminal court whether Pita intentionally violated Section 151. He had completed his four-year term as a party-list MP without anyone raising any objection about his alleged lack of full qualifications.

If the Election Commission finds enough evidence against Pita, it can ask the Public Prosecutor Office to bring Pita to a criminal court. But it remains uncertain whether the Public Prosecutor Office will go further and prosecute Pita. It did not do so in the case of Pita's predecessor, Thanathorn Juangroongruangkit, even after the Constitutional Court disqualified Thanathorn from the House membership in November 2020 for holding shares in an obscure magazine.

A spokesman for the MFP criticised the Election Commission's move to accuse Pita of violating Section 151, describing it as part of the ongoing efforts of the conservative establishment to obstruct Pita from assuming the premiership and to stop the MFP-led coalition from forming a new government.⁶

MORE FORMIDABLE NEXT OBSTACLE

If Pita's case of violating Section 151 goes to a criminal court, it will take months for the court to reach its verdict. After that, appeals can still be made against the verdict in an appeal court, and finally in the Supreme Court if necessary. This will take years for the case to reach its final conclusion.

Meanwhile, the Election Commission on 19 June confirmed⁷ the election results of all 400 constituencies and allocation of the 100 party-list House seats. Pita is first on the MFP's list of 92 candidates for party-list seats in the House of Representatives. He is going to return to the House for a second time as a party-list MP when the House opens in July.

After Pita returns to the House, he may face yet another challenge on his qualifications. One-tenth of the House membership (50 MPs) can submit a joint appeal to the House Speaker to examine Pita's qualifications. Alternatively, the Election Commission can do the same.

In either case, the House Speaker is obliged to forward such a request to the Constitutional Court for a ruling. On its part, the Constitutional Court has the discretion to either accept or reject the case. If it accepts it for further consideration, the Constitutional Court may even suspend Pita's House membership – like it did in the case of Thanathorn.⁸

ONE NEW FAUX PAS ON TV

Pita carelessly shot himself in the foot again during a recent TV interview in which he sang the praises of local liquors, and even mentioned a few of his favourite brands by name. This was part of his promotion of the MFP's campaign to “demonopolise” the alcohol beverage industry.⁹

Inadvertently, he may have violated the law banning direct advertising of alcoholic beverages on TV. A complaint against Pita was lodged at the Office of Committee for Alcohol Beverage Control on 7 June.¹⁰ Penalties for breaking this law include a jail-term up to one year, and a fine up to 500,000 baht.

Still worse are the legal implications of the violation: The Constitution's Section 98 (6) bans from running in a House election anyone who has been convicted by a court of law. And the ban also disqualifies the violator from holding any posts in a cabinet, including the premiership, according to the Constitution's Section 160 (6).

However, it will not be easy for the prosecutor to establish beyond any reasonable doubt in a criminal court that Pita intentionally broke the law. Pita has denied advertising any alcoholic beverage. He has insisted that he merely wanted to draw public attention to the plights of SMEs that cannot expand their distillery operations because of numerous restrictions put in place allegedly to protect the monopolies of a handful number of business breweries.

One of the structural changes advocated by his party is “Demonopolisation”:¹¹ Demolishing monopolies of big businesses – including those in the alcohol beverage industry – in order to promote the development and competitiveness of SMEs.

BARKING UP THE WRONG TREE

Deputy Prime Minister Dr Wissanu Krea-ngarm, the chief government jurist, dropped a bombshell in early June.¹² He wondered out loud whether Pita’s possible disqualification from being an MP could lead to his disqualification as party leader; and consequently to a need to hold by-elections in all 112 constituencies where MFP’s candidates have won.

The MFP’s party regulations prohibit anyone owning or holding shares in a newspaper or any other media businesses from serving on the party’s executive committee. By holding the iTV shares, Pita should have been disqualified from becoming party leader. Being an unlawful party leader, Pita’s signed endorsements of all MFP’s candidates to run in the general election could be deemed as null and voided.

On this legal question, the Lawyers Council of Thailand has issued a statement explaining its collective view that Pita’s alleged lack of qualification is a personal fault which should not hurt the party or harm the MFP’s candidates.¹³ The Election Commission seems to agree with this line of reasoning and has dropped the complaint against Pita on this particular issue.

Also dismissed by the Election Commission was another complaint against Pita in which he was accused of omitting his bank guarantee liability from his formal declaration of assets and liabilities in his capacity as an MP. The National Anti-Corruption Commission has reported that Pita did include in his declaration some liabilities.¹⁴

Any MP or other holder of public office who has failed to make a full and complete declaration of assets and liabilities faces penalties ranging from months of imprisonment to a life-long ban from national politics.

INSURMOUNTABLE LAST OBSTACLE

Even if Pita manages to survive the disqualification battles, he will still face strong objections from a large number of the 250 Senators. The Senators, together with 500 MPs, select the next prime minister, and in order to win, a premiership candidate needs to receive at least 376 votes from the 750 participants in a joint parliamentary session. The MFP-led coalition of eight parties, which is going to put forth Pita as its premiership candidate, has only 312 MPs -- still 64 votes short.

So far, intensive ongoing lobbying efforts of the coalition has reportedly won support for Pita from fewer than 30 Senators. This being the case, a stalemate looks inevitable if and when a joint parliamentary session is held (most probably in late July) to vote on the next premiership.

Most of the Senators are pro-establishment conservatives. They oppose the MFP's initiative to reform the monarchy by, for example, amending the controversial Section 112 of the Criminal Code, the so-called "*lese-majeste* law". The MFP has proposed reducing the penalties in Section 112 from 3-15 years of jail-term to no more than one year, and to allow only an authorised representative of the Royal Household Bureau to file a police complaint if and when there is a serious violation. At present, anyone can bring an alleged violation to the attention of the police.

One new complication was Pita's acknowledgement that the MFP wants to "introduce accountability" to Thai national politics by subjecting outgoing Prime Minister General Prayut Chan-o-cha to legal scrutiny. Pita has insisted that he has no desire for any personal "revenge". He and the MFP merely want to see the beginning of a new culture of political accountability in Thailand.¹⁵

General Prayut, while he was the army chief, led a coup to topple the Pheu Thai-led coalition government in May 2014. He then headed the National Council for Peace and Order. In the 2019, he accepted the nomination of Palang Pracharath Party as its only candidate for the premiership. He won the premiership, chiefly with the support of 249 Senators.¹⁶

Nevertheless, such a veiled threat of holding General Prayut accountable for alleged wrongdoings in the past will not sit well with the conservative Senators. All of the first batch of 250 Senators were chosen during the last few months of the military regime headed by General Prayut, in early 2019. Many of the Senators may feel they still owe some gratitude to General Prayut. One way to reciprocate is to block Pita from assuming the next premiership.

With potential court cases against Pita still lurking in the background, the Senators will have a good excuse to look beyond Pita for someone else to be the next prime minister of Thailand.

IF PITA FAILS...

General Prayut has never formally conceded election defeat. His United Thai Nation Party won only 36 House seats (23 constituency seats, and 13 party-list seats), compared with the MFP winning 151 House seats (112 constituency seats, 39 party-list seats). General Prayut has maintained a passive "wait and see" stance, waiting to see whether Pita will succeed in winning the next premiership.

If Pita is disqualified or if he fails to win the premiership, the MFP cannot put forth any new premiership candidate because the party registered only Pita as its sole premiership candidate. Then it will be the turn of Pheu Thai, with 141 MPs, the second largest, to put forth one of its three premiership candidates. Most probably, it will be 59-year-old real estate tycoon Srettha Thavisin.

Ms Paetongtarn Shinawatra, the youngest daughter of exiled former prime minister Thaksin, may have already dropped out due to an objection from her mother, Khunying Potjamarn. The matriarch of the Shinawatra family presided over a lunch meeting in a Bangkok hotel on 7 June, and after the meeting, news spread that the Shinawatra family had reached a conclusion

that Paetongtarn, 37, is still too young, and that she should wait five more years before going for the premiership. In addition, the family also felt it might be unsafe for Thaksin to return to Thailand too soon.¹⁷

The former Thai prime minister has been in exile overseas for nearly 17 years. He faces a total of 10 years of imprisonment from three past convictions in cases of corruption and conflict of interest while he was the head of government in the early 2000s. On 9 May, Thaksin announced his latest decision to return to Thailand in July, before his 74th birthday on 26 July.

The other premiership candidate of Pheu Thai is former justice minister Chaikasem Nitisiri, 74, who has been unwell and hospitalised during the last few weeks before the voting day on 14 May.

If no one from Pheu Thai Party can win the premiership, then this second largest party may cross over to team up with some parties in the Prayut Administration to form a new coalition – without participation of Pita’s MFP. The MFP has vowed never to work with any parties from the Prayut Administration, dismissing them as the vestige of General Prayut’s dictatorship.

Given this scenario, the Shinawatra family may feel it not yet “safe” for Thaksin to return from his exile. Under these conditions, the next Thai prime minister could therefore be one of the following: Anutin Charnvirakul, leader of Bhumjaithai Party, which has 71 House seats; General Prawit Wongsuwan, leader of Palang Pracharat Party, which has 40 House seats; General Prayut, who is one of the two premiership candidates of his United Thai Nation Party, and finally; the other UTN premiership candidate, party leader Pirapan Salirathavibhaga.

If none of the above can win the premiership, the new coalition can propose going for an “outsider” who has not been nominated for the premiership by any party.

CONCLUSION

Pita is facing tough obstacles on his arduous quest for the Thai premiership. Even if he manages to overcome them, he will fail in the end if he cannot gain enough support from Senators. If Pita fails, new options for Pheu Thai Party and others will emerge.

ENDNOTES

¹ Section 151 of the 2019 election law starts with one crucial reference, i.e. of anyone “who knows” he/she has no right to run in a House of Representatives election. Pita had served a full 4-year term as a party-list MP in the previous House after the 2019 general election without any question about his qualifications. At first, he was a party-list MP of Future Forward Party. After the party was disbanded in February 2020, Pita joined a new opposition party, Move Forward, and became its party leader.

² iTV stopped broadcasting after its service agreement was abruptly cancelled by the Office of the Permanent Secretary of the Prime Minister’s Office. Subsequently, an arbitration board ruled that the agreement cancellation was unjustifiable, and advised the Office of the Permanent Secretary to

compensate iTV with 2,890 million baht. The Office of the Permanent Secretary objected and appealed to the Administration Court. The Administration Court ruled in iTV's favour. The Office of the Permanent Secretary then appealed to the Supreme Administration Court. In the meantime, iTV has therefore had to maintain its status as a media business entity in order to fight the pending case in the Supreme Administration Court.

³ About 638.6 million shares (nearly 53%) have been held by Intuch Holdings, a public company. The Stock Exchange of Thailand's record shows that 24.99% of Intuch Holdings belongs to Singtel Global Investment.

⁴ “ ‘พิธา’ รับแล้วโอนหุ้น แจกกันไว้ก่อนฟื้นฟูพีทีไอทีวี ... ” [‘Pita’ admits transferring shares as a precaution against any move to revive iTV ...], **Thai Rath Online**, 7 June 2023, www.thairath.co.th/news/politic/2699839, accessed 10 June 2023.

⁵ Details of the record at www.intouchcompany.com/download/iTV_Minutes%20AGM2023%20TH.pdf, accessed 10 June 2023.

⁶ “ ‘โรม’ ซ้ำปม ‘กต’ เตรียมสอบ ‘พิธา’ ติดตาม ม.151 ตั้งใจเตะตัดขาตั้ง รบ. ... ” [‘Rome’ sees the motive of the Election Commission in probing ‘Pita’ under Section 151 is to disrupt the formation of a new government ...] Siam Rath Online, 10 June 2023, www.siamrath.co.th/n/453658, accessed 11 June 2023. Rangsiman Rome is a former MP and the spokesman for the Move Forward Party.

⁷ The Election Commission has received complaints of alleged wrongdoings in 82 constituencies. If any of the elected MP is found guilty, he or she can be removed by the Election Commission from the House of Representatives within 12 months after the election.

⁸ Thanathorn attended the opening session of the House of Representatives on 24 May 2019. But after the oath-taking ceremony, he was notified of the Constitutional Court's decision to suspend his House membership. Thanathorn had to leave. The Constitutional Court finally ruled on 19 November 2019 to disqualify him as an MP. After losing his House membership, Thanathorn was later banned from national politics for 10 years as a result of the dissolution of his Future Forward Party in February 2020, because of Thanathorn's illegal lending of about 191.2 million to ease the cashflow problems of his party. The Constitutional Court found the lending, as well as the party's borrowing from Thanathorn, a serious violation of the political party law, which prohibits anyone from single-handedly assuming financial control of a party.

⁹ “ อลุ่มทลาย! พิธาจุดกระแส ‘สุรแก้วหน้า’ ทำ ‘เหล้าสังเวียน’ ขายหมดตลาด ” [Immense impact! Pita started the dynamic movement of ‘progressive liquor’, leading to a sold out of ‘Savieng Liquor’], Morning News on **TV Channel 3**, 2 June 2023 www.youtube.com/watch?V=_1iRX30Nye0&t=18s, accessed 10 June 2023.

¹⁰ “ ส่อตกม้าตาย ‘ศรีสุวรรณ’ ร้องเอาผิด ‘พิธา’ ข้อซ้อเหล้าออกสื่อ ... ” [Untimely death: ‘Srisuwan’ accuses ‘Pita’ of mentioning liquor brands on the media], **Thai Post Online**, 7 June 2023, www.thaipost.net/x-cite-news/392389, accessed 10 June 2023. Srisuwan Janya is a social activist.

¹¹ The other three structural changes advocated by the MFP are: Democratisation (including drafting a new constitution), Decentralisation (including direct election of all provincial governors; so far only the Bangkok Governor is directly elected), and Demilitarisation (stopping military intervention in national politics).

¹² “ วิษณุ มอง หาก พิธา ถูกตัดสินขาดคุณสมบัติ ต้องเลือกตั้งซ่อมทั่วประเทศ ” [Wissanu sees the need to have by-elections nationwide should Pita be found to lack qualifications], **TV Channel 7**, 1 June 2023, www.news.ch7.com/detail/647596, accessed 10 June 2023.

¹³ “ ฟัน พิธา ไม่กระทบพรรค ” [Slashing Pita will not impact the party], **Thai Post Online**, 3 June 2023, www.thaipost.net/one-newspaper/389908, accessed 10 June 2023.

¹⁴ The liability emerged when Pita was the CEO of Oil For Life. He resigned from the firm in March 2017. It is unclear whether Pita guaranteed the firm's borrowings of about 460.3 million baht in his capacity as the CEO, or also in his personal capacity as a guarantor.

¹⁵ “ บิ๊กตู่ ลั่นไม่กลัว เช็คบิลย้อนหลัง ด้านพิธา เผยแค่ต้องการให้เกิดวัฒนธรรมความรับผิดชอบ ” [‘Big Tuh’ says he is not afraid of any retroactive checking; Pita says he merely wants to see a new culture of political accountability] **TV Channel 3 Morning News**, 6 June 2023, www.youtube.com/watch?v=OFkk146Ew_o, accessed 10 June 2023. ‘Big Tuh’ is the media nickname of General Prayut.

¹⁶ General Prayut won the premiership with 500 votes, 251 from MPs in 19 parties in the Palang Pracharath-led coalition, and 249 from Senators. Senate President Dr Pornpetch Wichitcholchai abstained.

¹⁷ The news, citing an “informed source” appeared on all major media outlets in Bangkok, including **Daily News Online**, 9 May 2023, www.dailynews.co.th/news/2411884, accessed 10 June 2023.

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