

The Constitutional Court  
The Kingdom of Thailand

Constitutional Court Ruling  
No. 2-3/2563 (2020)

Dated 7<sup>th</sup> February B.E. 2563 (2020)

Between	{	President of the House of Representatives	Applicant
		-	Respondents

Re: The President of the House of Representatives referred the opinions of Members of the House of Representatives to the Constitutional Court for a ruling under section 148 paragraph one (1) on whether or not the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was enacted in accordance with the provisions of the Constitution.

The President of the House of Representatives, applicant, referred the opinions of Members of the House of Representatives to the Constitutional Court for a ruling under section 148 paragraph one (1) of the Constitution in a total of 2 applications. The facts under both applications, supplemental application and supporting documents could be summarized as follows.

**First Application (Case No. 2/2563)**

During the deliberations of the Bill on Annual Expenditure Budget of B.E. 2563 (2020), at one instance there was a person who used the electronic identification and voting card of Mr. Chalong Toedweerapong, Member of the House of Representatives for Phatthalung Province, Bhumjaithai Party, to cast a vote of approval for such bill at a time when Mr. Chalong Toedweerapong was not present in the sitting of the House of Representatives. Such action could cause the process for enactment of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) to become unconstitutional.

One hundred and nine Members of the House of Representatives therefore entered their names in a motion to the applicant pursuant to section 148 paragraph one (1) of the Constitution in conjunction with article 139 of the Rules of Procedure of the House of Representatives B.E. 2562 (2019) for a referral to the Constitutional Court for a ruling, as follows.

1. Whether or not the process for enactment of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was contrary to or inconsistent with the voting principle under section 120 of the Constitution.

2. If inconsistent with section 120 of the Constitution, whether the Bill on Annual Expenditure Budget of B.E. 2563 (2020) lapsed in its entirety or only the sections in respect of which there was wrongful use of another person's electronic identification and voting card, and in such a case whether or not it was deemed that the House of Representatives failed to complete its consideration of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) within one hundred and five days of such bill reaching the House of Representatives pursuant to section 143 paragraph one of the Constitution.

3. If the Bill on Annual Expenditure Budget of B.E. 2563 (2020) lapsed in its entirety or only the sections in respect of which there was use of another person's electronic identification and voting card, what actions should be taken.

The applicant had verified the signatures of Members of the House of Representatives submitting the opinion and found that the Members of the House of Representatives who entered their names to submit the opinion numbered not less than one-tenth of the total number of existing Members of both Houses of the National Assembly pursuant to section 148 paragraph one (1) of the Constitution. The opinion was therefore referred to the Constitutional Court for ruling.

### **Second Application (Case No. 3/2563)**

During the deliberations of the Bill on Annual Expenditure Budget of B.E. 2563 (2020), which was approved by the House of Representatives on 11<sup>th</sup> January B.E. 2563 (2020), it appeared that there was use of another person's electronic identification and voting card in the second reading, from section 31 to section 55, in the third reading to give approval of Members of the House of Representatives and observations of the committee. It appeared that the name of Mr. Chalong Toedweerapong, Member of the House of Representatives for Phatthalung Province, Bhumjaithai Party, also voted despite the fact that during such time Mr. Chalong Toedweerapong was not present at the sitting of the House of Representatives but was in Phatthalung Province. Even though it was unclear who had casted the vote on his behalf, the existence of Mr. Chalong Toedweerapong's vote in favour of the bill showed that another Member of the House of Representatives used Mr. Chalong Toedweerapong's electronic identification and voting card to vote. Furthermore, it also appeared on the facts that during voting in the second reading, there were Members of the House of Representatives from Palang Pracharath Party and Bhumjaithai Party who each used 2 electronic cards, which implied circumstances that there were voting for other persons. Also, such action violated the fundamental

principle of being a Member of the House of Representatives who represented the Thai people, charged with performing duties free from influence or control, and to perform duties honestly for the collective benefit of the nation and well-being of the people without conflicts of interests as provided under section 114 of the Constitution. The actions were inconsistent with the principle of honesty pursuant to the solemn declaration made by Members of the House of Representatives pursuant to section 115 of the Constitution, and inconsistent with the voting principle under section 120 paragraph three of the Constitution. Therefore, the voting process in the deliberations of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was unconstitutional, and it could be deemed that the resolution of the House of Representatives in the process for enactment of the bill was unconstitutional. As a consequence, the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was enacted inconsistently with the provisions of the Constitution, and the Constitutional Court had given a ruling in a similar case in Constitutional Court Ruling No. 3-4/2557 dated 12<sup>th</sup> March B.E. 2557 (2014).

Eighty-four Members of the House of Representatives therefore entered their names in an opinion to the applicant pursuant to section 148 paragraph one (1) of the Constitution to refer the matter to the Constitutional Court for a ruling on whether or not the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was enacted in accordance with the provisions of the Constitution.

The applicant had verified the signatures of Members of the House of Representatives in the motion and found that the number of Members of the House of Representatives in the motion was not less than one-tenth of the total number of existing members of both Houses of the National Assembly as provided under section 148 paragraph one (1) and therefore referred the opinion to the Constitutional Court for ruling.

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept these two applications for a ruling under section 148 paragraph one (1) of the Constitution. The Constitutional Court found as follows. Section 148 paragraph one (1) of the Constitution provided that prior to the Prime Minister presenting a bill to the King for Royal Assent pursuant to section 81, if Members of the House of Representatives or Senators, or members of both Houses of the National Assembly comprising not less than one-tenth of the total number of members of both Houses of the National Assembly, were of the opinion that such a bill contained provisions which were contrary to or inconsistent with the Constitution, or had been enacted inconsistently with the provisions of the Constitution, an opinion should be submitted to the President of the House of Representatives, President of the Senate or President of

the National Assembly, as the case might be. The President of the House receiving such an opinion would refer the opinion to the Constitutional Court for ruling and notify the Prime Minister without delay. Upon a finding of facts in both applications and supporting documents that 109 Members of the House of Representatives (Case No. 2/2563) and 84 Members of the House of Representatives (Case No. 3/2563), which was a number not less than one-tenth of the total number of existing members of both Houses of the National Assembly, entered their names in a motion for referral to the Constitutional Court for ruling that the Bill on Annual Expenditure Budget of B.E. 2563 (2020) had been enacted inconsistently with the provisions of the Constitution, the case was therefore in accordance with section 148 paragraph one (1) of the Constitution in conjunction with section 7(1) of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The Constitutional Court therefore ordered the acceptance of both applications for ruling and directed relevant persons, namely the Secretary-General of the House of Representatives, Mr. Chalong Toedweerapong, Member of the House of Representatives, Miss Prim Poolcharoen, Member of the House of Representatives and Mr. Somboon Sarum, Member of the House of Representatives, to submit a written statement together with relevant information to the Constitutional Court.

The Secretary-General of the House of Representatives stated that the Secretariat of the House of Representatives had held meeting no. 3/2563 of the Committee for Coordination and Presenting Opinions for Decisions by the President of the National Assembly and President of the House of Representatives (Coordinating Committee) on 21<sup>st</sup> January B.E. 2563 (2020), which could be summarized as follows. After reviewing the information on the interview given by Mr. Chalong Toedweerapong to the mass media, it could be stipulated that he was not present at the sitting of the House of Representatives during parts of the vote on the Bill on Annual Expenditure Budget of B.E. 2563 (2020) between 10<sup>th</sup> to 11<sup>th</sup> January B.E. 2563 (2020) due to the death of a relative and the need to make funeral arrangements. On 11<sup>th</sup> January B.E. 2563 (2020), he travelled to a children's day event at Ang-Thong Sub-district, Srinagarindra District, Phatthalung Province. He explained that he never collected the electronic identification and voting card from the House of Representatives. Normally, he would leave it on the table or inserted in the meeting room, and in the evenings it would be retrieved by an official. As to whether or not another person would use the electronic identification and voting card in his place, he did not know. On this matter, the Superior Officer of the General Administration Group, Bureau of Parliamentary Proceeding, explained to the Coordinating Committee that between 8<sup>th</sup> to 10<sup>th</sup> January B.E. 2563 (2020), after the sitting, officials could not find Mr. Chalong Toedweerapong's electronic card.

However, the card was found on 11<sup>th</sup> January B.E. 2563 (2020) after the conclusion of the sitting to deliberate on the Bill on Annual Expenditure Budget of B.E. 2563 (2020). From the minutes of the Bureau of Minutes and Stenography, it appeared that in the votes on section 31 to section 53 of the Bill on Annual Expenditure Budget of B.E. 2563 (2020), vote to approve the entire bill, and vote to approve the observations of the committee, Mr. Chalong Toedweerapong's name appeared to have voted in favour. The Coordinating Committee therefore adopted a resolution that the approval votes of Mr. Chalong Toedweerapong were unlawful. In presenting oneself and voting in the second and third readings between 10<sup>th</sup> to 11<sup>th</sup> January B.E. 2563 (2020), it appeared that Mr. Chalong Toedweerapong, Miss Prim Poolcharoen and Mr. Somboon Sarum actually used the electronic card to present themselves and vote on the Bill on Annual Expenditure Budget of B.E. 2563 (2020) as claimed. Nevertheless, the sitting of the House of Representatives used the Chantra Room, which was the Senate's meeting room, on a temporary basis. There were a total of 356 slots for inserting electronic cards, of which 315 slots were allocated to Members of the House of Representatives. Since there were 500 Members of the House of Representatives, the number of electronic card slots was insufficient for use of Members of the House of Representatives. It was therefore necessary that a Member of the House of Representatives handed over one's electronic identification and voting card to a fellow member who was seated to insert the electronic card to present oneself and vote in accordance with one's wishes. In such a case, it was therefore inappropriate to infer an intention to allow another Member of the House of Representatives to vote on one's behalf, which was inconsistent with the Constitution and Rules of Procedure.

Mr. Chalong Toedweerapong, Member of the House of Representatives, stated that he was a Member of the House of Representatives for Phatthalung Province. He attended the sitting on 8<sup>th</sup> and 9<sup>th</sup> January B.E. 2563 (2020) as usual and the sitting continued until 10<sup>th</sup> January B.E. 2563 (2020) at 12.00 hours. He received a telephone call that a relative had been in a vehicular accident in Nong Phai District, Phetchabun Province. There were casualties, including fatalities, and assistance was requested. Therefore, he had to leave the meeting room urgently at approximately 19.30 hours to embark a flight from Don Mueang Airport at 20.20 hours. However, due to the hasty departure, he left the electronic identification and voting card in the meeting room of the House of Representatives and affirmed that he had not deposited or tasked any person to use the electronic identification and voting card on his behalf. As for whether any person would use such electronic card in any manner, he could not know.

Miss Prim Poolcharoen, Member of the House of Representatives, explained that, in regard to media reports in news clips and claims that she used another member's electronic identification and voting card during the deliberations of the House of Representatives on the Bill on Annual Expenditure Budget of B.E. 2563 (2020) in the second and third readings, she had used only her own electronic card to present herself and vote on every occasion, and that she had not voted on behalf of any other person.

Mr. Somboon Sarum, Member of the House of Representatives, stated that, in regard to media reports that he possessed 2 electronic identification and voting cards, which were circumstances suggesting votes in the deliberations of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) on another person's behalf, he confirmed that he was present in the sitting of the House of Representatives. As for the possession of 2 electronic cards, he explained that during the month of December B.E. 2562 (2019), he could not find his electronic identification and voting card. Thus, he requested for a spare electronic voting card from an official for temporary use. Subsequently, he found his electronic identification and voting card but had not yet returned the spare electronic voting card. He therefore possessed 2 electronic identification and voting cards. However, when voting, he used the electronic identification and voting card only once.

Thereafter, the applicant submitted a supplemental application, the facts in which could be summarized as follows. In the deliberations during the second reading of section 49 of the Bill on Annual Expenditure Budget of B.E. 2563 (2020), there appeared the names of Mrs. Natee Ratchakitprakarn, Member of the House of Representatives, Bhumjaithai Party, who voted in favour despite the fact that during such time Mrs. Natee Ratchakitprakarn was on course to travel abroad. This showed that a Member of the House of Representatives had used an electronic identification and voting card on her behalf.

The Constitutional Court considered both applications, supplemental application, statements of relevant persons and supporting documents and found that there were sufficient facts in this case to give a ruling. An inquisitorial hearing was therefore not held pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The issue which had to be decided was whether or not the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was enacted consistently with the Constitution of the Kingdom of Thailand.

Section 3 paragraph two of the Constitution provided that the National Assembly, Council of Ministers, courts, independent organs and state agencies should perform duties in accordance with the Constitution, laws and rule of law for the collective benefit of the nation and general well-being of the people. Section 114

provided that Members of the House of Representatives and Senators were representatives of the Thai people, not bound by any obligation or influence and should perform duties honestly for the collective benefit of the nation and general well-being of the people, free from conflicts of interests. Section 120 paragraph three provided that a Member had one voice in a vote and article 80 paragraph three of the Rules of Procedure of the House of Representatives B.E. 2562 (2019) provided that one's vote could not be exercised by others.

After deliberations, the Constitutional Court found as follows. Section 148 of the Constitution provided for the Constitutional Court to review the constitutionality of a bill both in terms of procedure and substance. The Constitutional Court would determine whether a bill had been enacted in accordance with the provisions of the Constitution or whether such a bill contained any substance which was contrary to or inconsistent with the Constitution. In this case there was no issue for the Constitutional Court to decide on the content or substance of the bill. Also, there was no issue concerning a criminal or ethical wrongdoing of any Member of the House of Representatives. The only issue to be decided was the process for enactment of such bill. As for whether or not and to what extent a person was liable to a penalty, this was a matter subject to further proceedings under the relevant laws.

The facts in both applications showed that the House of Representatives convened in a sitting to consider the Bill on Annual Expenditure Budget of B.E. 2563 (2020) in the second and third readings and the observations of the committee on 8<sup>th</sup> to 11<sup>th</sup> January B.E. 2563 (2020) and on 10<sup>th</sup> January B.E. 2563 (2020) at approximately 19.30 hours to 11<sup>th</sup> January B.E. 2563 (2020). It appeared that Mr. Chalong Toedweerapong, Member of the House of Representatives, presented himself and voted in favour. However, Mr. Chalong Toedweerapong admitted in court that he was not present at the sitting on such date and time. Thus, it could be found that in the sitting of the House of Representatives in the second reading, third reading and observation of the committee on such date and time, there was a use of electronic identification and voting card to approve the Bill on Annual Expenditure Budget of B.E. 2563 (2020) for Mr. Chalong Toedweerapong.

The exercise of voting right for a person who was absent from a sitting was a dishonest act which violated the fundamental principle of being a Member of the House of Representatives charged with performing duties unbound by obligation to any person and should perform duties honestly for the collective benefit of the nation and general well-being of the people free from conflict of interests under section 114 of the Constitution. The action was also inconsistent with the principle of honestly as declared by the Member of the House of Representatives prior to

taking office pursuant to section 115 of the Constitution. Furthermore, a Member had only one voice when casting a vote under section 120 paragraph three of the Constitution and could not exercise votes on another person's behalf pursuant to section 80 paragraph three of the Rules of Procedure of the House of Representatives B.E. 2562 (2019). Upon a finding of facts that in the deliberations of the Bill on Annual Expenditure Budget of B.E. 2563 (2020) on 10<sup>th</sup> January B.E. 2563 (2020) at approximately 19.30 hours till 11<sup>th</sup> January B.E. 2563 (2020), which were deliberations in the second and third readings, it appeared that Mr. Chalong Toedweerapong, Member of the House of Representatives, had presented himself and voted despite Mr. Chalong Toedweerapong admitting that he was not in the sitting at the said date and time. The fact that the Member of the House of Representatives was not in the meeting room, but there was use of electronic identification and voting card resulted in the vote being dishonest. As a consequence, the resolution on the Bill on Annual Expenditure Budget of B.E. 2563 (2020) on such date and time was inconsistent with the rule of law and inconsistent with the provisions of the Constitution. Hence, the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was enacted inconsistently with the provisions of the Constitution.

On the question of whether or not the Bill on Annual Expenditure Budget of B.E. 2563 (2020) lapsed in its entirety as was the case of Constitutional Court Ruling No. 15-18/2556 and Constitutional Court Ruling No. 3-4/2557, the Constitutional Court found as follows. The issue for ruling, case circumstances and relevant provisions of law in both Constitutional Court rulings differed from the issue for ruling, case circumstances and relevant provisions of law in this case in the essence. In other words, this case did not involve any issue on the essential substance of a bill being contrary to or inconsistent with the Constitution. The only problem was the process for enactment of this bill. The facts in this case were clear that the deliberations and voting of the House of Representatives in the first reading, acceptance of principles, and deliberations in the committee stage prior to submission to the House of Representatives for section-by-section deliberations in the second reading had been conducted in accordance with the Constitution in all regards. These stages could be deemed as having been satisfactorily completed. In addition, there was an urgent necessity for the nation to use this law to alleviate problems caused by delays and obstacles to disbursement of public funds. Furthermore, at present section 74 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018) provided that the Constitutional Court should include an enforcement provision in the ruling. Such a provision of law was not existent in the past. Therefore, even though the Bill on Annual Expenditure Budget



of B.E. 2563 (2020) was enacted inconsistently with the provisions of the Constitution, the Bill on Annual Expenditure Budget of B.E. 2563 (2020) lapsed only in regard to the deliberations in the second reading, third reading and observation of the committee, including deliberations and approval of the Senate. The deliberations and voting of the House of Representatives in the first reading, acceptance in principle, and deliberations in the committee stage prior to submission to the House of Representatives for section-by-section deliberations in the second reading that had already been completed in accordance with the Constitution in all respects, did not lapse. It was therefore necessary and expedient to prescribe enforcement provisions for the House of Representatives to proceed with deliberations and voting in the second reading, third reading and observations of the committee in accordance with the Constitution, and thereafter make a submission to the Senate for approval in compliance with the Constitution. Furthermore, the House of Representatives shall report the outcome of conformance with the Constitutional Court's enforcement provisions within thirty days of the Constitutional Court ruling pursuant to section 74 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018).

By virtue of the foregoing reasons, the Constitutional Court held that the Bill on Annual Expenditure Budget of B.E. 2563 (2020) was not enacted in accordance with the provisions of the Constitution only with respect to the deliberations and voting in the second reading, third reading and observations of the committee. An enforcement provision is issued whereby the House of Representatives shall duly proceed in accordance with the provisions of the Constitution only with respect to the second reading, third reading and observations of the committee, and such bill as properly rectified shall be submitted to the Senate for further proceedings under the Constitution. The House of Representatives shall also report compliance outcomes of the said enforcement provision to the Constitutional Court within thirty days of the Constitutional Court ruling under section 74 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018).

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