

Summary of Constitutional Court Ruling

No. 10/2563 (2020)

Dated 1st July B.E. 2563 (2020)

Re: The President of the House of Representatives submitted an application requesting for a Constitutional Court ruling under section 82 of the Constitution on whether or not the House of Representatives membership of Mr. Sira Jenjaka terminated under section 101(7) in conjunction with section 185(1) of the Constitution.

1. Summary of background and facts

Members of the House of Representatives, comprising 57 persons, signed a petition to the President of the House of Representatives (applicant) requesting that an application be submitted to the Constitutional Court for a ruling that the House of Representatives membership of Mr. Sira Jenjaka terminated under section 82 paragraph one of the Constitution. It was claimed that on 18th August B.E. 2562 (2019), the respondent and others, a total of 8 persons, undertook a field inspection of the construction of a condominium in Karon Subdistrict, Muang District, Phuket Province. During the field inspection, the respondent and others met Police Lieutenant Colonel Pratuang Pholmana, at the time holding the position of Deputy Superintendent for Prevention and Suppression Section, Karon Provincial Police Station. The respondent spoke in a way which criticized the performance of duties of Police Lieutenant Colonel Pratuang in relation to the discovery of unlawful construction and failure to make arrest for proceedings, and having knowledge of the visit by the respondent and others and failing to provide manpower assistance. Furthermore, the respondent also spoke in a way which threatened and demanded an apology from Police Lieutenant Colonel Pratuang. Despite the apology from Police Lieutenant Colonel Pratuang and a police salute, the respondent still criticized Police Lieutenant Colonel Pratuang for management incompetency due to the inability to assist Members of the House of Representatives performing duties, thus an unsuitable executive officer. Subsequently on 19th August B.E. 2562 (2019), the respondent and others travelled to Karon Subdistrict Municipal Office wearing a National Assembly uniform, summoning the mayor and executive officers of Karon Subdistrict Municipal Office to interrogate facts pertaining to the abovementioned condominium construction, representing themselves as responsible persons or having authority over such matter. Even though the mayor and executives of Karon Subdistrict Municipal Office gave factual explanations, the respondent refused to hear the explanation from the relevant persons and continued to show impartial

behaviour by insinuating that the owner of the condominium committed an unlawful act. The respondent's behaviour constituted a reliance of his status as Member of the House of Representatives in order to conduct a field inspection, despite such task not being a direct function provided by law, and there was no delegation by the House of Representatives or any House Committee. The respondent's actions constituted a behaviour within the scope of relying on a status or office of House of Representatives Member to perform an act of interference or intervention for one's own benefit in regard to the performance of an official function or routine operation of a police officer, mayor and executive officers of Karon Subdistrict Municipal Office. Such act was prohibited under section 185(1) of the Constitution, being a cause for termination of the respondent's membership of the House of Representatives under section 101(7) of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to accept the application for a ruling under section 82 of the Constitution.

After deliberations, the Constitutional Court found as follows. The facts under the application and supporting documents showed that 57 Members of the House of Representatives, being a number not less than one-tenth of the existing Members of the House of Representatives, signed a petition to the applicant for an application to be submitted to the Constitutional Court for a ruling that a membership of the House of Representatives terminated under section 82 paragraph one of the Constitution. It was claimed that the respondent relied on a status or office of House of Representatives Member to perform an act of interference or intervention for one's own benefit in regard to the performance of an official function or routine operation of a government official, thus constituting a cause for termination of the respondent's membership under section 101(7) in conjunction with section 185(1) of the Constitution, and the applicant submitted the application to the Constitutional Court. This case was in accordance with section 82 paragraph one of the Constitution and section 7(5) of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The Constitutional Court therefore ordered the acceptance of this application for ruling and directed the respondent to submit a reply statement.

3. Reply Statement

The respondent submitted a reply statement which could be summarised as follows. The respondent conducted a field inspection after receiving complaints from citizens suffering grievances due to the construction of The Peaks Residence condominium by Kata Beach Company Limited on land bearing Certificate of Utilization (N.S.3 K), Karon Subdistrict, Muang District, Phuket Province. Nakhon Si Thammarat Administrative Court had delivered a judgement to revoke such Certificate of Utilization (N.S.3 K) due to unlawful issuance. The case was pending consideration of an appeal in the Supreme Administrative Court. The respondent, in his capacity as Member of the House of Representatives, being a representative of the Thai people, was inevitably able to conduct a factual investigation to make proposals to the government in order to remedy the people's problems pursuant to his functions, free from any control, delegation or dominance. The respondent's field inspection was therefore a performance of function by a Member of the House of Representatives in the capacity of the Thai people's representative pursuant to section 114 of the Constitution. On 18th August B.E. 2562 (2019), the respondent met and spoke to Police Lieutenant Colonel Pratuang as claimed by the applicant. However, the purpose of the conversation was merely an inquiry to ensure that Police Lieutenant Colonel Pratuang, an authorised officer, fulfilled his duties and the law. Whether or not the implementing officer carried out the tasks as inquired was a matter for such implementing officer. As for the provision of manpower to assist the respondent, as Member of the House of Representatives, and others in the entourage, since the visit took place at the construction site of the condominium for factual investigations, with forums for hearing facts and opinions of persons suffering from grievances caused by the construction, attended by approximately 200 persons, such an event called for the presence of police officers to preserve peace and order. The respondent did not have any intent to have police officers provide protection for the respondent and his entourage. Police officers were required for the forum organised by the relevant members of the public. On 19th August B.E. 2562 (2019), the Phuket Provincial Governor invited the mayor and executive officers of Karon Subdistrict Municipal Office to meet and give facts to the respondent and his entourage at the Phuket Provincial Hall. By raising the outcome of judgment of the Nakhon Si Thammarat Administrative Court and facts regarding complaints when making inquiries to the mayor and executive officers of the Karon Subdistrict, the respondent only raised existing facts in the inquiries. Such action did not constitute an impartiality or an insinuation that the condominium owner committed a wrongdoing.

4. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court was whether or not the House of Representatives membership of the respondent terminated under section 101(7) in conjunction with section 185(1) of the Constitution, and from when.

After deliberations, the Constitutional Court found as follows. Under the democratic parliamentary system, the Constitution provided for checks and balances between the executive and legislature. The legislature, apart from the duties and powers to legislate, also had duties and powers to oversee the performance of duties by the executive. Such exercise of functions had to be within the limits of reasonableness and necessity to create adequate and fair mutual checks and balances. If the legislature's scope of inspection powers was too limited, the ability to efficiently inspect the performance of duties by the executive would be hindered. If such powers were excessive, there would be an interference or intervention on the performance of duties by the executive. Section 114 of the Constitution provided the general principle of scope of duties that a Member of the House of Representatives enjoyed independence in the performance of duties for the common benefit of the nation and well-being of the people. The performance of duties of a Member of the House of Representatives was a performance of duties as a representative of the Thai people, inclusive of all areas of the country, regardless of whether such Member of the House of Representatives was elected from a constituency or from a political party list. The performance of duties of a Member of the House of Representatives had to take into account the Thai people, being the common benefit of the nation, not merely the interests of people in a particular area of province from which one was elected. Section 185(1) of the Constitution provided a prohibited act for a Member of the House of Representatives and Senator from directly or indirectly interfering or intervening for one's own benefit, the benefit of others or a political party in the performance of an official function or routine operation of an official, employee or worker of an official agency, state agency, state enterprise, state majority held business or local government agency, which was consistent with the intent of the principle of conflict of interests under the Constitution, which aimed to prevent the exploitation of status or office for gains.

It was found on the facts that the respondent admitted that between 18-19 August B.E. 2562 (2019), he and others, a total of 8 persons, travelled to Phuket to inspect the a condominium construction situated on land bearing Certificate of Utilization (N.S.3 K) No. 1863, Moo 2, Karon Subdistrict, Muang District, Phuket Province, and that there was a conversation with Police Lieutenant Colonel Pratuang, the mayor and executive officers of Karon Subdistrict Municipality as claimed. The respondent was not tasked by a Committee to investigate facts from a third party.

However, after considering the actions, comprising two acts, namely the act of the respondent speaking using words and expressing behavior towards Police Lieutenant Colonel Pratuang relating to the failure to make arrests and instigate proceedings upon discovering an illegal construction, and the failure to provide police manpower to secure the safety of the respondent in his capacity of Member of the House of Representatives and others, the Constitutional Court by a majority of votes found as follows. Such actions of the respondent were merely requests that state officials performed their legal duties. The behavior and words used by the respondent only represented a disagreement on the performance of duties by Police Lieutenant Colonel Pratuang, in his capacity of a police officer of Karon Provincial Police Station. As for the respondent's words directed at the mayor and executive officers of Karon Subdistrict Municipality only amounted to an enquiry for information and explanation from state officials relating to such condominium construction to ensure performance of legal duties. The Constitutional Court did not find that the respondent used his status or office as a Member of the House of Representatives to interfere or intervene, for the benefit of oneself, or others or of a political party, in the performance of official functions or routine operation of Police Lieutenant Colonel Pratuang, the mayor and executive officers of Karon Subdistrict Municipality, under section 185(1) of the Constitution.

Nonetheless, as regards the respondent's behavior in expressing gestures and words to Police Lieutenant Colonel Pratuang, the mayor and executive officers of Karon Subdistrict Municipality, if any person was of the opinion that such behavior was impolite, inappropriate for the position or office of a Member of the House of Representatives, being a Member of the National Assembly, one of the bodies exercising sovereign powers, such person could take action under the Constitution, law, Rules of Ethics of Members of the House of Representatives and Committee Members B.E. 2563 (2020) and Ethical Standards of Justices of the Constitutional Court and Office Holders in Independent Organs, as well as the Ombudsmen and Heads of Constitutional Court Secretariat and Independent Organs B.E. 2561 (2018), which also applied to Members of the House of Representatives.

5. Ruling of the Constitutional Court

The Constitutional Court therefore held that the respondent's membership of the House of Representatives did not terminate under section 101(7) in conjunction with section 185(1) of the Constitution.
