

Summary of Constitutional Court Ruling* No. 1/2556 (2013)

Dated 1st February B.E. 2556 (2013)

Re: The President of the Senate referred the application of senators to the Constitutional Court for a ruling on whether or not the individual ministerial office of Mr. Warathep Rattanakorn, Minister Attached to the Prime Minister's Office, terminated under section 182 paragraph one (3) and (5) in conjunction with section 174(5) of the Constitution.

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1. Summary of background and facts

A total of 24 senators (applicants) requested for a ruling on whether or not the individual ministerial office of Mr. Warathep Rattanakorn, Minister Attached to the Prime Minister's Office (respondent), terminated under section 182 paragraph one (3) and (5) in conjunction with section 174(5) of the Constitution due to the respondent being sentenced by the Criminal Division for Persons Holding Political Positions of the Supreme Court to a 2-year term of imprisonment, which was suspended for 2 years, and a period of five years had not yet lapsed since the discharge of the sentence to the day of the respondent's appointment as Minister.

2. Jurisdictional issue

The jurisdictional issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 91 paragraph one in conjunction with section 182 paragraph three of the Constitution.

The Constitutional Court held that the applicants comprised of 24 senators, which were not less than one-tenth of the total number of existing senators. The applicants petitioned to the President of the Senate to refer an application to the Constitutional Court for a ruling on whether or not the individual ministerial office of the respondent terminated pursuant to section 182 paragraph one (3) and (5) in conjunction with section 174(5) of the Constitution. The Constitutional Court thus had the competence to admit this application for a ruling under section 91 paragraph one in conjunction with section 182 paragraph three of the Constitution.

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As for the respondent's argument that the Constitutional Court did not have the competence to admit this application for a ruling under section 215 of the Constitution, citing a decision in Constitutional Court Ruling No. 36/2542 on section 216(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), governing the same issue as the present case, the Constitutional Court found that section 215 of the Constitution was not a mandatory provision. The provision conferred a discretion on the Constitutional Court to admit a case for consideration. Since the facts presented in this case differed from those considered in the prior ruling, and there was a further issue to be decided under section 182 of the Constitution, the Constitutional Court thus had the competence to admit this case for consideration.

3. The issues considered by the Constitutional Court

First Issue. The first issue was whether or not the individual ministerial office of the respondent terminated under section 182 paragraph one (3) of the Constitution.

The Constitutional Court found as follows. An imprisonment sentence which would be subject to section 182 paragraph one (3) of the Constitution had to be a judgment delivered at the time of holding a ministerial office in order to result in the termination of the individual ministerial office. In the respondent's case, however, the imprisonment sentence was delivered prior to the ministerial appointment. The respondent's individual ministerial office therefore did not terminate under section 182 paragraph one (3) of the Constitution.

Second Issue. The second issue was whether or not the individual ministerial office of the respondent terminated under section 182 paragraph one (5) in conjunction with section 174(5) of the Constitution.

The Constitutional Court found as follows. A review of the qualifications and disqualifications of a minister under section 174 and section 182 of the Constitution could involve a cause that had occurred or was discovered at the time of holding a ministerial office. Section 174(5) of the Constitution provided that a minister should not be under a disqualification of being subject to an imprisonment sentence, where a period of five years had not yet lapsed since the discharge from the sentence to the appointment, with the exception of a sentence for an offence committed negligently or a minor offence. This provision was not an absolute prohibition. An opportunity was open for a person to become a minister after a period of five years from discharge of sentence. Since the disqualification constituted a deprivation of a person's right to become a minister, the provision had to be construed strictly. The provision was compared to the text "being subject to an imprisonment sentence" under section 182 paragraph one (3) and section 182 paragraph one (5) in conjunction with section 174(5). Section 174(5) provided a disqualification for ministerial office by merely stating a person subject to an imprisonment sentence and a period of five years had not yet lapse since discharge, but the provision did not state a further stipulation on imprisonment sentence as in section 182 paragraph one (3), which included both

imprisonment sentence and suspended imprisonment sentence. The construction of the meaning of having been subject to an imprisonment sentence under section 174(5) should therefore differ from the meaning under section 182 paragraph one (3). The terms “being subject to an imprisonment sentence” under section 182 paragraph one (5) in conjunction with section 174(5) should therefore mean an imprisonment sentence that was actually served.

The respondent was once sentenced for 2-year imprisonment by the Criminal Division for Persons Holding Political Positions of the Supreme Court. Such sentence was suspended for 2 years. Hence, the respondent was not deemed to have been subject to such imprisonment sentence within the meaning of section 174(5) of the Constitution. Therefore, the respondent’s ministerial office did not terminate under section 182 paragraph one (5) in conjunction with section 174(5) of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held unanimously that the respondent’s individual ministerial office did not terminate under section 182 paragraph one (3), and held by a majority of 6 to 3 that the respondent’s individual ministerial office did not terminate under section 182 paragraph one (5) in conjunction with section 174(5) of the Constitution.
