

# Summary of Constitutional Court Ruling No. 19/2552

**Dated 2<sup>nd</sup> December B.E. 2552 (2009)\***

**Re: The President of the House of Representatives referred a matter of the Election Commission to the Constitutional Court for a ruling on whether or not the House of Representatives membership of Mr. Kiatkorn Pakpeansilp, member of the House of Representatives for Prachinburi Province, terminated under section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).**

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## **1. Summary of background and facts**

On 7<sup>th</sup> September B.E. 2552 (2009), between 12.00 and 16.00 hours, Mr. Kiatkorn Pakpeansilp, member of the House of Representatives for Prachinburi Province (the respondent), declared his resignation from membership of the House of Representatives in a press conference at the National Assembly Building.

The Election Commission thus resolved in a meeting on 10<sup>th</sup> September B.E. 2552 (2009) to carry out an investigation of facts and compile evidence in relation to such matter. After consideration, the Election Commission found that the provision of section 106 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that “the membership of a member of the House of Representatives terminates upon... (3) resignation.” In this case, the law did not provide for the procedures of resignation from membership of the House of Representatives. However, as a member of the House of Representatives was elected by the people to perform legislative functions in the House of Representatives, a member of the House of Representatives who wished to resign could therefore express an intent to resign by a letter tendered to the President of the House of Representatives, or orally by expressing an intent to resign to the public. As a member of the House of Representatives was a representative of the Thai people, the respondent’s declaration to several sections of the media of his resignation from membership of the House of Representatives consequentially constituted an expression of intent to resign from membership of the House of Representatives to the public. As a result, the respondent’s membership of the House of Representatives terminated as of the date of notice of resignation pursuant to section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Hence, by virtue of section 91 and section 236(5) of the Constitution of the Kingdom of Thailand B.E. 2550

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(2007), and section 8 and section 10(10) and (11) of the Organic Act on Election Commission B.E. 2550 (2007), the Election Commission submitted the matter to the President of the House of Representatives in order to refer the matter to the Constitutional Court for a ruling.

After the Constitutional Court ordered the admittance of the application, the respondent was notified in order to submit a statement in reply to the allegations to the Constitutional Court. Upon the expiration of the period for submission of the statement in reply to the allegations, it appeared that the respondent did not make any submission of a statement in reply to the allegations to the Constitutional Court. The Constitutional Court therefore proceeded with the trial in accordance with clause 29 paragraph three of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

During the trial proceedings, the Chairman of the Election Commission, in the capacity of a related person, reported information on the respondent's resignation from membership of the House of Representatives by sending a copy of a letter of the Secretariat of Democrat Party and a copy of a letter of the Secretariat of the House of Representatives stating that the respondent had not yet tendered a letter of resignation from membership of the Democrat Party and had not yet tendered a letter of resignation from the office of member of the House of Representatives.

## **2. Preliminary Issue**

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for trial and adjudication. After consideration, it was found that upon the Election Commission's opinion that the respondent's declaration to the press of his resignation constituted a cause for the termination of the respondent's membership of the House of Representatives, the case was in accordance with section 91 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with clause 17(3) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore had the power to try and adjudicate this application.

## **3. Issue considered by the Constitutional Court**

The issue considered by the Constitutional Court was whether or not the membership of the House of Representatives of Mr. Kiatkorn Pakpeansilp, member of the House of Representatives for Prachinburi Province (the respondent), terminated under section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court examined the application, evidence in support of the application and documents submitted by related persons and found as follows. As the provision of section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) did not provide for the rules and procedures on the method for tendering a resignation from membership of the House of Representatives, a member of the House of Representatives

who wished to resign could therefore express the intent to resign either orally or in writing. In other words, resignation could be achieved by means of an oral expression of intent to resign. Moreover, whereas section 122 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for a member of the House of Representatives to represent the Thai people without being bound by any mandate, delegation or control, and to perform functions in an honest and loyal manner in the collective interest of the Thai people free from any conflict of interest, the acknowledgment of the expression of intent to resign could thus be either the House of Representatives or the public.

Upon a finding of facts that the respondent declared his resignation from membership of the House of Representatives in a press conference on 7<sup>th</sup> September B.E. 2552 (2009) at the National Assembly Building, and visual recordings had been widely disseminated through the mass media, such act therefore constituted an oral expression of intent to resign to the public. The expression of intent to resign made by the respondent was therefore effective and binding on the respondent. Hence, the respondent's membership of the House of Representatives terminated under section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) as of the date of expression of intent.

#### **4. Ruling of the Constitutional Court**

The Constitutional Court held that membership of the House of Representatives of Mr. Kiatkorn Pakpeansilp terminated under section 106(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) as of 7<sup>th</sup> September B.E. 2552 (2009).

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