

## Constitutional Court Ruling

No. 29/2563 (2020)

Dated 2<sup>nd</sup> December B.E. 2563 (2020)

Between { President of the House of Representatives      Applicant  
                  General Prayut Chan-o-cha, Prime Minister      Respondent  
                  and Minister of Defense

Re: The President of the House of Representatives submitted an application to the Constitutional Court for a ruling under section 170 paragraph three in conjunction with section 82 of the Constitution on whether or not the individual ministerial office of General Prayut Chan-o-cha, Prime Minister and Minister of Defense, terminated under section 170 paragraph one (4) in conjunction with section 160(5) and section 170 paragraph one (5), and in conjunction with section 186 paragraph one and section 184 paragraph one (3) of the Constitution.

A total of 55 Members of the House of Representatives entered their names in a petition to the applicant, alleging that the respondent used a residence in Infantry Division 1, being a military official residence, as a residence for the respondent and his family ever since holding office as Commander-in-Chief of the Royal Thai Army till present without paying rent, electricity and water bills to the military service. The respondent did not have any legal right to reside, which was deemed as a special benefit received from a state agency other than the treatment given to others by a government agency or state agency in the ordinary course of business. This benefit constituted a conflict of interests prohibited under section 186 paragraph one in conjunction with section 184 paragraph one (3) of the Constitution, causing the termination of the individual ministerial office of the respondent under section 170 paragraph one (5) of the Constitution. Furthermore, the actions constituted a serious violation or non-compliance of ethical standards pursuant to the Ethical Standards of Constitutional Court Justices and Office Holders in Independent Organs, Including the Auditor-General and Head of Administrative Agency of the Constitutional Court and Independent Organs B.E. 2561 (2018), thus causing the termination of individual ministerial office under section 170 paragraph one (4) in conjunction with section 160(5) of the Constitution. The applicant submitted an application to the Constitutional Court for a ruling under section 170

paragraph three in conjunction with section 82 paragraph one of the Constitution. The Constitutional Court accepted this application for consideration, and for the benefit of the proceedings, the Commander-in-Chief of the Royal Thai Army was directed to give a statement and submit information.

The Constitutional Court considered the application, reply to the allegations, statements of relevant persons and supporting documents and determined that the issue which required ruling was whether or not the respondent's individual ministerial office terminated under section 170 paragraph one (4) in conjunction with section 160(5) and section 170 paragraph one (5), and in conjunction with section 186 paragraph one and section 184 paragraph one (3), of the Constitution, and whence that termination took effect.

After deliberations, the Constitutional Court found as follows. Section 170 paragraph one of the Constitution provided that an individual ministerial office terminated upon... (4) lacking a qualification or having a prohibition under section 160, and (5) commission of a prohibited act under section 186 or section 187... Section 160 provided that a minister must (5) not act in a manner which constituted a serious violation or non-compliance of ethical standards. At present, the Ethical Standards of Constitutional Court Justices and Office Holders in Independent Organs, Including the Auditor-General and Head of Administrative Agency of the Constitutional Court and Independent Organs B.E. 2561 (2018) has been published under section 219. Section 219 paragraph two provided that such standards also applied to Members of the House of Representatives, Senators and the Council of Ministers. Article 27 provided that violation or non-compliance of an ethical standard in Chapter 1 should be deemed as a serious infringement and violation or non-compliance of an ethical standard in Chapter 2 and Chapter 3 would be deemed either as a serious or non-serious infringement depending on the circumstances of the violation or non-compliance, intent and seriousness of harm arising from the violation or non-compliance. Chapter 1, article 7 provided that national interests prevailed over individual interests. Article 8 provided that duties should be performed honestly, free from the unlawful exploitation of benefits for oneself or others, or circumstances of connivance or consent to another person's unlawful exploitation of one's office. Article 9 provided that there should be no request, demand, receipt or consent to receive property or other benefit in a manner which could prejudice the performance of duties. Article 10 provided that no gifts, properties or other benefits should be received, except those received in accordance with customs and receipts authorized by law, regulation or rules. Chapter 2, article 11 prohibited any act which would constitute a conflict of personal and common interests, whether directly or indirectly.

Chapter 9, Conflict of Interests, section 186 paragraph one of the Constitution provided that the provision of section 184 applied *mutatis mutandis* to a minister, except for the following cases: (1) holding office or actions provided by law as a duty or power of a minister; (2) performance of a duty and power in public administration or pursuant to a policy declared to the National Assembly, or as provided by law... Section 184 paragraph one provided that a Member of the House of Representatives and Senator must... (3) not receive monies or any other special benefit from a government agency, state agency or state enterprise other than treatment given by a government agency, state agency or state enterprise to other persons in the ordinary course of business...

According to the facts of this case, the respondent held office as Commander-in-Chief of the Royal Thai Army from 1<sup>st</sup> October B.E. 2553 (2010) and retired from official service on 30<sup>th</sup> September B.E. 2557 (2014). Whilst in office as Commander-in-Chief of the Royal Thai Army, he resided at residence number 253/54, situated in Infantry Division 1. This residence was reclassified as a guest residence of the Royal Thai Army in the year B.E. 2555 (2012). At present, this area is within the possession and official use of the Royal Thai Army.

A preliminary issue which had to be decided was whether or not the respondent committed a prohibited act under section 170 paragraph one (5) in conjunction with section 186 paragraph one and section 184 paragraph one (3) of the Constitution.

The Constitutional Court found as follows. Article 5 of the Royal Thai Army Regulation on Residing in the Royal Thai Army Guest Residence B.E. 2548 (2005) provided that a person who had the right to reside in the Royal Thai Army guest residence must have one of the following qualifications: 5.1 being an active official in the Royal Thai Army holding the rank of general; 5.2 being a former high level commanding officer of the Royal Thai Army who had served the Royal Thai Army and the nation and once held the office of Commander-in-Chief of the Royal Thai Army. Article 7 provided the different classifications of Royal Thai Army guest residences for eligible persons under article 5, as follows: 7.1 Royal Thai Army guest residence number 70/25 was the residence of the Commander-in-Chief of the Royal Thai Army; 7.2 Royal Thai Army guest residence numbers 1, 4, 31, 107/10, 246/16, 26/18, 385/23, 249/25, 437/37, 492/45, 493/45 and other to be subsequently designated by the Royal Thai Army were residences of high level commanding officers of the Royal Thai Army and former commanding officers under article 5.2 Article 8 paragraph one provided that a person eligible to reside in a Royal Thai Army guest residence would no longer have that right in the following cases: 8.1 transfer from the Royal Thai Army; 8.2 leaving the official service in any event; 8.3 death; 8.4 the Royal Thai

Army decided to terminate the right. Article 8 paragraph two provided that as regards a person eligible to residence under article 5.2, if the right to reside under article 8.1 or 8.2 terminated, the Royal Thai Army could decide to confer the right to reside on an individual basis. Article 11 provided that as regards a guest residence designated by the Royal Thai Army, the Royal Thai Army could provide suitable financial support for electricity and water costs, as well as other costs necessary for residence and as appropriate for use. The Commander-in-Chief of the Royal Thai Army stated further that while the respondent held office as Prime Minister on 24<sup>th</sup> August B.E. 2557 (2014), he was also still Commander-in-Chief of the Royal Thai Army. The respondent therefore had the right to reside in the Royal Thai Army guest residence under article 5 of the Royal Thai Army Regulation on Residing in the Royal Thai Army Guest Residence B.E. 2548 (2005). Upon the respondent's retirement from the office of Commander-in-Chief of the Royal Thai Army on 30<sup>th</sup> September B.E. 2557 (2014), the respondent, then Prime Minister, still had the right to reside in such Royal Thai Army guest residence since he had the qualification under article 5.2 of the regulation. In other words, he was a former high level commanding officer of the Royal Thai Army who had served the Royal Thai Army and the nation and once held office as Commander-in-Chief of the Royal Thai Army. The respondent did not reside in the guest residence in his sole capacity as Prime Minister. If the respondent was a civilian Prime Minister who had never served as a high level commanding officer of the Royal Thai Army, he would not have the right to reside in the guest residence in accordance with this Royal Thai Army Regulation. Furthermore, article 8 provided the Royal Thai Army with the power to decide on the right of a person to reside in a Royal Thai Army guest residence whose right had lapsed due to transfer from the Royal Thai Army or upon leaving the official service in any event, to continue to have the right to reside on an individual basis. The Royal Thai Army's designation of residence number 253/54 as a guest residence, despite the designation occurring subsequently pursuant to RTA very urgent letter attached to RTA letter number 0404/1560, dated 19<sup>th</sup> June B.E. 2555 (2012), approving the transfer of such guest residence building to become a Royal Thai Army guest residence under the care of the Royal Thai Army, such designation was done by virtue of powers under article 7.2. As for the Royal Thai Army's sponsorship of electricity and water costs for the use of such guest residence, the Royal Thai Army had already considered the suitability of giving sponsorship for electricity and water costs, as well as other costs necessary for residing in the guest residence as necessary and appropriate for use as provided under article 11. Furthermore, the grant of such right was in line with the Royal Thai Army's customary practice in determining the right of a high level commanding officer who qualified for residence in the Royal Thai Army guest

residence, which was not an exclusive right to the respondent. It was discernible that the respondent's residence in the guest residence provided by the Royal Thai Army and receipt of sponsorship for electricity and water costs were within the Royal Thai Army's discretion under the Royal Thai Army Regulation on Residing in the Royal Thai Army Guest Residence B.E. 2548 (2005). Such Regulation came into effect on 16<sup>th</sup> February B.E. 2548 (2005), prior to the respondent taking office as Commander-in-Chief of the Royal Thai Army and Prime Minister. The office of Prime Minister was an important office of the nation. Apart from being the head of the Council of Ministers entrusted by the Constitution with the functions of national administration, such office also held the status as the national leader. The safety of the Prime Minister, including his family, was important. The state had the duty to of guarding the safety of the Prime Minister and his family as appropriate to the situation. The provision of a safe and private residence which fostered preparedness physically and mentally for the performance of national administration functions constituted a common benefit. It was therefore of great significance that the state should provide a residence to the national leader during the term of office. Even though in the past of Thailand, the state once designated certain places as the official residence of the Prime Minister during tenure, such as Phitsanulok Residence, at present such residence had either not been maintained for newly provided. Therefore, to enable the Prime Minister to perform duties as the national leader with dignity, the state should provide an official residence for the Prime Minister. The Royal Thai Army's approval of use of the Royal Thai Army guest residence and sponsorship of electricity and water costs, to which the respondent once had such right while in office as Commander-in-Chief of the Royal Thai Army extended till present, was in conformity with the Royal Thai Army Regulation on Residing in the Royal Thai Army Guest Residence B.E. 2548 (2005). Such Regulation remained in force and had not been repealed or revoked. The Royal Thai Army's grant of such right to a former high level commanding officer who also qualified under the Regulation in the same way as the respondent would be deemed as a grant of right to a person for being a former high level commanding officer of the Royal Thai Army, which was a treatment by the Royal Thai Army in the ordinary course of business, not an act which conferred the respondent with monies or any special benefit from the Royal Thai Army, which was a government agency, other than what the Royal Thai Army would ordinarily treat others. The act was therefore not prohibited under section 186 paragraph one in conjunction with section 184 paragraph one (3) of the Constitution. The respondent's individual ministerial office therefore did not terminate under section 170 paragraph one (5).

The subsequent issue which had to be decided was whether the respondent committed a serious violation or non-compliance with ethical standards under section 160(5) of the Constitution thus causing the termination of individual ministerial office under section 170 paragraph one (4) of the Constitution.

The Constitutional Court found as follows. Upon a ruling that the respondent resided in the Royal Thai Army guest residence provided by a decision of the Royal Thai Army along with sponsorship of electricity and water costs for use of the guest residence pursuant to the Royal Thai Army Regulation on Residing in the Royal Thai Army Guest Residence B.E. 2548 (2005), this was therefore a case of a receipt permitted by regulation. This was not a case where individual interests prevailed over national interests. Nor was it a case of an unlawful exploitation for personal gains, a request, demand, receipt or consent to receive a property or any other benefit which could prejudice the performance of duties. The case was also not an act of conflict of between personal interests and common interests, whether directly or indirectly. The receipt was permitted by provision of law, regulation or rule. Hence, the respondent did not exhibit any circumstances of a serious violation or non-compliance of ethical standards as provided under article 27 in conjunction with article 7, article 8, article 9, article 10 and article 11 of the Ethical Standards of Constitutional Court Justices and Office Holders in Independent Organs, Including the Auditor-General and Head of Administrative Agency of the Constitutional Court and Independent Organs B.E. 2561 (2018). There was no commission of an act prohibited under section 160(5) of the Constitution that would cause the termination of individual ministerial office under section 170 paragraph one (4) of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court held that the respondent's individual ministerial office did not terminate under section 170 paragraph one (4) in conjunction with section 160(5) and section 170 paragraph one (5), and in conjunction with section 186 paragraph one and section 184 paragraph one (3) of the Constitution.

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