



Office of the Constitutional Court

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Facebook: www.facebook.com/constitutionalcourt.thai
E-mail : pr_constitutionalcourt@gmail.com



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Friday, 30th September B.E. 2565 (2022)

Today, the Constitutional Court deliberated an important case of interest, as follows.

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 ministerial office of the Prime Minister, General Prayut Chan-o-cha, terminated under section 170 paragraph two in conjunction with section 158 paragraph four of the Constitution (Case No. 17/2565)

The President of the House of Representatives (applicant) submitted an application to the Constitutional Court for a ruling that General Prayut Chan-o-cha, the Prime Minister (respondent), had held the Prime Ministerial office for a period that had met the time limit under section 158 paragraph four of the Constitution, which provides that “The Prime Minister shall not hold office for more than eight years in total, whether or not consecutively. However, it shall not include the period during which the Prime Minister carries out duties after vacating office.” As a consequence, the ministerial office of the Prime Minister, respondent, terminated under section 170 paragraph two in conjunction with section 158 paragraph four of the Constitution. The Constitutional Court issued an order to accept the application for ruling and to cease the respondent from performing duties as a Prime Minister from 24th August B.E. 2565 (2022) until the Constitutional Court rendered a ruling under section 82 paragraph two of the Constitution. The Constitutional Court subsequently issued orders to accept statements of replies, supplemental applications, written opinion and information together with documents of evidence from the relevant

agency in the case file and found that this case concerned a question of law and there was sufficient evidence to render a ruling. Therefore, the inquiries were ceased according to section 58 paragraph one of the Organic Act on Proceedings of the Constitutional Court, B.E. 2561 (2018).

Decision

The Constitutional Court, by majority vote (6 to 3), ruled that the respondent held the office of Prime Minister pursuant to section 264, Transitory Provisions, of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), for a period commencing from 6th April B.E. 2560 (2017) to 24th August B.E. 2565 (2022). The respondent had held the office of Prime Minister for a period that had not yet met the time limit under section 158 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017). Accordingly, the ministerial office of the Prime Minister, respondent, did not terminate under section 170 paragraph two in conjunction with section 158 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017).

Annex

The Relevant Provisions of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017)

Section 82

“Members of the House of Representatives or Senators comprising not less than one-tenth of the total number of the existing members of each House have the right to lodge with the President of the House of which they are members a complaint asserting that the membership of any member of such House has terminated under section 101 (3), (5), (6), (7), (8), (9), (10) or (12) or section 111 (3), (4), (5) or (7), as the case may be, and the President of the House with whom the complaint is lodged shall refer it to the Constitutional Court for decision as to whether the membership of such member has terminated.

Upon receipt of the matter for consideration, if it appears that there are reasonable grounds to suspect that the case of the member against whom the complaint is lodged is founded, the Constitutional Court shall order such member to cease the performance of his or her duties until the Constitutional Court makes a decision. When the Constitutional Court has made a decision, it shall notify the President of the House to which the complaint is lodged under paragraph one of such decision. In the case where the Constitutional Court decides that the membership of the member against whom a complaint has been lodged is terminated, such person shall vacate office as from the date of cessation of the performance of duties, but this shall not affect any act done by such person prior to the vacation of his or her office.

A Member of the House of Representatives or a Senator who has ceased the performance of his or her duties under paragraph two shall not be counted as one of the total number of the existing members of the House of Representatives or the Senate.

In the case where the Election Commission is of the opinion that the membership of any Member of the House of Representatives or any Senator has terminated under paragraph one, it may also refer the matter to the Constitutional Court for decision under paragraph one.”

Section 158 paragraph four

“The Prime Minister shall not hold office for more than eight years in total, whether or not consecutively. However, it shall not include the period during which the Prime Minister carries out duties after vacating office.”

Section 170 paragraph two and paragraph three

“Apart from the grounds for termination of ministership of an individual Minister under paragraph one, the ministership of the Prime Minister also terminates upon the lapse of the period of time under section 158 paragraph four.

The provisions of section 82 shall apply mutatis mutandis to the termination of ministership under (2), (4) or (5) or paragraph two. For this purpose, the Election Commission shall also have the power to refer the matter to the Constitutional Court for decision.”

Section 264

“The Council of Ministers administering State affairs on the day prior to the date of promulgation of this Constitution shall be the Council of Ministers under the provisions of this Constitution until the new Council of Ministers appointed subsequent to 97 the first general election under this Constitution assumes its duties. The provisions in section 263 paragraph three shall apply to the holding of position of Minister mutatis mutandis. Apart from having the qualifications and not being under any of the prohibitions under the Constitution of the Kingdom of Thailand (Interim) , B.E. 2557 (2014) , the Minister under paragraph one must not be under any of the prohibitions provided for a Minister under section 160, except (6) only in the part relevant to section 98 (12), (13), (14) and (15), and must vacate office pursuant to section 170, except for (3) and (4); however, in the case under (4), only in the part relating to section 98 (12), (13), (14) and (15), and except for section 170 (5) only in the part relating to the undertaking under section 184 (1). An appointment of a Minister during the time period under paragraph one shall be carried out in accordance with the Constitution of the Kingdom of Thailand (Interim) , B.E. 2557 (2014) as amended by the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 Amendment (No. 1), B.E. 2558 (2015) and the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 Amendment (No. 2), B.E. 2559 (2016). However, the Minister must not be under any of the prohibitions under paragraph two. The provisions in section 263 paragraph seven shall also apply to an application to stand as a candidate in an election of a Member of the House of Representatives of the Minister under paragraph one and paragraph three mutatis mutandis.”