

The Constitutional Court
The Kingdom of Thailand

Constitutional Court Order

No. 67/2562 (2019)

Dated 27th November B.E. 2562 (2019)

Between	{	President of the House of Representatives	Applicant
		Members of the House of Representatives	First to Sixth Respondents

Re: The President of the House of Representatives requested for a Constitutional Court Ruling under section 82 of the Constitution on whether or not the membership of 6 Members of the House of Representatives terminated under section 101(7) in conjunction with section 185(1) of the Constitution.

The President of the House of Representatives, applicant, referred the application of Mr. Chaiwut Thanakamanusorn, Member of the House of Representatives, and others, a total of 61 persons to the Constitutional Court for a ruling under section 82 paragraph one of the Constitution. The facts under the application and supporting documents could be summarised as follows.

On 28th September B.E. 2562 (2019), Mr. Sompong Amornvivat, first respondent, Mr. Wan Muhamad Noor Matha, second respondent, Mr. Thanathorn Juangroongruangkit, third respondent, Mr. Songkram Kitlertphairoj, fourth respondent, Mr. Nikhom Boonvises, fifth respondent, and others, a total of 12 persons, participated in a discussion panel on “Dynamic Shift in Resolution of Problems in Southern Border Provinces towards the Resetting of the Constitution” at Pattani Province. Such discussion panel contained substances which distorted the truth, incited and encouraged discontent and resistance of the people to the extent of causing unrest in the Kingdom or infringement of the laws of the land by the people. The panel also allowed Mrs. Chalita Bandhuwong, lecturer of Kasetsart University, to propose an amendment to section 1 of the Constitution without raising an objection or giving further explanation to prevent disharmony, despite the first to fifth respondents being in a position to rectify or prevent such act. Furthermore, the respondents spoke on the separation of state and supported the revision of the entire Constitution. As a consequence of such event, the Internal Security

Operations Command (ISOC 4th Region), by Major General Burin Thongprapai, Director, Office of Judge Advocate, Professional of Internal Security Operations Command Part 4 (Professional of ISOC 4), pressed charges against the first to fifth respondents and others, a total of 12 persons, under section 116 of the Penal Code. Thereafter, the first, second, fourth, fifth respondents and others, a total of 11 persons, pressed charges against Lieutenant General Pornsak Poonsawat, Fourth Region Army Commander, and Major General Burin Thongprapai, under section 137, section 172, section 174, section 326 and section 328 of the Penal Code, and on 4th October B.E. 2562 (2019), Mr. Piyabutr Saengkanokkul, sixth respondent, stated in a press conference that there was a complaint that an officer of the National Council for Peace and Order (NCPO) pressed charges under section 116 of the Penal Code against a large number of persons prejudicing the liberty of expression. If such matter was referred to the House of Representatives Committee on Law, Justice and Human Rights, as Chairperson of the Committee on Law, Justice and Human Rights, he would summon Major General Burin Thongprapai to give a statement.

Sixty-one Members of the House of Representatives were of the opinion that the actions of all six respondents constituted the use of status or membership of the House of Representatives to commit an act which amounted to a direct or indirect intervention or interference for the benefit of oneself, others or political party in the performance of official functions or routine operations of an official, staff or employee of a government agency, state agency, state enterprise, state majority-held business or local government agency. For this reason, the membership of all six respondents terminated under section 101(7) in conjunction with section 185(1) of the Constitution. The members therefore entered their names in a motion to the applicant for a referral of an application to the Constitutional Court for a ruling that the membership of the House of Representatives of all six respondents terminated under section 82 paragraph one of the Constitution.

The applicant verified the signatures of the motion petitioners and found that this was a case where Members of the House of Representatives comprising not less than one-tenth of the total number of existing Members of the House of Representatives jointly submitted a motion for the referral of an application to the Constitutional Court for a ruling under section 82 of the Constitution on whether or not the six respondents' membership of the House of Representatives terminated under section 101(7) in conjunction with section 185(1) of the Constitution.

The preliminary issue to be decided by the Constitutional Court was whether or not the Constitutional Court could accept the application for a ruling under section 82 paragraph one of the Constitution. The Constitutional Court found as follows. The facts stated in the application and supporting documents showed that

this was a case where 61 Members of the House of Representatives, being a number not less than one-tenth of the total number of existing Members of the House of Representatives, motioned for a referral of an application to the Constitutional Court for a ruling under section 82 paragraph one of the Constitution on the termination of the 6 respondents' membership of the House of Representatives pursuant to section 101(7) in conjunction with section 185(1) of the Constitution. Even though the case was in accordance with section 82 paragraph one of the Constitution in conjunction with section 7(5) of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018), in order for the Constitutional Court to accept an application for a ruling under section 82 paragraph one, in addition to the channel and submission process of application, the Constitutional Court had to consider the content of the application to determine the existence of grounds for prohibition under the Constitution. Otherwise, the Constitution did not provide any other measures for screening grounds in an application prior to referral to the Constitutional Court for a ruling under section 82 paragraph one of the Constitution. Each House of the National Assembly could prescribe mechanisms for screening grounds in an application by the approval of the respective House of the National Assembly prior to referral to the Constitutional Court. However, since this House of the National Assembly had not yet implemented such a mechanism, the Constitutional Court was obliged to perform the function of initial screening for grounds in an application prior to accepting an application for a ruling in the interest of fairness to the respondents.

It was found on the facts as stated in the application that this was a case where the first to fifth respondents pressed criminal charges against the 4th Region Army Commander and Major General Burin Thongprapai, which was deemed as a regular exercise of a legal right under the criminal justice process. As for the case of the sixth respondent, the action in question was only a statement made during a press conference to inform the media of functions of the House of Representatives Committee on Law, Justice and Human Rights. There were no other actions which amounted to the use of status or position of membership of the House of Representatives which could be characterised as an intervention or interference, for the benefit of oneself, others or a political party, of official functions or routine operations of an official, staff or employee of a government agency or state agency that would constitute a cause for termination of membership of all six respondents pursuant to section 101(7) in conjunction with section 185(1) of the Constitution.

By virtue of the foregoing reasons, the Constitutional Court denied leave to accept this application for ruling.
