

Translated Judgment

The Constitutional Court Ruling on Prayuth's Eight Years as Prime Minister

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I. INTRODUCTION

On 30 September 2022, the Constitutional Court ruled on the constitutionality of the prime ministership of General Prayuth Chan-ocha. General Prayuth has served continuously as prime minister since being appointed on 24 August 2014 following the 22 May 2014 coup that he led as the head of the National Council for Peace and Order (NCPO). Under the 2017 Constitution, drafted by a Constitution Drafting Committee appointed by the NCPO, an individual may only serve as prime minister for a total period of eight years. Through legal gymnastics and creative reasoning, despite this explicit limitation, the Constitutional Court found that General Prayuth has *not* served as prime minister under the 2017 Constitution in excess of this limitation.

The ruling came in response to a petition by a coalition of members of opposition parties submitted to the Constitutional Court on 24 August 2022, the day General Prayuth had served as prime minister for a full eight years.

In a majority ruling, the Constitutional Court interpreted the 2017 Constitution to rule that General Prayuth's prime ministership was constitutional prior to the promulgation of the Constitution, but the tabulation of the time in office with respect to the eight-year limit did not begin until the Constitution was promulgated on 6 April 2017. The 2017 Constitution, like any legal instrument, is malleable and open to interpretation. Yet how can the period of General Prayuth's prime ministership

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between 24 August 2014 and 5 April 2017 be at once constitutional according to the 2017 Constitution, and yet not counted when tabulating the total period in office under the same Constitution? One interpretation is that this ruling turns on how time in office is tabulated, and the Constitutional Court is merely interpreting the provisions of the Constitution flexibly. But is a second, and unexpected, potential line of questioning perhaps opened up regarding the legitimacy of General Prayuth's prime ministership prior to the 2017 Constitution, and therefore the very coup that brought him into office? What makes his prime ministership prior to 6 April 2017 different than his prime ministership afterwards? Is the difference the nominally democratic form of the 2017 Constitution and the election, even if neither free nor fair, that it facilitated? Is a prime minister selected by a legislative assembly chosen by a junta following a coup by the very same junta different than a prime minister selected through a general election? In other words, might the Constitutional Court's creative counting be able to be read against itself to raise questions, if not answer them?

An unofficial translation of the full majority ruling is offered here in the service of scholarship and public debate. Brief additions in brackets [] have been added for readability when the subject of a sentence or other key details were not apparent in the original text.

II. TRANSLATION

[State Emblem]
In the Name of His Majesty the King
The Constitutional Court

Ruling No. 14/2565

Matter for Examination No. 17/2565
30 September 2022

Between

President of the House of Representatives, Petitioner

And

General Prayuth Chan-ocha, Prime Minister, Respondent

Re: The Chair of the House of Representatives sending a petition to the Constitutional Court to rule on in accordance with Article 170, paragraph three, as well as Article 82 of the Constitution on whether or not the prime ministership of General Prayuth Chan-ocha is terminated in accordance with Article 170, paragraph two, as well as Article 158, paragraph four.

The President of the House of Representatives (Petitioner) sent a petition for the Constitutional Court to rule on in accordance with Article 170, paragraph three, as well as Article 82. The facts according to the petition and the included documents can be summarized as follows:

Mr. Chonlanan Srikaew, member of the House of Representatives and affiliates comprised of 172 people, have jointly signed to propose the petition to the Petitioner that the ministership of Prime Minister General Prayuth Chan-ocha (the Respondent) is terminated according to Article 170, paragraph two, along with Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. This is because on 24 August 2014, there was a royal proclamation appointing the Respondent as the Prime Minister according to Article 19 of the 2014 (Interim) Constitution of the Kingdom of Thailand. On 6 April 2017, the 2017 Constitution of the Kingdom of Thailand was promulgated. A transitory provision, Article 264, paragraph one, prescribes that, “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 the first general election under this Constitution assumes its duties.”

The Respondent held the office of Prime Minister in the Council of Ministers who administered State affairs on the day prior to the promulgation of this Constitution. Subsequently, there was a Royal Decree setting a general election for the House of Representatives for the first time according to the 2017 Constitution of the Kingdom of Thailand on 24 March 2019 and there was a royal proclamation appointing the Respondent as the Prime Minister according to Article 158 of the 2017 Constitution of the Kingdom of Thailand on 9 June 2019. The Respondent held the prime ministership continuously until 24 August 2022. Since 24 August 2022, the total period of time holding the prime ministership has been in excess of the eight years in accordance with Article 158, paragraph four. For this reason, the prime ministership of the Prime Minister, the Respondent, should be terminated in line with Article 170, paragraph two, along with Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. In Constitutional Court Ruling No. 3–5/2550 and Constitutional Court Ruling No. 24/2564, the Constitutional Court retroactively applied the law in order to abrogate the political rights of the executives of political parties and terminate the offices of members of the House of Representatives. In addition, the National Anti-Corruption Commission has ruled that the appointment of the Respondent as Prime Minister on 9 June 2019 was not a new term of prime ministership.

The Petitioner examined the signatures of those who joined the petition and found that it contained no less than one in ten of the total number of members of the House of Representatives in accordance with Article 82, paragraph one, of the Constitution, and therefore forwarded the petition to the Constitutional Court to examine in accordance with Article 170, paragraph three, along with Article 82 as follows:

- (1) [Whether or not] The ministership of the Prime Minister, the Respondent, is terminated according to Article 170, paragraph two, along with Article 158, paragraph four;
- (2) There was an order for the Respondent to cease performing the duties of Prime Minister until the Constitutional Court had a ruling according to Article 82, paragraph two, of the Constitution.

The initial point that the Constitutional Court has to examine is whether or not the Constitutional Court has the authority to accept this petition for ruling in accordance with Article 170, paragraph three, along with Article 82, of the Constitution. The Court finds that the facts according to the petition and the documents accompanying the petition are an instance in which 172 members of the House of Representatives, which is a number of no less than one in ten of the total members of the House of Representatives, have signed the petition of the Petitioner to forward the matter to the Constitutional Court to rule on whether or not the ministership of the Prime Minister, the Respondent, is terminated in accordance with Article 170, paragraph two, along with Article 158, paragraph four. The Petitioner submitted the petition to the Constitutional Court as a case in accordance with Article

170, paragraph three, along with Article 82 of the Constitution and Article 7 (9) of the 2018 Organic Act on the Procedures of the Constitutional Court. The Constitutional Court therefore issued an order to accept this petition for ruling and had the Respondent submit a counter statement in response to the accusation.

Regarding whether or not the Respondent should be ordered to cease performing the duty of Prime Minister until the Constitutional Court ruled in accordance with Article 82, paragraph two, the Constitutional Court found that the facts according to the petition and the accompanying documents indicated a reasonable doubt. Therefore, the Court ordered the Respondent to cease performing the duty of prime minister from 24 August 2022 until a ruling was made.

The Respondent submitted a counter statement to the accusation and accompanying documents. This can be summarized as the Respondent did not include the period of time in which he held the prime ministership following royal appointment in accordance with Article 19 of the 2014 (Interim) Constitution of the Kingdom of Thailand on 24 August 2014, as part of the period in which he has held the prime ministership since 6 April 2017 by effect of the transitory provision of the Article 264, paragraph one, of the 2017 Constitution of the Kingdom of Thailand. This further cannot be calculated to be a continuous period with the royal appointment as prime ministership for a second time on 9 June 2019 in accordance with Article 158 of the 2017 Constitution of the Kingdom of Thailand. This is because the Respondent's [first royally-appointed] prime ministership was terminated along with the revocation of the 2014 (Interim) Constitution of the Kingdom of Thailand. This interrupted the period of prime ministership. Counting from the prime ministership since the promulgation of the 2017 Constitution of the Kingdom of Thailand on 6 April 2017 according to transitory provision Article 264, paragraph one, and the prime ministership since 9 June 2019, on 24 August 2022 and until the present, the Respondent has not held the prime ministership according to the 2017 Constitution of the Kingdom of Thailand in excess of eight years. The ministership of the Prime Minister, the Respondent, is not terminated according to Article 170, paragraph two, along with Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. Anyhow, Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand, is a provision that limits the rights of the person who holds the office of prime minister, and therefore must be interpreted rigorously. In addition, the prime ministership, according to the rules and conditions, must not be held in excess of eight years according to Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. It must be interpreted to only mean a prime minister who is appointed in accordance with the 2017 Constitution of the Kingdom of Thailand. It does not include prime ministerships in accordance with other Constitutions that have already been revoked. If the 2017 Constitution of the Kingdom of Thailand contained the intention to count the period of time of holding the prime ministership to be retroactively applied to include prime ministerships in accordance with other constitutions that have been revoked, the 2017 Constitution of the Kingdom of Thailand must formulate this clearly. As the 2017 Constitution of the Kingdom of Thailand did not formulate

this clearly, then Article 158, paragraph four, cannot be interpreted to limit an individual's rights.

In addition, the Respondent's view is that Constitutional Court Ruling No. 5/2561 and Constitutional Court Ruling No. 7/2562 indicate that the prime ministership of the Respondent in accordance with the 2014 (Interim) Constitution of the Kingdom of Thailand beginning on 24 August 2014 was terminated and interrupted and the prime ministership was started anew in accordance with transitory provision Article 264, paragraph one, of the 2017 Constitution of the Kingdom of Thailand. In addition, the tabulation of the time of the prime ministership in accordance with Article 158, paragraph four, is a separate issue than the retroactive application of the law in accordance with Constitutional Court Ruling Nos. 3–5/2550 and Constitutional Court Ruling No. 24/2464 cited by the Petitioner. The Petitioner's start of the count of the period of the Respondent's prime ministership beginning with 24 August 2014 is an incorrect understanding of the facts and the provisions of law. The Constitutional Court Rulings that the Petitioner cited are not related to the case in which the Petitioner has accused the Respondent. In addition, the Respondent's prime ministership does not contravene the international standards and principles and the intention of Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand as the Petitioner claimed. The Respondent sincerely believes in the foundation of law and the rule of law, and follows international standards in arguing that the prime ministership of the Respondent is not yet in excess of eight years in accordance with Article 158, paragraph four, of the 2017 Constitution as it is not possible to count the period of time of the Respondent's prime ministership from 24 August 2014 to be included together with the prime ministership according to transitory provision Article 264, paragraph one, of the 2017 Constitution of the Kingdom of Thailand and the prime ministership according to Article 158, paragraph one, of the 2017 Constitution of the Kingdom of Thailand.

Regarding the minutes of the Constitution Drafting Committee Meeting No. 500 on Friday, 7 September 2018 that contain the opinions of Mr. Meechai Ruchuphan, the Chairman of the Constitution Drafting Committee, and Mr. Suphot Khaimuk, the Deputy Chairman of the Constitution Drafting Committee, one person said that the period of the prime ministership prior to the day that the 2017 Constitution of the Kingdom of Thailand was promulgated can be counted together with the period of prime ministership in accordance with this Constitution. The aforementioned meeting was merely a meeting to prepare a book, "The aims and explanation about the provisions of the 2017 Constitution of the Kingdom of Thailand," but this opinion did not appear in the aforementioned book. Therefore it may not be able to be held to be the intention of Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand as the Petitioner claimed. In addition, that the Petitioner referred to the examination by the National Anti-Corruption Commission that did not make public the accounts of assets and debts of the Respondent and his spouse when he was appointed as Prime Minister on 9 June 2019, as this instance was not the first time that the account record of assets and debts was

submitted according to Article 105, paragraph three (1) of the 2018 Organic Act on Anti-Corruption, but was a submission of evidence according to Article 105, paragraph four, by claiming that the Respondent held the prime ministership in accordance with Article 158 of the 2017 Constitution of the Kingdom of Thailand since 24 August 2014, which was the day that the Respondent submitted his account of assets and debts the first time, is a misunderstanding of the facts and laws. The submission of an account of assets and debts and calculation of the period the prime ministership is held are governed by different rules and intentions, and are also located differently in the hierarchy of laws. The Petitioner cannot bring the examination of the National Anti-Corruption Commission to bear on the interpretation of Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand, which is a measure that limits the rights of an individual.

For the benefit of the examination, by virtue of Article 27, paragraph three, of the 2018 Organic Act on the Procedures of the Constitutional Court, the Constitutional Court sent a request for documents, evidence, and individuals to Mr. Meechai Ruchuphan, in the status of the former Chair of the Constitution Drafting Committee, and to the Secretary of the House of Representatives, to provide opinions and to send related information, documents and evidence to the Constitutional Court.

Mr. Meechai Ruchuphan, in the status of the former Chair of the Constitution Drafting Committee, provided a written opinion dated 11 August 2022 that can be summarized as the Council of Ministers, including the Prime Minister, who held their ministerships on the day before the 2017 Constitution of the Kingdom of Thailand was promulgated are the Council of Ministers according to the Constitution from the day that the Constitution is promulgated. Regarding the report of the 500th meeting of the Constitution Drafting Committee on Friday, 7 September 2018, in the section regarding the citation of the person providing opinion, it was a record of a report that was incomplete and was a summary made from the understanding of the person taking the minutes. The Constitution Drafting Committee has not examined and affirmed that meeting report.

The Secretary of the House of Representatives sent Letter of the Office of the Secretary of the House of Representatives No. So Pho 0003/10148, dated 2 September 2022. This included a copy of the aims and explanations accompanying each measure of the 2017 Constitution of the Kingdom of Thailand for Article 158 and Article 264, and a copy of the minutes of the meeting and the report of the meeting of the Constitution Drafting Committee on the examination of Article 158 and Article 264 of the 2017 Constitution of the Kingdom of Thailand.

The Petitioner submitted a petition to send additional documents and evidence, including opinions about the calculation of the period of time holding prime ministership by the Respondent, which was an opinion that the Respondent held the prime ministership beginning on 24 August 2014. The period of the prime ministership of the Respondent has to begin from the aforementioned day and has already reached a period of eight years according to Article 157, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. They compiled and sent additional

documents and evidence regarding how Mr. Meechai Ruchuphan, as the chair of the Constitution Drafting Committee, gave written opinion to the Constitutional Court that according to Article 264 of the 2017 Constitution of the Kingdom of Thailand, the Council of Ministers, including the Prime Minister, who hold ministerships on the day prior to the promulgation of this Constitution, are a Cabinet of Ministers according to the 2017 Constitution of the Kingdom of Thailand from 6 April 2017, which is the day that this Constitution was promulgated. The setting of the period of the prime ministership according to Article 157, paragraph four, begins to be counted from 6 April 2017. The Petitioner thinks that a prime minister who held the ministership on the day prior to the promulgation of the 2017 Constitution of the Kingdom of Thailand is a prime minister who has been royally appointed according to Article 19 of the 2014 (Interim) Constitution of the Kingdom of Thailand, not a prime minister who is royally appointed according to the 2017 Constitution of the Kingdom of Thailand. Therefore, there is no reason to tabulate the time in office from 6 April 2017, which is the date that the 2017 Constitution of the Kingdom of Thailand was promulgated, but must be counted from the day that there was a royal proclamation appointing the Respondent as Prime Minister on 24 August 2014, and this was an opinion provided by Mr. Meechai Ruchuphan in the report of the 500th meeting of the Constitution Drafting Committee on Friday, 7 September 2018. Regarding the comment of Mr. Meechai Ruchuphan that the minutes of the meeting may cause misunderstanding as they were not fully recorded, it was a summary from the point of view of understanding of the notetaker, and the Constitution Drafting Committee did not examine or affirm the report of the meeting, as it was the final meeting and the Constitution Drafting Committee ceased operations on 12 September 2018, the view of the Petitioner is that the minutes of the 500th meeting of the Constitution Drafting Committee contains content that speaks to the intention of the drafters of the 2017 Constitution of the Kingdom of Thailand, regarding Article 264 and related to Article 157, paragraph four. In addition, the aforementioned meeting of the Constitution Drafting Committee was not the final meeting as Mr. Meechai Ruchuphan claimed. This is because there was a 501st meeting of the Constitution Drafting Committee on Tuesday, 11 September 2018 which Mr. Meechai Ruchuphan attended. The second point of order recorded was that “The Committee motioned to accept the minutes of the 497th meeting on Tuesday, 28 August 2018, until the 500th meeting on Friday, 7 September 2018. The subcommittee has examined the minutes and reports of the meetings and there are no corrections.” The minutes of the aforementioned meeting are a document that the staff compiled. The subcommittee examined the meetings and reports of the meetings and the Constitution Drafting Committee motioned to accept them. Therefore, it is a correct and referenceable document. The claim of Mr. Meechai Ruchuphan that the Constitution Drafting Committee did not examine or accept the report of the meeting as it was the final meeting is false. As it is an important point for the ruling, it cannot be accepted as evidence.

The Constitutional Court requested documents and evidence and for the Secretary of the House of Representatives to arrange the sending of a copy of the

minutes and the report of the 501st meeting of the Constitution Drafting Committee to the Constitutional Court.

The Constitutional Court has examined the petition, the additional petition, the counter statement by the Respondent, the opinions and information of related units and accompanying documents. The Court views that there is sufficient evidence in the case to rule and therefore halted the proceedings according to Article 58, paragraph one, of the 2018 Organic Act on the Procedures of the Constitutional Court which stipulates the point that must be examined and ruled upon is whether or not the prime ministership of the Prime Minister, the Respondent, is terminated in accordance with Article 170, paragraph two, as well as Article 158, part four.

Upon examination, it is found that Article 170, paragraph one, of the 2017 Constitution of the Kingdom of Thailand prescribes that, “The ministership of an individual minister terminates upon: 1. death; 2. resignation; 3. the passing of a vote of no-confidence by the House of Representatives; 4. being disqualified or being under any of the prohibitions under Article 160; 5. having done an act prohibited by Article 186 or Article 187; 6. the issuance of a Royal Command to remove a minister from office under Article 171.” Paragraph two prescribes that, “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 Article 158, paragraph four.” Article 158, paragraph four prescribes that, “The Prime Minister shall not hold office for more than eight years in total, whether or not holding consecutive terms. However, it shall not include the period during which the Prime Minister carries out duties after vacating office.”

Article 158, paragraph one, of the 2017 Constitution of the Kingdom of Thailand, prescribes that, “The King appoints the Prime Minister and not more than thirty-five other ministers to constitute the Council of Ministers having the duties to carry out the administration of state affairs in accordance with the principle of collective responsibility.” Paragraph two prescribes that, “The Prime Minister must be appointed from a person who is approved by the House of Representatives under Article 159.” Paragraph three prescribes that, “The President of the House of Representatives shall countersign the Royal Command appointing the Prime Minister.” Article 159, paragraph one, prescribes that, “The House of Representatives shall complete its consideration for approval of the person suitable to be appointed as Prime Minister from a person who has the qualifications and is not under any of the prohibitions under Article 160, and is a person listed by a political party under Article 88, only with respect to the political parties whose members have been elected as Members of the House of Representatives constituting not less than five per cent of the total number of existing Members of the House of Representatives.” Paragraph two prescribes that, “The nomination under paragraph one shall be endorsed by members comprising not less than one-tenth of the total number of the existing Members of the House of Representatives.” Paragraph three prescribes that, “The resolution of the House of Representatives approving the appointment of a person as Prime Minister shall be passed by open votes and by the votes of more than one half of the total

number of the existing Members of the House of Representatives.” And Article 272, paragraph one, prescribes that, “In the period of five years from the date of installation of the first National Assembly under this Constitution, an approval of a person suitable to be appointed as the Prime Minister shall be done in accordance with Article 159, except for the consideration and approval under Article 159, paragraph one, which shall be done by a joint sitting of the National Assembly, and the resolution approving the appointment of any person as the Prime Minister under Article 159, paragraph three, must be made by votes of more than one-half of the total number of existing members of both Houses.” Paragraph two prescribes that, “During the time under paragraph one, if a Prime Minister cannot be appointed from the persons in the lists submitted by political parties under Article 88 due to any reason, and members of both Houses comprising not less than one-half of the total number of existing members of both Houses submit a joint signed petition to the President of the National Assembly requesting the National Assembly to pass a resolution exempting the nomination of the Prime Minister from the persons in the lists submitted by political parties under Article 88, in such a case, the President of the National Assembly shall promptly convene a joint sitting of the National Assembly. In the case where the National Assembly passes a resolution approving the exemption with votes of not less than two-thirds of the total number of existing members of both Houses, the procedure under paragraph one shall be undertaken further, in respect of which the persons in the list submitted by political parties under Article 88 may or may not be nominated.”

The 2017 Constitution of the Kingdom of Thailand stipulates two procedures for becoming Prime Minister, which is different from other constitutions. One procedure is that according to Article 159 and the other is according to the transitory provision in Article 272. The important principle pertaining to a prime ministership according to Article 159 is that the Prime Minister must come from a list of individuals whose names are submitted to the Election Commission prior to the election and found suitable to be Prime Minister. They must possess the qualifications stipulated by the Constitution. The Respondent was approved in accordance with Article 159 and Article 272 and a Royal Command was issued to appoint him as prime minister in accordance with Article 158 of the 2017 Constitution of the Kingdom of Thailand on 9 June 2019. The Respondent has held the prime ministership in full accordance with the principles and procedures of the 2017 Constitution and in accordance with the general principles of legal effect and the principles of certainty and clarity of the law. In other words, to hold the prime ministership in accordance with Article 158, paragraph four, the process of appointment according to Article 158 and Article 159 must be examined, especially the conditions set out in Article 159, paragraph one, that prescribes “The House of Representatives shall complete its consideration for approval of the person suitable to be appointed as Prime Minister from a person who has the qualifications and is not under any of the prohibitions under Article 160, and is a person listed by a political party under Article 88, only with respect to the list of names of political parties whose members have been elected as Members of the House of Representatives constituting not less than five per cent of the total number of existing

Members of the House of Representatives.” This is a provision that has a specific meaning according to the conditions of the 2017 Constitution of the Kingdom of Thailand, which is that individuals whose names are proposed to be Prime Minister must be those whose names are listed by a political party according to Article 88 only with respect to the list of names of political parties whose members have been elected as Members of the House of Representatives constituting not less than five per cent of the total number of existing Members of the House of Representatives. The Respondent was appointed by Royal Command to the position of Prime Minister according to Article 19, paragraph one, of the 2014 (Interim) Constitution of the Kingdom of Thailand on 24 August 2014. The King appointed him following a resolution of the National Legislative Assembly, [whose creation was] from the advisement of the National Council for Peace and Order. The Respondent was not [then] the prime minister according to the 2017 Constitution of the Kingdom of Thailand, who, according to Article 158, paragraph two, must receive approval from the House of Representatives.

Nevertheless, the 2017 Constitution of the Kingdom of Thailand has a transitory provision, Article 264, paragraph one, that prescribes that, “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 the first general election under this Constitution assumes its duties. The provisions in Article 263, paragraph three, shall apply to the holding of position of Minister *mutatis mutandis*.” Paragraph two prescribes that, “Apart from having the qualifications and not being under any of the prohibitions under the 2014 (Interim) Constitution of the Kingdom of Thailand, the Minister under paragraph one must not be under any of the prohibitions provided for a Minister under Article 160, except (6) only in the part relevant to section 98 (12), (13), (14) and (15), and must vacate office pursuant to Article 170, except for (3) and (4); however, in the case under (4), only in the part relating to Article 98 (12), (13), (14) and (15), and except for Article 170; (5) only in the part relating to the undertaking under Article 184 (1).” Paragraph three prescribes that, “An appointment of a Minister during the time period under paragraph one shall be carried out in accordance with the 2014 (Interim) Constitution of the Kingdom of Thailand, as amended by the 2014 (Interim) Constitution of the Kingdom of Thailand, Amendment No. 1 (2015), and the 2014 (Interim) Constitution of the Kingdom of Thailand, Amendment No. 2 (2016). However, the Minister must not be under any of the prohibitions under paragraph two.” Paragraph four prescribes that “The provisions in Article 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*.”

The next matter that must be examined is whether or not the Council of Ministers, of which the Respondent was Prime Minister, that governed the country prior to the day that the 2017 Constitution of the Kingdom of Thailand was promulgated, is a Council of Ministers according to said Constitution.

Upon examination, it is found that the 2017 Constitution of the Kingdom of Thailand, Article 264, paragraph one, has two aims. The first is for it to be a provision that affirms the principle of continuity of the Council of Ministers. That is to say, even though the Council of Ministers of which the Respondent was Prime Minister existed before the day that the 2017 Constitution of the Kingdom of Thailand was promulgated, once the Constitution was promulgated on 6 April 2017, that Council of Ministers is considered to be constitutional under the aforementioned transitory provision, Article 264, even though it entered office under a different Constitution [the 2014 (Interim) Constitution]. Regarding the second aim, it is in order to apply the new rules of this Constitution to be enforced on the Council of Ministers that was in place prior to the day of its promulgation. This follows the general principle that the Council of Ministers that governs the country prior to the day of the promulgation of the new constitution must immediately be under every aspect of the new rules that have been promulgated. This is the case except with respect to transitory provisions that create exceptions of matters that will not apply to the Council of Ministers that governed the country prior to the day that the Constitution was promulgated as appears in Article 264, paragraph two, which stipulates exceptions on only some matters. Therefore, if an exception is not stipulated, the provision on any given matter must be adhered to according to the new Constitution. The aim of transitory provision Article 264 is according to the general principle of the enforcement of the law, which is that laws come into effect from the day that they are promulgated. This means that when this Constitution went into force on 6 April 2017, every provision of the Constitution went into effect. The only exception is for transitory provisions, which provide for provisions for various matters to not yet go into force. Therefore, no matter the issue, once the 2017 Constitution of the Kingdom of Thailand is in force, everything must begin immediately. The instance according to Article 158, paragraph four, regarding the matter of the period of eight years, therefore, must begin to be counted immediately from the day that the Constitution came into force. Therefore, based on the aforementioned legal principle, [the Constitutional Court] rules that the Respondent, who was the Prime Minister who governed the country prior to the day that this Constitution was promulgated, was the Prime Minister in line with Article 158, paragraph four, of this Constitution.

Regarding the claim that Constitutional Court Rulings No. 3–5/2550 and 24/2564 were the retroactive application of law in order to abrogate the political rights of the executives of political parties and the termination of the terms of members of the House of Representatives were not criminal punishment and so it is possible to act similarly with the instance in this petition, [the Constitutional Court] finds that the facts in the aforementioned rulings are that they were instances in which political parties violated the law related to political parties and this was the reason to dissolve the parties and also resulted in the abrogation of the political rights of the executives of the political parties. These were instances of prohibition of being members of the House of Representations, which was the reason their terms of office were terminated. Both of the aforementioned instances were under a clearly written provision that the

law could be retroactively applied because the parties violated the law or lacked the qualifications from the beginning. The applicable provisions of the 2017 Constitution of the Kingdom of Thailand do not address how retroactive application is to work with regards to the limit on the length of term of holding the office of Prime Minister. The two aforementioned rulings are not comparable. This case regards the tabulation of the length of term of holding the office of Prime Minister set by the Constitution and the cause for the holding of the office to be terminated. The principles and intentions of the Constitution and the law [on political parties] are different and therefore the instances are not comparable. In addition, the rules and conditions of the 2018 Organic Act on Anti-Corruption is different than the principles in accordance with Article 158, paragraph four, along with Article 254, paragraph one, of the 2017 Constitution of the Kingdom of Thailand.

Regarding the claim of the Petitioner that the meeting minutes of the Constitution Drafting Committee, the 500th meeting, held on Friday, 7 September 2018, clearly noted the intention of limiting the period a person could hold the office of Prime Minister, according to Article 158, paragraph four, and that the chair and one of the deputy chairs of the Constitutional Drafting Committee expressed an opinion about counting the period a given individual who served as Prime Minister held office prior to the day that 2017 Constitution of the Kingdom of Thailand was promulgated, that any given individual who held the office of prime minister via any means before the day this Constitution was promulgated should be included in the tabulation of the period of time holding the office and that it must be a combined period of no more than eight years, [the Court] finds that the aforementioned meeting was held in order to consider the intention and explanation for each provision of the 2017 Constitution of the Kingdom of Thailand. This was merely an explanation of the ideas and aims of the Constitutional Drafting Committee regarding the preparation of various provisions of the Constitution. But the views of the chair and one of the deputy chairs of the Constitution Drafting Committee one year and five months after the 2017 Constitution of the Kingdom of Thailand had been promulgated, cannot be used to identify the intention and offer an explanation of Article 158. Further, according to the minutes and the report of the meeting of the Constitution Drafting Committee that examined the question of setting of the time period of holding the office of Prime Minister according to Article 158, paragraph four, counting the period of time an individual held the office of Prime Minister prior to the day the Constitution was promulgated in the tabulation of the total time in office was not raised during the debate. Therefore, the tabulation of the time of holding the office of Prime Minister according to Article 158, paragraph four, only applies to holding the office of Prime Minister according to the 2017 Constitution of the Kingdom of Thailand.

Therefore, once the 2017 Constitution of the Kingdom of Thailand was promulgated on 6 April 2017, and the Respondent held the office of Prime Minister, as a Minister who administered the country prior to the day this Constitution was promulgated, according to transitory provision Article 264, the aforementioned prime ministership was constitutional and must be under the enforcement of Article 158,

paragraph four. The Council of Ministers that administered the country prior to the day this Constitution was promulgated was considered to be a Council of Ministers in accordance with the provisions of this Constitution from the day that it was promulgated, and this was considered to be the day that they entered office under this Constitution. The Respondent therefore held the prime ministership according to Article 264 of the 2017 Constitution of the Kingdom of Thailand, from 6 April 2017 until 24 August 2022. The Respondent therefore has not held the prime ministership for the full period of according to Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand. The prime ministership of the Respondent is therefore not terminated according to Article 170, paragraph two, as well as Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand.

For the aforementioned reasons, the Constitutional Court, by majority consensus, therefore rules that the ministership of the Prime Minister, the Respondent, is not terminated according to Article 170, paragraph two, as well as Article 158, paragraph four, of the 2017 Constitution of the Kingdom of Thailand.

Mr. Warawit Kangsasitiam
President of the Constitutional Court

Mr. Tweekiat Menakanist
Constitutional Court Judge

Mr. Punya Udchachon
Constitutional Court Judge

Mr. Wiroon Sangtian
Constitutional Court Judge

Mr. Noppadon Theppitak
Constitutional Court Judge

Mr. Nakharin Mektrirat
Constitutional Court Judge

Mr. Udom Sittiwirattham
Constitutional Court Judge

Mr. Chiranit Havanond
Constitutional Court Judge

Mr. Bunjongsak Wongprachaya
Constitutional Court Judge