

(Unofficial Translation)

(Official Emblem)

No.Or.Sor.0030.4/11097

Office of the Attorney-General

Rajburi Direkrit Building, the Government Complex,
Chaengwattana Road, Tungsonhong Sub-district, Lakxi
District, Bangkok 10210

10 August 2022

RE: Decision on the Dissenting Opinion

Attention: The Director-General, Department of Special Investigation (“DSI”)

REF: (1) Letter of Department of Special Investigation No.Yor.Thor. 0816/1808 dated 10
August 2020

(2) Letter of Department of Special Investigation No.Yor.Thor. 0817/107 dated 18
January 2022

With reference to the above-mentioned Letters, the Criminal Case file Sor.1, receipt No.90/2562, coupled with the case file (where the taking of evidence was conducted before filing the case, receipt No.1/2562, of the Department of Special Litigation 1, Office of Attorney-General). According to such a case, Mr. Chaiwat Limlikit-aksorn and others, a total of four accused, were accused of the murder of the other person by premeditation and for the purpose of securing the benefit obtained through the other offence, or concealing the other offence or escaping punishment for the other offence committed by them. They were also accused of detaining or confining the other person, or by other means whatsoever, depriving such person of their liberty, and causing death to the person detained, confined or deprived of their liberty. They were accused of participating in carrying an arm and compelling another person to give or to agree to give them or the other person a benefit in the nature of being property by committing an act of violence or by a threat to commit violence against the life, body, liberty, reputation or property of the compelled person, or a third person, so that the compelled person submitted to the same. They were accused of participating in committing a gang robbery while carrying arms and using the vehicle for the commission of the gang robbery and such gang robbery caused death to the other person. They were accused of in bad faith concealing and performing any act on the corpse or a surrounding area where the corpse is discovered before the autopsy is completed, in a manner likely to cause the autopsy or the consequence of the case to be changed. They were accused of being the supporter of the official having the duty of purchasing, manufacturing, managing, or keeping any property, dishonestly misappropriating such property for his own or the other person. They were accused of being the supporters of the official, by a wrongful exercise of one's functions, coercing or inducing any person to deliver or procure the property or any other benefit for oneself or another person. The DSI sent its dissenting opinion to the non-prosecution order of the four accused to the Attorney-General for his consideration. The Attorney-General issued the order to conduct an additional inquiry. Later, according to the above-mentioned Letter (2), the DSI sent the case file together with the result of the additional inquiry for the Attorney-General's consideration and decision.

/ the Attorney-General.....

The Attorney-General had considered and had the opinion that, where the four accused had taken away such property of Mr. Pholachi, they did not perform such act while they performed their duty according to laws. But the four accused performed such act for their personal reason, and did not exercise power granted to them by their position; therefore, they were not the official having the duty of managing or keeping any property. In addition, Mr. Pholachi gave them such property was not due to the fact that he was coerced to deliver such property and there was no information found that there was a threat to commit violence against the life, body, liberty, reputation or property of Mr. Pholachi which forced him to do so, but it was due to the fact that the four accused intended to arrest Mr. Pholachi only. Therefore, taking such property away was not the dishonest misappropriation of property for his own or the other person, or compelling another person to give him or the other person a property. Moreover, there was no established fact to warrant that, before or while the cause of action of this case arose, the four accused had the intention to take away Mr. Pholachi's property because the value of Mr. Pholachi's property was not high. But the four accused just intended to conceal the crime, which was performed with an intention to deprive the life of Mr. Pholachi only. Therefore, the fact that the four accused hid Mr. Pholachi's property was that no one can find such property, not to dishonestly take away Mr. Pholachi's property at all. Such act did not fulfill the elements of crimes of the offence relating to being the official having the duty of managing or keeping any property, dishonestly misappropriating such property for his own or the other person; offence relating to being the official, by a wrongful exercise of one's functions, coercing or inducing any person to deliver or to procure the property or any other benefit for oneself or another person; offence relating to participating in carrying an arm and compelling another person to give him or the other person a benefit in the nature of being property by committing an act of violence or by a threat to commit violence against the life, body, liberty, reputation or property of the compelled person, or a third person, so that the compelled person submits to the same; and offence relating to participating in committing a gang robbery while carrying arms and using a vehicle for the commission of the gang robbery and such gang robbery caused death to the other person. The evidence of such a case was inadequate for the prosecution.

Therefore, Attorney-General issued the order as follows:

1. The Attorney-General decided to prosecute Mr. Chaiwat Limlikit-aksorn (the First Accused), Mr. Boontaen Busarakam (the Second Accused), Mr. Thanaseth or Paithoon Chamted (the Third Accused), and Mr. Kritsanapong Jitthes (the Fourth Accused), for committing the offence of murder with premeditation and for the purpose of securing the benefit obtained through the other offence, or concealing the other offence or escaping punishment for the other offence committed by him; for participating in the carrying of arms and compelling the other person to do or not to do any act, or to suffer anything by putting him in fear of injury to life, body, liberty, reputation or property of him; for participating in the detaining or confining of the other person, or by other means whatsoever, depriving a such person of their liberty, and such commission of the offence caused death to the person detained, confined or deprived of their liberty.

/ For participating

for participating in bad faith in the concealment or performing any act to the corpse or a surrounding area where the corpse is discovered before the autopsy is completed, in a manner likely to cause the autopsy or the consequence of the case to be changed, in accordance with Section 83, 91, 289(4)(7), 309, 310 of the Penal Code, Section 4 of the Penal Code Amendment Act (No. 6) B.E. 2526 (1983), Section 4 of the Penal Code Amendment Act (No. 26) B.E. 2560 (2017), Section 150 *bis* of the Criminal Procedure Code, and Section 5 of the Criminal Procedure Code Amendment Act (No. 21) B.E. 2542(1999).

2. The Attorney-General decided not to prosecute Mr. Chaiwat Limlikit-aksorn (the First Accused), Mr. Boontae Busarakam (the Second Accused), and Mr. Thanaseth or Paithoon Chamted (the Third Accused), for committing the offence of being the official having the duty of managing or keeping any property, dishonestly misappropriates the same for his own or the other person; for being the official, by a wrongful exercise of one's functions, coercing or inducing any person to deliver or to procure the property or any other benefit for oneself or other person; for participating in carrying of an arm and compelling other person to give him or the other person a benefit in the nature of being a property by committing an act of violence or by a threat to commit violence against the life, body, liberty, reputation or property of the compelled person, or a third person, so that the compelled person submits to the same; for participating in committing a gang robbery while carrying arms and using vehicle for commission of the gang robbery and such gang robbery caused death to the other person in accordance with Section 83, 147, 148, 337, 340, 340 *ter* of the Penal Code; Section 3 and 4 of the Penal Code Amendment Act B.E. 2502 (1959), Section 4 of the Penal Code Amendment Act (No. 6) B.E. 2526 (1983), Section 4, 6 and 7 of the Penal Code Amendment Act (No. 26) B.E. 2560 (2017), and Article 14 and 15 of the Notification of Revolutionary Council (No. 11) B.E. 2514 (1971).

3. The Attorney-General decided not to prosecute Mr. Kritsanapong Jitthes (the Fourth Accused), for committing the offence of being a supporter of the official having the duty of managing or keeping any property, dishonestly misappropriates the same for his own or the other person; for being a supporter of the official, by a wrongful exercise of one's functions, coercing or inducing any person to deliver or to procure the property or any other benefit for oneself or other person; for participating in carrying of an arm and compelling other person to give him or the other person a benefit in the nature of being a property by committing an act of violence or by a threat to commit violence against the life, body, liberty, reputation or property of the compelled person, or a third person, so that the compelled person submits to the same; for participating in committing a gang robbery while carrying arms and using vehicle for commission of the gang robbery and such gang robbery caused death to the other person in accordance with Section 83, 86, 147, 148, 337, 340, 340 *ter* of the Penal Code;

/the Amendment Act.....

(Unofficial Translation)

Section 3 and 4 of the Penal Code Amendment Act B.E. 2502 (1959), Section 4 of the Penal Code Amendment Act (No. 6) B.E. 2526 (1983), Section 4, 6 and 7 of the Penal Code Amendment Act (No. 26) B.E. 2560 (2017), and Article 14 and 15 of the Notification of Revolutionary Council (No. 11) B.E. 2514 (1971).

In this connection, the aforementioned criminal case file had already been sent to the Public Prosecutor for their further take action.

Yours sincerely,

(signature)

(Mr.Kulthanit Mongkolsawas)

Director-General, Department of Attorney General Litigation (Acting)

Attorney-General

Department of the Attorney-General's Decisions

Telephone No. 0 2142 1523

Telefax No. 0 2143 9196

E-mail: dlag4@ago.go.th