Blurring the Divide between Legal and Political Liability

On the Decision of the Constitutional Court to Remove the Thai Prime Minister from Office

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On 29 August 2025, the Thai Constitutional Court removed Paetongtarn Shinawatra, the Prime Minister of Thailand, from office due to a scandal involving a leaked phone call. The case against the Prime Minister is unique because it relates to an ethical standard – a new type of liability introduced by the 2017 Constitution – rather than a legal obligation. Paetongtarn was accused of carrying out her office "dishonestly" and "unethically". Thereby, the Constitutional Court added further turbulence into the already volatile and fragile political system. The suspension order demonstrates the continued judicial encroachment upon the political branch. It also highlights the danger of the 2017 Constitution's moralistic obsession with unrealistically clean and pure politics.

Border dispute and fateful phone call

Prime Minister Paetongtarn is the youngest daughter of Thaksin Shinawatra, the controversial former prime minister of Thailand who served from 2001 until his ousting in the 2006 coup. Thaksin was accused of corruption, human rights abuses, and disloyalty, yet remained highly popular. His daughter, Paetongtarn, now faces charges of ethical misconduct following a phone call with Hun Sen, the de facto leader of Cambodia. The two countries share an almost 800-kilometre border, much of it poorly demarcated. As a result, Thailand and Cambodia frequently engage in territorial disputes. In 2010, Cambodia's efforts to have the Temple of Preah Vihear recognised as a UNESCO World Heritage Site triggered military confrontations. In late May, the situation again intensified when Thailand accused Cambodia of unilaterally occupying a disputed area in Chong Bok. A subsequent firefight resulted in the death of one Cambodian soldier; eventually culminating in a brief war in late July.

On 18 June 2025, the Cambodian leader Hun Sen released a supposedly confidential phone conversation between him and Paetongtarn. It is important to know that her family always enjoyed a close relationship with Hun Sen's family. Hun Sen hosted her father, Thaksin Shinawatra, during his exile after the 2006 coup d'état. This familiarity with Hun Sen has now backfired on her. In the released phone call, the Thai Prime Minister essentially asked Hun Sen to reopen the border. Her motives were as understandable as they were simple: The border closure disrupted border trade worth billions of baht each year. Still, the public was outraged when Paetongtarn was heard saying that her own 2nd Army Commander, in charge of the Eastern border, was not supporting her – and when she referred to Hun Sen as 'uncle'. While in Southeast Asia, using familial terms such as 'father', 'mother', and 'uncle' with non-relatives is not uncommon; in this particular context, however, it shows Paetongtarn positioning herself as inferior to the more senior Cambodian strongman. The leaked phone call also fuelled the public's suspicion that Paetongtarn was personally too close to Hun Sen and might not do her best to protect the national interest. A group of conservative senators filed a complaint to the Constitutional Court accusing Paetongtarn of evident dishonesty (section 106 (4)) and violation of serious ethical standards (section 106 (5)) which eventually led to her removal.

The decision is at odds with itself. On the one hand, the Constitutional Court strengthened Paethongtarn's position by arguing that she was actively trying to solve a border crisis without taking any benefit from Hun Sen. The phone call did not

affect the position of the 2nd Army Commander or bring about any policy change. Therefore, the Court ruled that she honestly fulfilled her role as Prime Minister. However, the Constitutional Court argued the phone call had undermined Thailand's position. According to the Court, Prime Minister Paetongtarn exposed Thailand's weakness to Hun Sen when she denounced the 2nd Army Commander. She failed to exercise due care when engaging in a confidential negotiation. The Court noted that the request to reopen the border would benefit Cambodia and help stabilise Paetongtarn's declining popularity. Thus, Paetongtarn appeared to act solely in Hun Sen's and her own interest, rather than in Thailand's. Her action undermined national pride and interest. The Court concluded that the phone call violated serious ethical standards.

Moralistic constitutionalism

It is true that the phone call reflects Paetongtarn's poor leadership. By treating the crisis as a personal matter, she underestimated it and fell victim to the more experienced Hun Sen. Yet, aside from matters of national pride, Thailand suffered no harm from her actions. Paetongtarn did not commit any crime. Nor did she break any law. The phone call did not constitute an act of treason. While ultra-nationalists wanted the border to remain closed to punish Cambodia and deprive it of essential goods, business people along the border, losing millions in revenue, urged the government to negotiate its reopening. Her tone was too gentle for the ultra-nationalists. Making a private phone call without proper security was certainly unwise. But the law punishes wrongdoings, not foolishness. For that very reason, the senators were accusing her of ethical misconduct rather than a crime.

Drafted under the supervision of the junta who overthrew the democratic government in 2014, the 2017 Constitution reflects the drafters' deep distrust of elected politicians. Convinced that politicians were short-sighted and corrupt, they introduced several extreme measures aimed at rooting out 'evil' representatives. The 2017 Constitution stipulates that a minister shall be evidently honest (section 160(4)) and shall not seriously fail to meet the ethical standards (section 160(5)). The 2017 Constitution assigns the Constitutional Court, together with other watchdog agencies, the responsibility of defining these ethical standards which apply to members of both the legislative and executive branches. Failure to comply with the standard may result in removal from office and even a lifetime ban from politics. The problem is that the ethical standards by the Constitutional Court are written in such a generic manner that they grant the judiciary broad discretion to interpret them.

Although most people agree that candidates for public office should maintain a reasonable ethical standard, defining those standards proves difficult given the diverse views of what constitutes good and ethical behaviour. Corruption, for example, definitely deserves punishment. Gaining personal wealth through the exercise of public power is universally not accepted. Yet there exists a wide range of less ideal behaviours, such as being associated with questionable individuals, having an affair, or being untrustworthy. Many of these behaviours are drawing public criticism or can even cause politicians to end their careers. However, most of them fall short of constituting a crime. Should a constitution remove a politician for reneging on a promise or accepting donations from environmentally harmful industries?

The case against Paetongtarn blurs the line separating legal and political liability. A crime, a violation of a written rule, is properly addressed in the court of law, while a political blunder faces the court of public opinion. Paetongtarn made a poor decision; yet her actions remained within legal boundaries. For a democracy to function effectively, politicians must have the latitude to blunder, as this discretion is essential for public administration. Labelling a political blunder as an unethical and thus illegal act creates excessive uncertainty for elected representatives. This potentially enables courts to arbitrarily remove politicians on flimsy grounds.

Problematic jurisprudence

The decision is problematic. How could a single phone call serve as evidence for Paethongtarn being honest

and, at the same time, unethical? The decision did not show credible evidence to support the Constitutional Court's claim of her putting her own interest before that of the nation.

Paetongtarn is no exception. Paetongtarn's predecessor, Sretha Taweesin, was removed for a similar cause in 2024. Sretha appointed Pichit Chueuban his deputy. Pichit had once been sentenced to six months' imprisonment for contempt of court 15 years ago. He had tried to bribe a court in a case against Paetongtarn's father, Thaksin Shinawatra, the former prime minister and de facto leader of the Pheu Thai Party, to which both Sretha and Paetongtarn belong. The appointment caused an uproar as the public felt the candidate was inappropriate. The Constitutional Court never ruled on Pichit's eligibility but removed Sretha for choosing a morally questionable candidate.

Not only Paetongtarn's father but also her aunt, Yingluck Shinawatra, who was Prime Minister from 2011 to 2014, was involved in a similar situation. She launched a rice pledging scheme to help low-income farmers. Many economists viewed the programme as unsustainable. After the 2014 coup, the junta attempted to prosecute her for the rice-pledging programme, but they could not find suitable legal grounds. Ultimately, the court punished Yingluck for failing to prevent her deputy and civil servants from seeking profit from the scheme. For her supporters, the true reason behind her punishment was because the junta perceived Yingluck as dishonest and unethical.

Paetongtarn's removal opens a can of worms. Appointing new cabinet members or introducing controversial policies will be more challenging for incoming governments. Politicians lose their originality and adaptability due to unrealistic demands for overly pure and clean politics. The red line remains blurry. Thailand's moralistic politics is as turbulent as ever.

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