

Comparative Interpretation of Paragraph 2 of Section 68 of the Thai 2007 Constitution: A Syntactic Approach

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Abstract

This research is concerned with a comparative interpretation of Paragraph 2 of Section 68 of the Thai Constitution 2007, English version, which is ambiguous. One hundred four university lecturers of English participated in interpreting one of the sentences of Paragraph 2. Included in the study were 8 views of judges from the Constitutional Court, who voted 7-1 to claim its authority to accept petitions from individuals. The interpretation falls into three groups. The first group interpreted that “the person” shall only submit a motion directly to the Constitutional Court. The second interpretation supports the idea that “the person” shall only submit a motion indirectly through the Prosecutor General. The third interpretation supports the idea that “the person” shall submit a motion through two channels, directly to the Constitutional Court or indirectly through the Prosecutor General. A linguistic interpretive approach was employed to attest to these various views. The sentence was parsed and interpreted. The constituents of the sentence were put into tree diagrams to view the interrelationship among the internal parts. The tree diagrams show that while there is a connection between “the person” and the Constitutional Court in Interpretation 1, there is no connection

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between the Constitutional Court and the Prosecutor General. The tree diagram of Interpretation 2 reveals that there is a link between “the person” and the Prosecutor General, but there is no connection between “the person” and the Constitutional Court. It was observed that there was an extension of the expression in Interpretation 3 to allow “the person” to submit a motion directly to the Constitutional Court. The study shows significantly contrastive views between the academics and the Constitutional Court.

Keywords: *Constitution, Constitutional Court, Interpretation, Prosecutor General, Tree Diagram*

การศึกษาเชิงปริยบเทียบการตีความกฎหมายรัฐธรรมนูญ
แห่งราชอาณาจักรไทย พ.ศ. 2550 มาตรา 68 วรรค 2
ฉบับภาษาอังกฤษตามหลักโครงสร้างของกลุ่มคำ

สมจิต บุราค *

บทคัดย่อ

การวิจัยนี้ศึกษาเชิงปริยบเทียบการตีความกฎหมายรัฐธรรมนูญแห่งราชอาณาจักรไทย พ.ศ. 2550 มาตรา 68 วรรค 2 ฉบับภาษาอังกฤษซึ่งมีความคลุมเครื่อง คณาจารย์ผู้สอนภาษาอังกฤษระดับอุดมศึกษาจำนวน 104 คนตีความมาตรา 68 วรรค 2 การวิจัยได้รวมการตีความมาตรานี้ขึ้นอยู่ด้วยการศึกษาล้วน 8 ท่าน ที่มีมติ 7-1 ให้ศาลรับคำร้องจากผู้ที่รับที่เป็นบุคคลทั่วไปได้ การตีความจำแนกเป็น 3 กลุ่ม กลุ่มที่ 1 ตีความว่าผู้ที่รับสามารถยื่นคำร้องตรงต่อศาลรัฐธรรมนูญช่องทางเดียว กลุ่มที่ 2 ตีความว่าผู้ที่รับต้องยื่นคำร้องผ่านอัยการสูงสุดช่องทางเดียว กลุ่มที่ 3 ตีความว่าผู้ที่รับสามารถยื่นคำร้องได้สองทาง คือ ผ่านอัยการสูงสุดหรือยื่นตรงต่อศาลรัฐธรรมนูญ การวิจัยใช้เครื่องมือทางภาษาศาสตร์ ตามหลักโครงสร้างของกลุ่มคำในการพิสูจน์ข้อเท็จจริงของการตีความที่แตกต่างกันเหล่านี้ ประโยชน์แห่งวรรค 2 ได้รับการวิเคราะห์กระจายแบบเป็นกลุ่ม ๆ ลงในแผนภาพต้นไม้เพื่อแสดงความสัมพันธ์ภายในของกลุ่มคำที่ประกอบขึ้นเป็นวรรค 2 จากการวิเคราะห์โครงสร้างประโยชน์ ของกลุ่มที่ 1 แผนภาพต้นไม้แสดงการเชื่อมโยงระหว่างผู้ที่รับกับศาลรัฐธรรมนูญ แต่ไม่แสดงการเชื่อมโยงระหว่างศาลรัฐธรรมนูญกับอัยการสูงสุด กลุ่มที่ 2 แผนภาพต้นไม้แสดงการเชื่อมโยงระหว่างผู้ที่รับกับศาลรัฐธรรมนูญ การวิเคราะห์โครงสร้างประโยชน์กลุ่มที่ 3 พบว่า มีการขยายความมาตรา 68 วรรค 2 เพื่อให้สิทธิผู้ที่รับในการยื่นคำร้องตรงต่อศาลรัฐธรรมนูญ การวิจัยพบความแตกต่างของ การตีความมาตรานี้ วรรค 2 ระหว่างนักวิชาการผู้สอนภาษาอังกฤษและศูนย์ภาษาศาสตร์ ศาลรัฐธรรมนูญอย่างเห็นได้ชัด

คำสำคัญ: รัฐธรรมนูญ ศาลรัฐธรรมนูญ อัยการสูงสุด การตีความ แผนภาพต้นไม้

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Introduction

The statutory text of Paragraph 2 of Section 68 of the Thai Constitution 2007, English version, has been a source of controversy. The reading of paragraph 2 reveals a constitutional conflict. The Constitutional Court's interpretation of the law allows for the submission of a motion in one of two ways: (1) through the Prosecutor General or (2) directly to the Constitutional Court. Many lawyers and law academics have interpreted Paragraph 2 to mean that submission of a motion shall be made through the Prosecutor General only.

The Constitutional Court's interpretation of the law, that it can accept petitions directly from lay people, or "the person knowing of such act" as stated in the law, has been the subject of criticism and debate by lawmakers as well as academics in the field of law. Such an interpretation has further aroused political movements, which have resulted in political instability and threatened political unrest in the nation. This interpretation was further perceived as the Constitutional Court expanding its power beyond that which is written in Paragraph 2 of Section 68. The Constitutional Court was criticized for interfering with the role of the Prosecutor General in accepting petitions. These various interpretations are perceived as idiosyncratic, intuitive, and nonscientific.

This research claims a scientific approach to the interpreting statute of Paragraph 2 of Section 68. Syntactic knowledge was incorporated into the reading of Paragraph 2 to attest to the various interpretations. The study investigates the structure of the sentence of Paragraph 2 by parsing it and putting the constituents into tree diagrams. With this linguistic methodology, the relationships among the internal parts that comprise the statute were explicitly observed. This breakthrough interpretive technique enables the author to clearly view the functions of the parties stated in the statute. Accordingly, the query concerning submission of a motion can be resolved and the plain meaning of the law is ascertained scientifically.

The author believes that applying syntactic theories (language science) to reading the law can be an alternative effective tool that provides an answer to the query of the role of these two legislative bodies. This research is truly linguistically-based. It provides insight into the relationships among the three parties written in

Section 68, Paragraph 2: the person knowing of such act, the Constitutional Court, and the Prosecutor General. This paper is not politically motivated and to some extent it should benefit legal drafters, lawyers, linguists, forensic linguists, as well as multilingual translators that work with complex sentence structure.

Literature Review

The Thai 2007 Constitution and Political Controversy

The 2007 Constitution of Thailand is a consequence of the military junta of September 19, 2006. The current constitution was promulgated through a referendum held on August 19, 2007. Prior to the vote on the referendum, the junta-appointed constitution drafting assembly unanimously approved the draft in July 2007, despite significant public controversy about several clauses. The junta passed a law making it illegal to publicly criticize the draft. The junta also ran a successful promotion campaign leading up to the referendum and threatened not to step down if the constitution was not accepted. However, during the referendum campaign, several political bodies agreed to accept the constitution, subject to amendment later.

Nitirat, an academic group of seven faculty members from Thammasat University, Bangkok, Thailand, proposed that all judicial decisions that were a consequence of the coup of September 19, 2006 be nullified. The academia proposed amendments to several articles, and the Peau Thai Party embraced the proposal. The government announced that it would take the proposals seriously and that it would establish a special parliamentary committee to study the matter. While the party emphasized that it agreed in principle with the academic group's recommendations, it claimed that it had no direct connection with Nitirat's individual members.

The Statute of Paragraph 2 of Section 68, Thai Version and English Version

Paragraph 2 of Section 68, Thai version, is a short paragraph with one sentence composed of 54 words:

ในการนี้ที่บุคคลหรือพรรคการเมืองได้กระทำการตามวาระหนึ่ง ผู้ที่รับการกระทำการดังกล่าว ย่อมมีสิทธิเสนอเรื่องให้อัยการสูงสุดตรวจสอบข้อเท็จจริงและยื่นคำร้องขอให้ศาลรัฐธรรมนูญ วินิจฉัยสังการให้เลิกการกระทำการดังกล่าว แต่ทั้งนี้ ไม่กระทบกระเทือนการดำเนินคดีอาญาต่อผู้กระทำการดังกล่าว

However, the Thai version of Paragraph 2 appears complicated when it is translated into English as can be seen in the following:

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person.

The English version of Paragraph 2 is made up of one sentence with 63 words. According to the plain language rule, this statute is considered very long and complex. The rule of plain language recommends that a simple and plain sentence should be comprised of 15-25 words and of an average 20 words. Accordingly, it would be difficult for a competent reader to obtain ordinary meaning upon reading the legislative text of Paragraph 2. An ordinary meaning is the meaning that spontaneously comes to the mind of a competent reader upon reading a legislative text. An ordinary meaning is presumed to be the meaning intended by Parliament (Sullivan, 2007), for example.

English Translation and the Court's Claim of Its Authority to Accept Petitions Directly from Lay People

There has been widespread criticism of the court regarding its authority as written in the charter to accept a petition directly from lay people. Academics from Thammasat University, the Nitirat group, criticized that the Constitution Court acted outside its powers in accepting a petition to review the amendment of the constitution. However, the court defended its position that the Constitutional Court had the authority to do so based on the English translation of the 2007 Constitution Section 68, Paragraph 2.

Having studied Paragraph 2 of Section 68 (English version), the Constitutional Court interpreted that the Court was lawful in accepting petitions directly from individuals, including the Prosecutor General.

Matichon Online (June 7, 2012) quoted Wasan, Constitutional Court President, as stating (in Thai language, see below) that with respect to interpreting section 68, one should look at the English translation of the Constitution 2007, which clearly specifies that the submission of a motion is concerned with the person that knows, not just the Prosecutor General (Attorney-General):

เรื่องการตีความมาตรา 68 นั้น ขอให้ไปดูรัฐธรรมนูญฉบับที่แปลเป็นภาษาอังกฤษ จะชัดเจน ว่าการยื่นคำร้อง เป็นเรื่องของผู้ที่ร่าง ไม่ใช่เรื่องของอัยการสูงสุด (อสส.) เพียงอย่างเดียว

However, on June 14, 2012 (The Nation Online, 2012) the eight judges hearing the case voted 7-1 that the Constitution Court is empowered by the charter to accept individual direct petitions.

Plain Legal Language

With society becoming more complex, communication should be made simple and plain. Actually, the concept of simplicity was embraced by Leonardo da Vinci and Albert Einstein. Once da Vinci was quoted as saying, 'Simplicity is the Ultimate Sophistication' and Einstein was quoted as saying, 'Everything Should Be Made as Simple as Possible, But Not Simpler.'

Plain legal language or plain language in short is language that is clear and understandable—and as simple as the situation allows. Plain language is language that is effective for its purpose and clear to the intended reader (Stephens, 2008). Plain language is accessible structurally and semantically. Words used to write plain language are clear for meaning being conveyed and the structure of sentences of plain language is derivable in only one form.

Plain language is communication that one's audience can understand the first time they read or hear it. A communication is in plain language if the audience for that communication can quickly and easily find what they need, understand what they find and act appropriately on that understanding (O'Flahvan, 2011).

Elements of Plain Language

The language used in legal documents is changing. Legal writing must be turned into plain language documents, intended for average readers because law, especially constitutional law, impacts every individual in the nation.

To achieve plain language, writers of legal documents should follow these suggestions (Painter, n.d.; Kimble, 2011; Stephens, 2008):

Know Your Audience

Knowing one's current or prospective readers assures that the documents are understandable. The constitution, for example, is intended for the people in the nation. As such, it should be written in a form that the audience can easily recognize and scan.

Use Fewer than 75 Words per Issue

To achieve plain language, it is recommended that a sentence should contain an average of 15 words and that no sentence should be longer than 25 words.

An issue may be written with more than one paragraph; however, some people recommend that an issue should contain 50-75 words so that, upon reading, readers understand the text of the issue more easily.

Use the Active Voice with Strong Verbs

The readers understand sentences in the active voice more quickly and easily because it follows how we think and process information. The passive voice involves more processes and readers are forced to take extra steps to convert the passive into the active. However, if necessary, the writer can use the passive, but sparingly.

Replace Jargon and Legalese with Short, Common Words

Ruthlessly eliminate jargons and legalese. Instead, use short, common words so that the average readers get the points easily. Common words can be used to explain complicated concepts.

Use “BUT” and “AND” to Begin Sentences

The use of ‘but’ and ‘and’ to begin sentences can avoid ambiguity. A sentence that begins with the coordinator ‘but’ or ‘and’ contains an overt subject, which makes it explicit about who, what, where, when, why and how.

It holds true that English grammar specifies that two clauses be conjoined by ‘but’ or ‘and.’ However, many times structural ambiguity occurs when these coordinators are used grammatically and interpretation is required. A classic example is the use of the coordinator ‘and’ in Paragraph 2 of Section 68 of the Thai Constitution 2007:

...the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts **and** submit a motion to the Constitutional Court...

Law is a matter that concerns people and their behaviors. Therefore, legal documents must be accurate, clear, and concise. There are several classes of people that read and interpret the law that concern them. Therefore, it is the lawmakers’ responsibility to draft the law in plain language.

Material and Methodology

Participants

A total of 104 English professionals teaching at four state universities, one institute and two private universities in Bangkok, Thailand participated in interpreting the English version of Paragraph 2 of Section 68 of the Thai Constitution 2007. The collection of data covered the period June to October 2012.

Nine judges from the Constitutional Court might be referred to as passive participants because their interpretations of paragraph 2 were gathered from the media and website of the Constitutional Court.

Material: Paragraph 2 of Section 68 of the Thai 2007 Constitution

Paragraph 2 of Section 68, English version was obtained (Constitution Drafting Commission, Constituent Assembly, 2007) and was included in a questionnaire.

A questionnaire was provided and university lecturers were requested to study the text of Paragraph 2. Problematic items in the statute were highlighted and framed so that participants could easily identify them from the rest.

Participants were asked to use a line to link or connect the **verb** “SUBMIT” to its **subject**. Paragraph 2 has two noun phrases as subject candidates: the *person* and the *Prosecutor General*:

....the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**....

Phrase Structure Rules

Linguistically, a complex structure can be made explicitly through the use of phrase structure (PS) rules and it is evident that the written structure of the statute of Paragraph 2 is written with a complex structure. Therefore, it is important that phrase structure rules be employed as a tool to justify the functions of the Constitutional Court and the authority of the Prosecutor General. By using phrase structure rules, a tree diagram was created. Interestingly, the connections of elements in the tree diagram were explicitly observed through solid lines.

Selected PS rules relevant to analyzing a complex structure such as the structure of Paragraph 2 were taken from *The Grammar Book* by Celce-Murcia et al., 1999.

Results and Discussion

Participants' Interpretations

The interpretations of Section 68, Paragraph 2 by 104 lecturers of English varied as shown below:

(1) Thirty one lecturers (31=29.80%) supported the direct submission of a motion to the Constitutional Court

(2) Sixty lecturers (60=57.69%) supported the submission of a motion through the Prosecutor General

(3) Three lecturers (3=2.88%) supported the submission of a motion in two ways, either directly to the Constitutional Court or through the Prosecutor General

(4) Ten lecturers (10=9.61%) expressed an undecided position.

Judges' Interpretations

The Constitutional Court interpreted Paragraph 2 with a majority vote of 7-1 that “the person knowing of such fact” shall submit a motion directly to the Constitutional Court or through the Prosecutor General. One judge of the Court viewed that “the person knowing of such act” shall submit a motion through the Prosecutor General only and one judge expressed judicial abstention. There are nine judges in the Thai Constitutional Court.

The judges’ rulings of Paragraph 2 can be converted to percentages as follows:

Seven judges (7=77.77%) supported a direct submission of a motion to the Constitutional Court or through the Prosecutor General.

One judge (1=11.11%) supported the submission of a motion through the Prosecutor General.

One judge (1=11.11%) expressed abstention.

The interpretations of Paragraph 2 by the participants and judges can be tallied in a table below to see the different views.

Table 1: Percentages of Various Interpretations by the Participants and the Judges

Interpretations	Participants	Judges
Submission only through the Prosecutor General	57.69%	11.11%
Direct submission to the Constitutional Court	29.80%	0%
Direct submission to the Constitutional Court or through the Prosecutor General	2.88%	77.77%
Undecided/Abstention	9.61%	11.11%

The judges decided the case by allowing a direct or indirect submission of a motion with a very high percentage at 77.77%, while the participants had a split decision, with 29.80% allowing direct access to the Constitutional Court and 57.69% allowing submission of a motion only through the Prosecutor General. A two-way submission of a motion was a marginal interpretation by the participants (2.88%)

while the judges showed a very high percentage (77.77%) for this category. However, all of these diverse judgments of the statutory text needed to be attested to ascertain the preliminary or plain meaning of the law.

Attestation to the Plain Meaning of Paragraph 2

There were three categories of interpretations decided by the participants and judges, excluding the undecided/abstention.

The following are the parsing and interpretations of the sentence of Paragraph 2 with a linguistic methodology employed.

Interpretation 1:

....the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**....

There were 31 participants that linked a solid line from the verb ‘**submit**’ to its subject, the “**person**” knowing of a such act. Interpretation 1 supports the idea that the **person** knowing of such an act has the right to submit a motion (directly) to the *Constitutional Court*. Interpretation 1 accounts for 29.80% of the 104 participants.

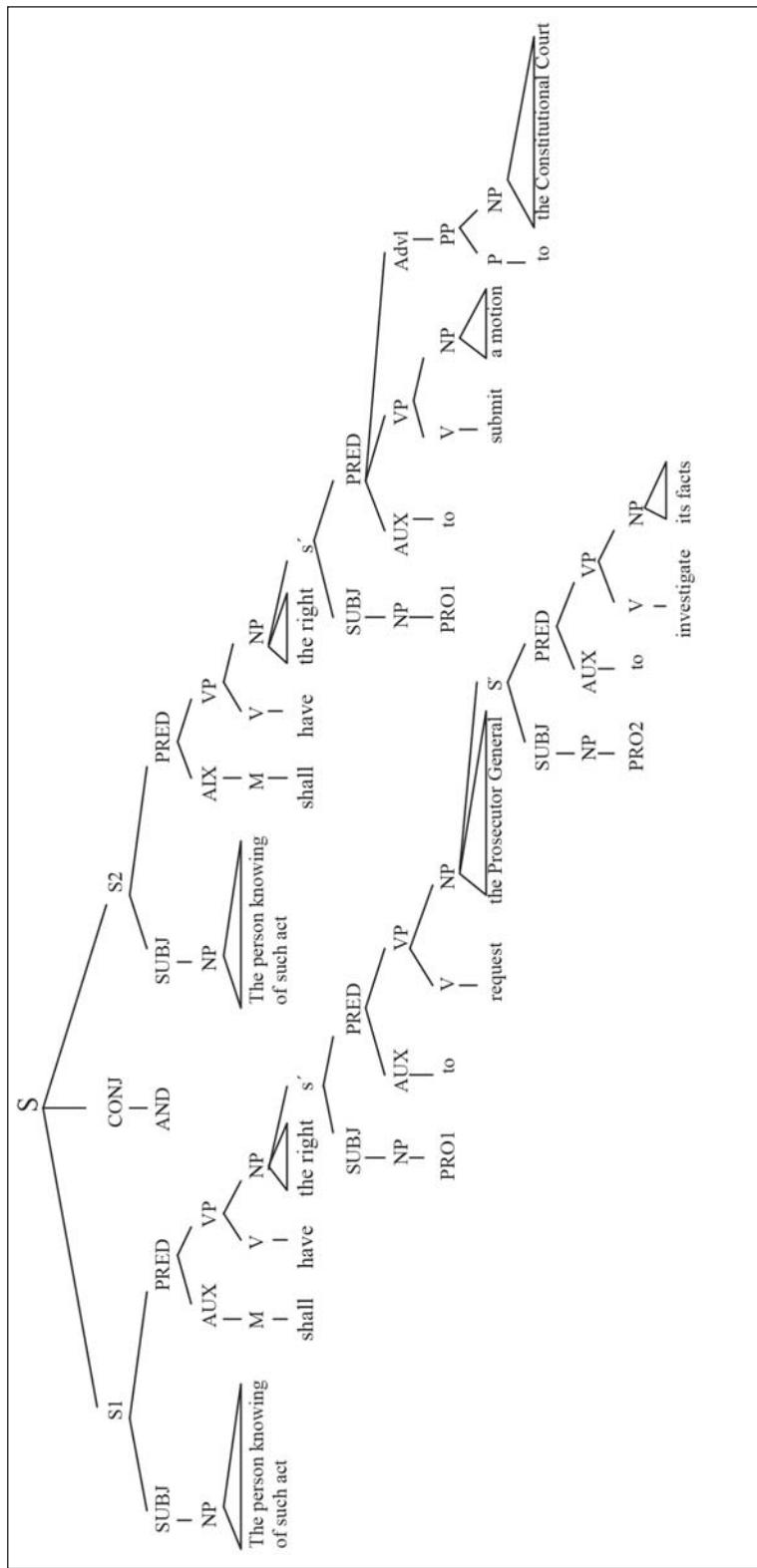
Linguistic Approach to Interpretation

Interpretation 1 may be *parsed* and put into a tree diagram to derive the underlying (deep) structure of the sentence. This method enables us to visualize the relationship between the three bodies in question: the person, the Prosecutor General, and the Constitutional Court.

Parsing

Interpretation 1 may be parsed as follows:

The person knowing of such act shall have the right to request the Prosecutor General to investigate its facts *and* the person knowing of such act shall have the right to submit a motion to the Constitutional Court.



Tree Diagram 1 displays the underlying meaning of Interpretation 1. Inside node S1, node PRO1 represents the phrase “the person knowing of such act,” which controls the verb ‘request,’ which in turn dominates the NP node, “the Prosecutor General.” The tree diagram shows no connection or link between the Prosecutor General and the Constitutional Court, which means that the Prosecutor General has no right to submit a motion. Inside node S2, the tree diagram shows the connection between node PRO1 “the person knowing of such act” and the Constitutional Court—meaning only “the person knowing of such act” shall have the right to submit a motion.

Reading Tree Diagram 1

Interpretation 1

The tree diagram of Interpretation 1 represents the underlying structure of the statute of Section 68, Paragraph 2. The tree diagram shows no connection between the Prosecutor General and the Constitutional Court. That is, there is no solid line linking the NP node (Prosecutor General) to the NP node (the Constitutional Court), as they appear in different families. The NP node (the Prosecutor General) is dominated by S1, while the NP node (the Constitutional Court) is dominated by S2. That is, these two legislative branches are not in the same family. Syntactically, connections between nodes within a given tree diagram are linked by solid lines. The tree diagram of Interpretation 1 demonstrates that “the person knowing of such act” cannot submit a motion to the Prosecutor General, but rather that he or she shall submit a motion to the Constitutional Court only. According to the tree diagram of Interpretation 1, the Prosecutor General shall investigate *its facts* and stop there. It shall do nothing after investigating *its facts*. The person knowing of such an act does not request the Prosecutor General to submit a motion to the Constitutional Court. Interpretation 1 indicates that the Prosecutor General is not authorized to deal with the Constitutional Court. As indicated by the solid lines in the tree diagram, there is no connection between the two legislative bodies.

The tree diagram of Interpretation 1 indicates that the sentence of Paragraph 2 has a compound structure coordinated by the conjunction (CONJ) ‘AND.’ There is only *one* conjunction in the tree diagram. Inside S1, PRO1, a daughter of Š dominated by NP node ‘the right’ refers to “the person knowing of such act” who shall request the Prosecutor General to investigate its facts. The tree diagram suggests that the Prosecutor General ends its function there—thus, it is limited only to investigation. PRO2, a daughter of Š dominated by NP, “the Prosecutor General” refers to the Prosecutor General himself or herself.

Inside S2, PRO1, a daughter of Š dominated by NP node “the right,” refers to “the person knowing of such act” who shall submit a motion (directly) to the Constitutional Court. According to the tree diagram of Interpretation 1, the NP node (the Constitutional Court) is referred to as the “terminal node,” which

ends the tree diagram. These solid lines from S2 down to the terminal NP node (the Constitutional Court) indicate that those nodes are related to one another. The tree diagram of S2 enables us to see that there is *no* connection between “the person knowing of such act” and “the Prosecutor General.”

Accordingly, Interpretation 1 is an absurd reading because the Prosecutor General is empowered by the Constitution to deal with legal matters on behalf of the people, but this interpretation does not show a connection between the Prosecutor General and the Constitutional Court. This reading might not reflect the legislature’s intent.

Interpretation 2:

....the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**

There were 60 participants that linked a solid line from the verb ‘**submit**’ to its subject, “the **Prosecutor General**.” Interpretation 2 specifies that the Prosecutor General shall submit a motion to the *Constitutional Court*. Supported by 57.69 percent of the 104 participants, Interpretation 2 was the majority interpretation.

Parsing

Interpretation 2 may be parsed as follows:

The person knowing of such an act shall have the right to request the Prosecutor General to investigate its facts *and* the person knowing of such act shall have the right to request the Prosecutor General to submit a motion to the Constitutional Court.

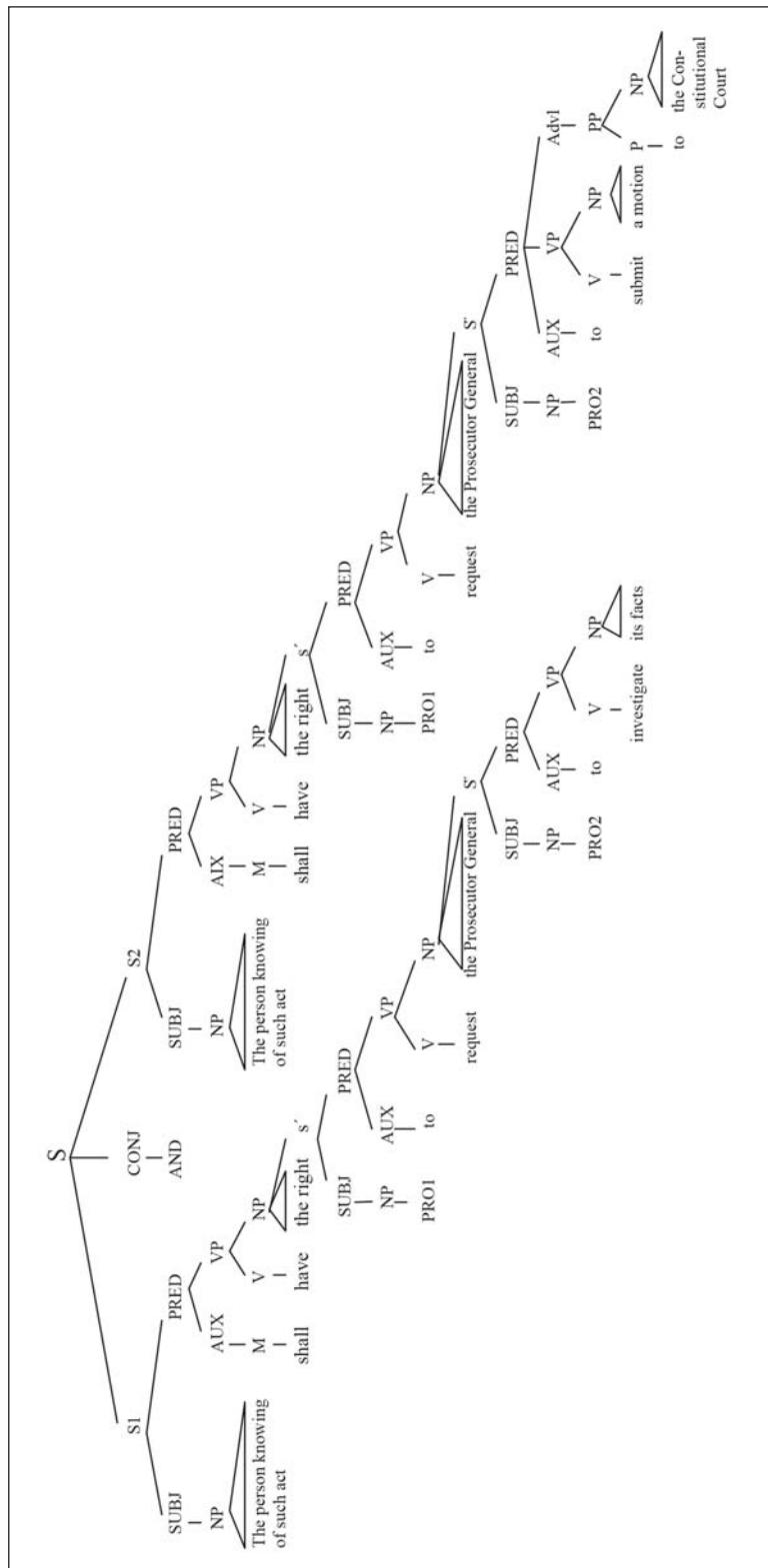


Figure 2: Tree Diagram 2 displays the underlying meaning of Interpretation 2. The tree diagram shows that the right of “the person knowing of such act” goes no further than requesting the Prosecutor General to investigate the facts of the act and requesting the Prosecutor General to submit a motion to the Constitutional Court.

Reading Tree Diagram 2

Interpretation 2

Inside S1 there are only two parties: the person knowing of such an act and the Prosecutor General. PRO1, a daughter of Š dominated by the NP node “the right” refers to ‘the person knowing of such act’ which controls the verb “to request.” PRO2, a daughter of Š dominated by the NP node, “the Prosecutor General,” refers to “the Prosecutor General, which controls the verb “to investigate.” This parsing makes it evident that “the person knowing of such act” can only *request*, but not submit. That is, “the person knowing of such act” shall have the right to *request* only.

Inside S2 there are three parties: the person knowing of such an act, the Prosecutor General, and the Constitutional Court. PRO1, a daughter of Š dominated by the NP node “the right” refers to “the person knowing of such act” which controls the verb “to request.” PRO2, a daughter of Š dominated by the NP node, “the Prosecutor General,” refers to “the Prosecutor General” which controls the verb “to submit.” The tree diagram specifies that PRO2, “the Prosecutor General,” shall submit a motion to the Constitutional Court.

The tree diagram of Interpretation 2 testifies that “the person knowing of such an act” is not authorized by Paragraph 2 to submit a motion directly to the Constitution Court. He or she shall exercise his or her right through the Prosecutor General only.

Inside both S1 and S2, the tree diagram makes it explicitly clear that the role of “the person knowing of such act” is to *request* the Prosecutor General to investigate its facts. The function of the Prosecutor General is not only to *investigate* its facts but also to *submit* a motion. Accordingly, Interpretation 2 can be considered the most plausible judgment as intended by the Constitution.

Interpretation 3:

....the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**....

Three participants out of the 104 linked solid lines from the verb “submit” to both “the person knowing of such act” and “the Prosecutor General.” This very small minority (2.88%) interpreted that “the person knowing of such act” was lawful in submitting a motion through the Prosecutor General and directly to the Constitutional Court—indirect and direct submission of a motion.

Parsing

Interpretation 3 may be parsed as follows:

The *person* knowing of such an act shall have the right to request the Prosecutor General to investigate its facts *and* the person knowing of such an act shall have the right to request the Prosecutor General to submit a motion to the Constitutional Court, *and* the person knowing of such an act shall have the right to submit a motion to the Constitutional Court.

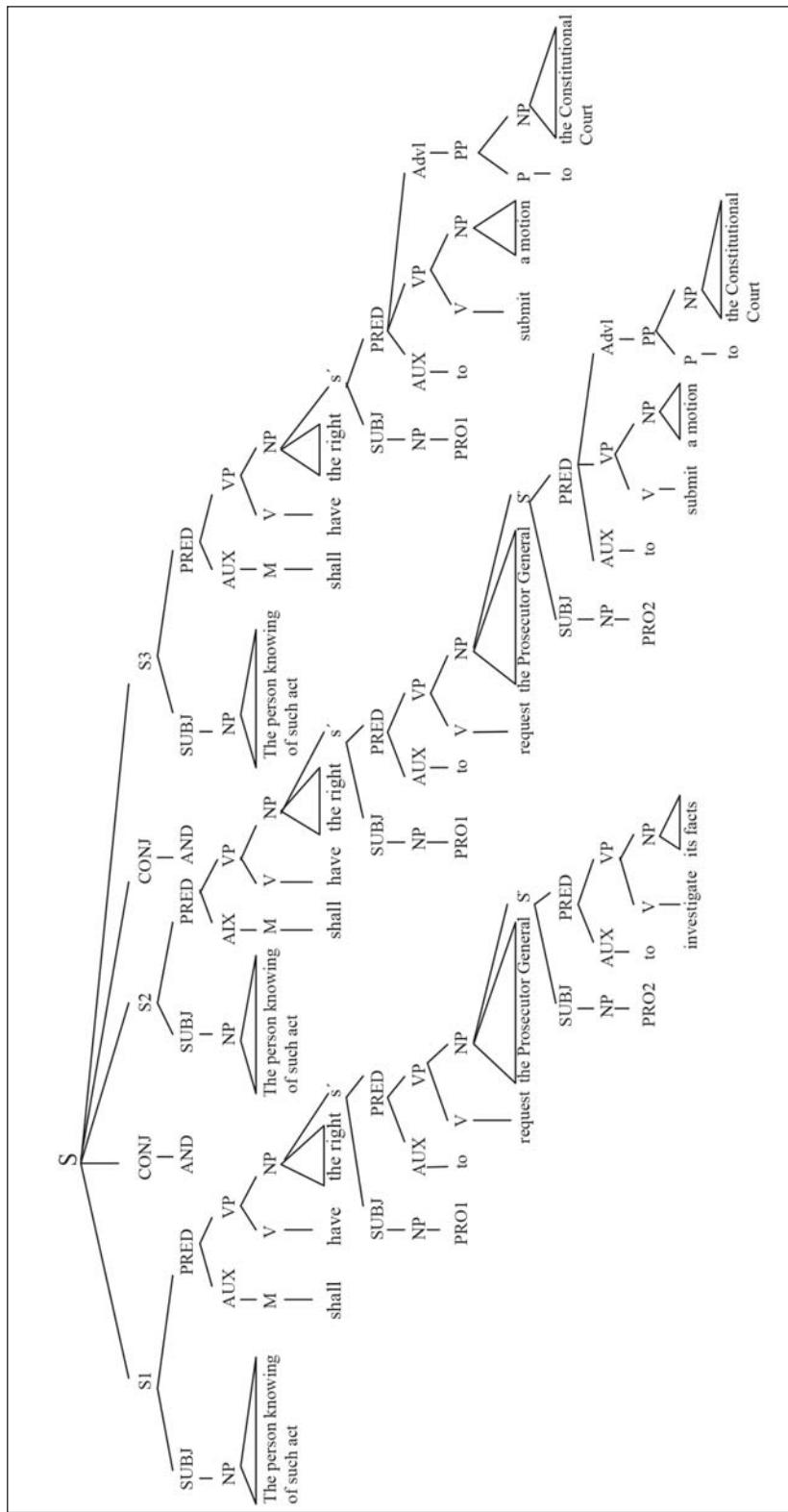


Figure 3: *Tree Diagram 3* displays the underlying structure of Interpretation 3. Unique to this diagram is the *extension* of the meaning as compared to the previous interpretations. The extension is observed when the interpretation is made by adding one more coordinating ‘ANDs,’ which means one more sentences is added. S2 Node shows that “the person knowing of such act” shall submit a motion through the Prosecutor General. S3 Node describes that “the person knowing of such act” shall submit a motion directly to the Constitutional Court.

Reading Tree Diagram 3

Interpretation 3

Compared to the previous interpretations, Interpretation 3 adds one more sentence to Tree Diagram 3, which means that it contains three sentences with two coordinating ANDs. Both Tree Diagram 1 and Tree Diagram 2 contain two sentences joined by only *one* coordinating ‘AND.’ With an extra sentence added, Interpretation 3 falls into an *extension of expression* that was not written in Paragraph 2. Originally, Paragraph 2 contained only *one* coordinating ‘AND.’ Interestingly, the addition of one additional sentence in Interpretation 3 enables “the person knowing of such act” to submit a motion in two ways. That is, he or she can exercise his or her right to submit a motion through “the Prosecutor General” or though “the Constitutional Court.” Adding an extra sentence (S3 node) into Interpretation 3 means that the interpreters added one more extra right, thus allowing “the person knowing of such act” to submit a motion to the Constitutional Court.

In short, Interpretation 3 assigns *three* rights to “the person knowing of such act”—(1) the right to request “the Prosecutor General” to investigate its facts, *and* (2) the right to request “the Prosecutor General” to submit a motion to the Constitutional Court, *and* (3) the right to submit a motion to the Constitutional Court.

Interpretation 3 can be said to distort the original meaning of Paragraph 2 of Section 68, as an extra sentence was added to the original statute. Interpretation 3 may be considered a judge-made law.

Conclusion

The statutory text of Paragraph 2 of Section 68 of the Thai Constitution 2007, English version is disturbingly complex and results in various interpretations. The confusion occurs because the law was written with the coordinating “and.” The participants as well as the judges interpreted that the coordinating “and” joins different subjects resulting in diverse readings. The aim of the interpretation was to justify the person that shall submit a motion. Twenty-nine point eighty

percent (29.80%) of the participants interpreted the statute supporting a direct submission to the Constitutional Court. The majority (57.69%) of the participants viewed that submission of a motion should be made through the Prosecutor General, who shall investigate the case first. One (11.11%) out of nine judges interpreted Paragraph 2 as supporting a submission of a motion through the Prosecutor General. The majority (77.77%) of the judges read the statutory text as supporting a two-way submission, while only 2.88% of the participants agreed on this mixed opinion. There were ten participants and one judge that fell into the undecided category or abstention, which indicates that the sentence structure of Paragraph 2 was truly confusing.

The study endeavored to explore these various views to exhibit the relationships among the parties that are stated in Paragraph 2. A linguistic methodology was employed to demonstrate the connectivity among the internal parts of the legal sentence. The tree diagram indicates that a direct submission is an absurd interpretation because this reading does not allow the Prosecutor General to submit a motion to the Constitutional Court but to investigate the facts only. The tree diagram shows that a submission through the Prosecutor General is the most plausible interpretation, as there is a reasonable link between “the person knowing of such act” and the Prosecutor General, and a connection between the Prosecutor General and the Constitutional Court. The tree diagram reveals that the Constitutional Court made a new law when it interpreted that submission of a motion can be made in two ways: directly to the Constitutional Court or through the Prosecutor General.

A linguistically-integrated interpretation is one of the scientific approaches that helps judges, lawyers, academics as well as people concerned with reading the law to achieve the preliminary or plain meaning. Statutory interpreters should be aware of this effective tool when they encounter an ambiguous structure in statutory texts.

Recommendations

Based on the research findings, Paragraph 2 should be deemed amended to modify, as necessary, the ambiguous structure.

To improve the text of the statute, the legislature's intent must be verified, for example:

Legislative Intent 1: Individual Direct Access to the Constitutional Court

Amendment 1: Begin a sentence with the coordinating 'AND.' Then, supply the verb 'SUBMIT' with the overt subject "*the person knowing of such act*" as follows:

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts. *And the person knowing of such act shall submit a motion to the Constitutional Court* for ordering the cessation of such act without, however, prejudice to the institution of a criminal action against such person.

Legislative Intent 2: Individual Indirect Access to the Constitutional Court

Amendment 2: Supply the verb 'SUBMIT' with the overt subject '*the Prosecutor General*' as follows:

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts *and the Prosecutor General shall submit* a motion to the Constitutional Court for ordering the cessation of such act without, however, prejudice to the institution of a criminal action against such person.

To make Paragraph 2 of Section 68 explicitly clear, the overt subject of the verb 'SUBMIT' should be introduced.

Acknowledgments

The author extends his special gratitude to all academics from universities and institutions for their kind participation in interpreting paragraph 2 of section 68 of Thai Constitution 2007, English version. Their reading of the statute reflects

a fundamentally different meaning from that provided by the law. The author hopes that their reflections will provide a scenario for members of the public that are interested in the case—the channels of submission of a motion to the Thai Constitutional Court.

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