

Collected Papers on Constitutional Review



Chalermpon Ake-uru

Justice of the Constitutional Court of Thailand

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on Constitutional Review**

by

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PREFACE

This book is a compilation of various papers that I wrote and presented to different international conferences during 2011 to 2013 on issues concerning constitutional review and the role of the Constitutional Court of Thailand. The papers cover such topics as : “Separation of Powers and Independence of the Constitutional Court of Thailand, Promotion of Democracy and Constitutional Justice : the case of Thailand, The Role of the Constitutional Court in the Protection of the Rights and Liberties of the People : the case of Thailand, Constitutional Review by the Constitutional Court : the case of Thailand, and Provisions on Directive Principles of Fundamental State Policies in the Thai Constitution.”

The aim of these papers is to give an overview of the role of the Constitutional Court of Thailand in fulfilling what its slogan enjoins:

*“Adhere to rule of law,
uphold democracy,
protect rights and liberties of the people.”*

The papers were written when the Constitution of the Kingdom of Thailand, B.E.2550 (2007) was in force. It is hoped that the new Constitution to be promulgated in the future will maintain and strengthen even further the constitutional review

system in Thailand.

In this connection, I would like to take this opportunity to express my appreciation to the Office of the Constitutional Court of Thailand and persons who extend valuable support and assistance, thus making the publication of these papers possible. Many thanks go to Dr. Punya Udchachon, Secretary-General of the Office of the Constitutional Court, Dr. Chaowana Traimas, former Secretary-General, Dr. Montree Kanokwaree, Senior Expert on Legal Cases, Mrs. Koonthala Sasasmit, Secretary to the Justice of the Constitutional Court and Mr. Ponlapat Pankhao, Assistant Secretary to the Justice of the Constitutional Court.

Chalermpon Ake-uru

Justice of the Constitutional Court

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Separation of Powers and Independence of The Constitutional Court of Thailand*

Chalermpon Ake-uru

Justice of the Constitutional Court of Thailand

INTRODUCTION

The principle of separation of powers among the legislature, the executive and the judiciary is of fundamental importance to modern democracy. The separation of powers among the three authorities means mutual checks and balances among them which guarantee the limitation of any excess of power by other powers. One of the importance hallmarks of a state that respects this principle is the independence of the judiciary. In fact, the independence of the judiciary is a logical corollary of the principle of separation of powers in the sense that the vesting of judicial functions in a body separate from the legislature and the executive can only be meaningful if that body is truly independent.

Every constitution that had been promulgated in Thailand since the change from absolute monarchy to constitutional monarchy in 1932 embraced the principle of separation of

* Second Congress of the World Conference on Constitutional Justice
Rio de Janeiro, 16-18 January 2011

powers. The current one - the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) (hereinafter referred to as “the Constitution”) stipulates that Thailand adopts a democratic regime of government with the King as Head of State.¹ Sovereign powers belong to the Thai people. The King as Head of State shall exercise such powers through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution. The performance of duties of the National Assembly, the Council of Ministers, the Courts, Constitutional organs and States agencies shall be in accordance with the rule of law.²

The Constitution contains one chapter - Chapter X the Courts - dealing with the judicial powers. Chapter X is divided into 5 parts. Part 1 is the General Provisions which states the general principles regarding the judicial powers, while Parts 2, 3, 4, 5 contain provisions concerning the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Courts respectively. The division of the Chapter in this fashion signifies that the Judiciary or the Court system in Thailand is a parallel system of judicial jurisdiction with 4 types of courts.

Judicial powers, as one aspect of sovereign powers, are vested in the Courts. This is affirmed in the Constitution which provides that the trial and adjudication of cases are the powers of the Courts, which must be carried out with due regard to justice in accordance with the Constitution, laws and in the name of the King. Judges are independent in the proper, swift and fair trial and adjudication of cases in accordance with the

¹ *The Constitution of the Kingdom of Thailand, B.E. 2550 (2007)*, section 2.

² *Ibid.*, section 3.

Constitution and laws.³

This means that only the Courts can exercise judicial powers to ensure justice. The Constitutional Court, just like other Courts in the system, is independent and has to decide constitutional cases in accordance with the Constitution and laws.

Various guarantees of independence of the Constitutional Court are specified in the Constitution and related laws. These guarantees will now be examined.

I. The independence of the Constitutional Court as an institution

In constitutional democracy, the constitution is regarded as supreme. This principle of the supremacy of the constitution is reflected in the Constitution that the Constitution is supreme law of the State. The provisions of any law, rule and regulation, which are contrary to or inconsistent with the Constitution will be unenforceable.⁴

The Constitutional Court performs the important function of safeguarding this supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translate into reality the protection of rights and liberties by the exercise of adjudicative power.

The constitutional status of the Constitutional Court

The Constitutional Court was established by virtue of the Constitution. It consists of the President and eight judges to

³ *Ibid.*, section 197 paras. 1 and 2.

⁴ *Ibid.*, section 6.

be appointed by the King upon advice of the Senate.⁵ Judges of the Constitutional Court are styled “Justices of the Constitutional Court”.

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties may be divided into the following nine categories:

(1) constitutional review of bills and draft rules of procedure of the legislative branch prior to their promulgation to ensure that they are not inconsistent with or contrary to the Constitution;⁶

(2) constitutional review of a promulgated law to ensure that it is not inconsistent with or contrary to the Constitution;⁷

(3) constitutional review of the prerequisites for the enactment of an Emergency Decree to ensure that it is not inconsistent with or contrary to the Constitution;⁸

(4) ruling on whether or not members of the House of Representatives, senators or members of the committee are involved directly or indirectly in the use of the appropriations;⁹

(5) ruling on disputes regarding the powers and duties among the National Assembly, the Council of Ministers or the Constitutional organs other than the Courts which arise between two or more of such organs;¹⁰

(6) review resolutions or regulations of political parties,

⁵ *Ibid.*, section 204 para. 1.

⁶ *Ibid.*, sections 141, 149, 154, 155.

⁷ *Ibid.*, sections 211, 245, 257, 212.

⁸ *Ibid.*, section 184.

⁹ *Ibid.*, section 168.

¹⁰ *Ibid.*, section 214.

consideration of appeals of members of the House of Representatives and ruling on cases concerning the constitutional exercise of political rights and liberties by a person or a political party;¹¹

(7) ruling on the membership or qualification of a member of the National Assembly, Ministers and Election Commissioners;¹²

(8) ruling on whether or not a treaty requires prior approval of the National Assembly;¹³

(9) powers and duties prescribed under the Organic Act on Political Parties, B.E. 2550 (2007).¹⁴

Regulatory autonomy and administrative autonomy

The Constitutional Court has the autonomy to organize itself with regard to case management as well as the general administration of the Court. The Court has an independent secretariat, with the Secretary-General of the Office of the Constitutional Court as the superior official directly responsible to the President of the Constitutional Court. A person to be appointed as the Secretary-General of the Office of the Constitutional Court must be nominated by the President of the Constitutional Court with the approval of Justices of the Constitutional Court collectively. The Office of the Constitutional Court has independence in personnel administration, budget

¹¹ *Ibid.*, section 65, 106 (7), 237.

¹² *Ibid.*, sections 91, 182, 233.

¹³ *Ibid.*, section 190.

¹⁴ *The Organic Act on Political Parties, B.E. 2550 (2007)*, section 13, 14, 41, 33, 20 (4), 31, 91, 93, 94, 98. See also, *Office of the Constitutional Court, A Basic Understanding of the Constitutional Court of the Kingdom of Thailand, 2008* pp. 4 – 32.

and other activities as provided by law.¹⁵

In this connection, the Office of the Constitutional Court Act, B.E. 2542 (1999) was enacted to give effect to the above-mentioned provision of the Constitution. According to this Act, the Justices of the Constitutional Court collectively have the power to issue regulations or notifications with respect to general administration, personnel administration, budget, finance and property and other businesses of the Office of the Constitutional Court. Such regulations or notifications will be signed by the President of the Constitutional Court and come into force upon their publication in the Government Gazette.¹⁶

Justices of the Constitutional Court collectively, in practice, play 3 important and distinctive roles. For the adjudicative function, the Justices collectively are the Constitutional Court. The Justices collectively play a role of the Board of Directors in performing administrative affairs of the Office of the Constitutional Court. And, lastly, the Justices collectively become the Central Personnel Administration Body for officials of the Office of the Constitutional Court. All these show the independence of the Constitutional Court in the administration of its own affairs.

As for the procedures of the Court, the Constitution provides in Section 216 paragraph six that the procedures of the Constitutional Court shall be in accordance with the Organic Act on Procedures of the Constitutional Court. The Organic Bill on Procedures of the Constitutional Court has been submitted

¹⁵ *Supra*, note 1, section 217.

¹⁶ *Office of the Constitutional Court Act, B.E. 2542 (1999)*, section 6.

for consideration of the House of Representatives since 2008. Nevertheless, this Bill is still pending consideration in the House of Representatives.

The Constitution provides in Section 300 paragraph five, as part of its transitional provisions, that while the Organic Act on Procedures of the Constitutional Court has not yet been enacted, the Constitutional Court has the powers to prescribe rules on procedures and rendering of decisions. So the Constitutional Court has issued the “Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)”. The Rules have been applied to every case that comes to the Constitutional Court at the present time. Constitutional Court procedures under the Rules provide for an inquisitorial system. Any procedure which is not specifically provided for under these Rules will be governed by provisions of the Civil Procedure Code to the extent that such provisions are applicable and not inconsistent with these Rules.

Budgetary independence

The Constitutional Court administers its own budget which is part of the State budget. The Constitution provides that the State will allocate adequate budgets for the autonomous administration of the Constitutional Court and in consideration of expenditure estimates for the Constitutional Court if the Court is of the opinion that the allocated budget is insufficient, it will submit a motion to the committee (National Assembly’s Budgetary Committee) directly.¹⁷

As regards the submission of budget estimates, the Office of the Constitutional Court Act, B.E. 2542 (1999) stipulates that

¹⁷ *Supra*, note 1, section 168 paras. 8 and 9.

the Office will submit to the Council of Ministers its estimates of the budget in accordance with the resolution of the Justices of the Constitutional Court collectively for the purpose of incorporating it in the annual appropriations bill or the supplementary appropriations bill, as the case may be, in order to set it aside as subsidies of the Justices of the Constitutional Court collectively and the Office of the Constitutional Court. In this instance, the Council of Ministers may also prepare the opinion with regard to the allocation of budget of the Justices of the Constitutional Court collectively and the Office of the Constitutional Court to be included in the memorandum accompanying the introduction of the annual appropriations bill or the supplementary appropriations bill. In the consideration of the annual appropriations bill or the supplementary appropriations bill, the House of Representatives or the Senate may allow the Secretary-General of the Office of the Constitutional Court to give explanations.¹⁸

As it happens every year, the National Assembly Budgetary Committee or the National Assembly rarely changes the budget estimates of the Office of the Constitutional Court.

One outstanding feature of the budgetary management of the Office of the Constitutional Court is that the unspent money left over from the previous fiscal years can be carried forward to the current fiscal year for spending. However, a report regarding this amount has to be submitted to the Council of Ministers at the end of every fiscal year.

All in all, it could be said that the Constitutional Court has necessary autonomy regarding its budget which could contribute to its institutional independence.

¹⁸ *Supra*, note 16, section 13.

Disciplinary independence

Justices of the Constitutional Court are required to follow the Constitutional Court's Guideline for judicial conduct. Serious violation of proper judicial conduct could result in criticism by fellow Justices. It is up to the person's conscience to do what is necessary to rectify the wrong. In practice, however, rarely did improper conducts occur.

Compliance with decisions of the Constitutional Court

The Constitution stipulates that the decision of the Constitutional Court will be deemed final and binding on the National Assembly, the Council of Ministers, the Courts and other State organs.¹⁹ It is final in the sense that the parties may not file an appeal to any court or body. It is binding in the sense that the decisions of the Constitutional Court will be binding not only to the parties but also to third parties. Thus, once the Constitutional Court passes a ruling, that ruling will be directly binding on the National Assembly, the Council of Ministers, the Courts as well as constitutional organs and state agencies in the enactment, application and interpretation of laws.

In practice, so far, there has never been a case of non-compliance with the decision of the Constitutional Court.

Relationship with the media

The Constitutional Court attaches great importance to public understanding of the works of the Court. In this connection, the Court has undertaken a wide variety of projects, some already executed and some to be executed in the future, in order to promote public understanding of the role of the

¹⁹ *Supra*, note 1, section 216 para. 5.

Constitutional Court as well as its decisions. For example, there are projects of the Court meeting the people in the provinces, quiz competition projects, drawing contest projects, etc. Apart from these, books, pamphlets, journals, bulletins, and newsletters are regularly prepared and distributed to bring information to the knowledge of the public.

Still, the help of the media is needed because the media can make the Court's proceedings and its ruling comprehensible to the general public. The media, as a matter of fact, acts like the public's eyes and ears. Correct and responsible reporting by the media is therefore very important. The good mutual understanding between the Court and the media is therefore necessary and desirable.

The Constitutional Court initiated a dialogue between the Court and the media in the form of seminars organized from time to time. At such seminars, the atmosphere was always good. Views were usually exchanged frankly and freely. Such seminars will surely be organized regularly in the future.

The Constitutional Court assigns the Office of the Constitutional Court the task of communicating with the media. A spokesmen team has been appointed to do this job, comprising the Secretary-General and one of the Deputy Secretaries-General of the Office of the Constitutional Court. The team usually holds press conference, especially on the day that the Constitutional Court renders a decision. Press release briefing the substance of the Court's decision are distributed at this occasion.

It can be said that, in general, the relationship between the Constitutional Court and the media is pretty good. There are, however, two kinds of problems occasionally coming up in this relationship.

The first kind involves inaccurate or misleading reporting of the essence or reasons of the Court's decisions which results from erroneous interpretation of the decisions on the part of the media for whatever the reason. This kind of problems could, however, be rectified in the future by facilitating or helping the media in the writing of news reports on the Court's decisions. One way is by the Office of the Constitutional Court preparing a decision summary couched in laymen's terms as possible to be distributed to the media. The other way is that the Office of the Constitutional Court organizes from time to time a short training course about the working and functioning of the Constitutional Court and meaning of legal terms usually used in the decisions.

Another kind of problems is more serious. It is noted that every time cases which could have political implications are under consideration of the Constitutional Court, for example, a case involving whether a big political party would be dissolved or not, some newspapers then act as a "mouthpiece" of some political groups who have interests in the case by reporting only one-side understanding of the story, even rumours, sometimes to the point of bringing the Court into disrepute and diminishing or damaging the credibility and impartiality of the Court. Such being a case, the Office of the Constitutional Court has no choice but to issue explanations concerning the true story in order to dispel misunderstanding and correct false impression.

If the acts on the part of the newspaper amount to defamation or other violations of laws, the Office of the Constitutional Court, at the instance of the Justices of the Court collectively, will make a complaint to the police to start the criminal proceedings, in accordance with due process of law, in the Courts of Justice.

II. The constitutional independence of individual judges

While it is admitted that in one sense the individual independence of the judge depends on “the state of mind” of that particular judge in the discharge of judicial office, it is still important that there should be guarantees of independence of individual judges stipulated in either the Constitution or law. In the case of the Constitutional Court of Thailand, a certain number of guarantees that support the independence of individual judges are provided in the Constitution.

Selection process

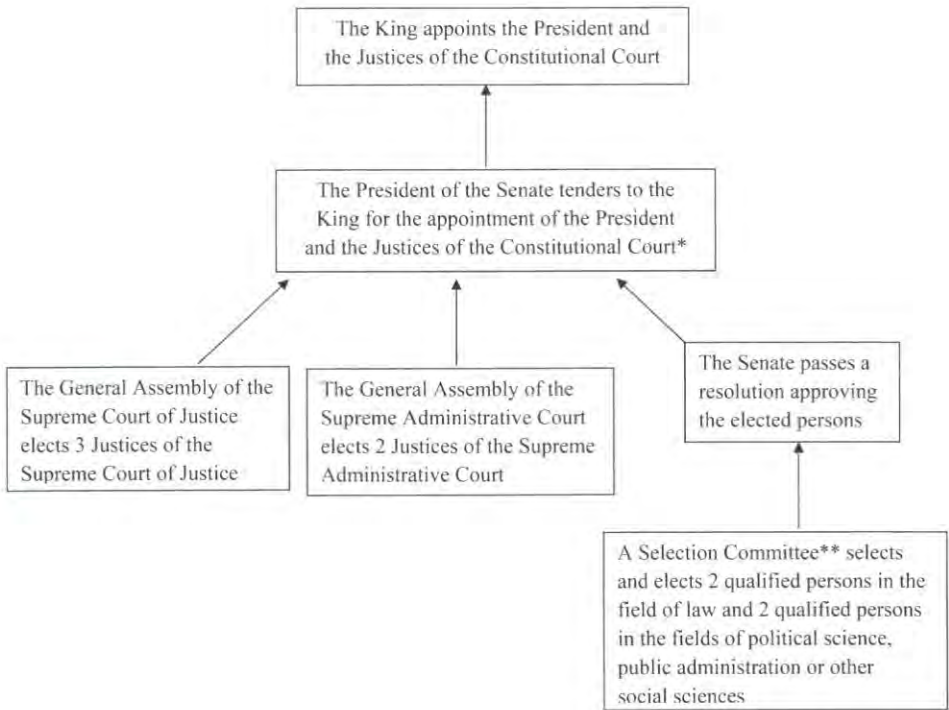
Since the Constitutional Court is a special judicial organ, the selection for the 9 Justices of the Constitutional Court is different from judges of other courts. Justices of the Constitutional Court are from three sources:

(a) *Justices of the Supreme Court of Justice*, 3 of whom are elected at a General Assembly of the Supreme Court of Justice by secret ballot.

(b) *Justices of the Supreme Administrative Court*, 2 of whom are elected at a General Assembly of the Supreme Administrative Court by secret ballot.

(c) *Qualified persons*, 2 qualified persons in the field of law who genuinely possess knowledge and expertise in law and 2 qualified persons in the fields of political science, public administration or other social sciences who genuinely possess knowledge and expertise in the administration of State affairs.

The selection process of the Justices of the Constitutional Court is as set out in a diagram below:



*- 9 elected persons shall hold a meeting and elect one among themselves to be the President of the Constitutional Court and notify the result to the President of the Senate accordingly.

-The President of the Senate shall countersign the Royal Command appointing the President and Justices of the Constitutional Court.

** The Selection Committee comprises the following:

1. President of the Supreme Court of Justice;
2. President of the Supreme Administrative Court;
3. Speaker of the House of Representatives;
4. Leader of the Opposition in the House of Representatives;
5. One person selected by and amongst Presidents of independent constitutional organs.

It can be seen that, among the 9 Justices, 5 Justices are elected by the Judiciary while the other 4 are elected by the Legislature. The Executive has minimal, if any, part in the election of the Justices of the Constitutional Court. Indeed, it could be said that the government has only one small voice through the Speaker of the House of Representatives in the Selection Committee of qualified persons since usually the Speaker is from the ruling political party or one of the ruling political parties. The Justices of the Constitutional Court therefore owe no duty of “gratitude” to those who elected them, thus enhancing their individual independence.

Professional qualifications

The Justices of the Constitutional Court have high professional qualifications. Five among the nine Justices are from the highest courts of the Judiciary, namely the Supreme Court of Justice and the Supreme Administrative Court. The other four, those who have been elected as qualified persons in the field of law or the fields of political science, public administration or other social sciences, also have high qualifications in that they must have been a Minister, a judge of the Supreme Military Court, an Election Commissioner, an Ombudsman, a National Counter Corruption Commissioner, a State Audit Commissioner or a National Human Rights Commissioner, or having served in a position of not lower than Deputy Attorney-General, Director-General or a person holding an administrative position in a government agency having administrative powers equivalent to a Director-General, or holding a position of not lower than Professor or having been a lawyer practicing legal profession regularly and continuously for not less than thirty years up to the date of nomination.

The Justices of the Constitutional Court are equal. The President is the “first among equals (*primus inter pares*)”. However, the election for the position of the President has to be done among themselves at the beginning of the term of office before the Royal Appointment or whenever the position is vacant thereafter. Therefore, there is no question of the promotional “temptations” as such.

Age and term of office

The minimum age for qualified persons in the field of law and the fields of political sciences, public administration or other social sciences to be elected to become Justices of the Constitutional Court is 45 years. There is no minimum age as far as Justices of the Constitutional Court who come from the Supreme Court of Justice and the Supreme Administrative Court are concerned. Of course, in practice, any person who could reach the positions of Justices of the Supreme Court of Justice and the Supreme Administrative Court usually are older than 45 years.

The term of office for the President and Justices of the Constitutional Court is 9 years. They will hold office for only one term.

In addition to the vacation of office upon the expiration of term, the President and Justices of the Constitutional Court vacate office upon:

- (1) death;
- (2) being of seventy years of age;
- (3) resignation;
- (4) being disqualified or being under any of the prohibitions;

- (5) having done an act in violation of incompatibilities;
- (6) the Senate passing the resolution for the removal from office;
- (7) being sentenced by a judgment to imprisonment notwithstanding the case not being final or the suspension of sentence, except the case of an offence committed through negligence, a petty offence or a defamation offence.²⁰

The removal from office by the Senate will be elaborated below.

The fixed term of office and non-renewability certainly serve as a guarantee for individual independence of the President and Justices of the Constitutional Court.

Material benefits

The Constitution stipulates that salaries, emoluments and other benefits of judges shall be as prescribed by law; provided that the system of salary-scale or emoluments applicable to civil servants shall not be applied. The said provisions also apply to Election Commissioners, Ombudsmen, National Counter Corruption Commissioners and State Audit Commissioners *mutatis mutandis*.²¹ In this connection, there is a separate Act on salaries, emoluments and other benefits of the President and Justices of the Constitutional Court. The level of salaries, emoluments and other benefits of the President and Justices of the Constitutional Court is, in principle, on par with those of the Presidents and Justices of the Supreme Court of Justice and the Supreme Administrative Court at a reasonable

²⁰ *Ibid.*, section 209.

²¹ *Ibid.*, section 202.

level commensurate with the positions concerned. It is believed that the level of salaries, emoluments and other benefits would promote the independence of those Justices.

Incompatibilities

According to the Constitution²², the President and Justices of the Constitutional Court must not be a government official holding a permanent position or receiving a salary. Nor can they be an official or employee of a State agency, State enterprise or local government organization or a director or adviser of a State enterprise or State agency. The other prohibitions are: they must not hold any position in a partnership, a company or an organization carrying out business with a view to sharing benefits or incomes, or be an employee of any person and they must not engage in any other independent profession. These incompatibilities start to be applied when the person concerned assumes his duty: he must have resigned from those positions mentioned above or must produced credible evidence that his engagement in such independent profession has ceased to exist. However, at the time of being elected to the position of the President or a Justice of the Constitutional Court he must not be under any of the prohibitions:

(a) he must not be a member of the House of Representatives, senator, political official, member of a local assembly or local administrator;

(b) he must not be or have been a member or holder of other position of a political party over the period of three years preceding the taking of office;

²² *Ibid.*, section 207.

(c) he must not be an Election Commissioner, an Ombudsman, a National Counter Corruption Commissioner, a State Audit Commissioner or a National Human Rights Commissioner.

The purpose of having these constitutional limitations is to prevent the Justice from being in a situation of conflict of interests or a situation that could compromise his independence.

Removal from office or impeachment process

The President and Justices of the Constitutional Court who are under exhibited circumstances of unusual wealthiness indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law or serious violation or failure to comply with ethical standards, may be removed from office by the Senate.²³

The process may be initiated by the lodging of complaint to the President of the Senate requesting the Senate to pass a resolution removing the person from office by either of the following:

(a) members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House; or

(b) senators of not less than one-fourth of the total number of the existing members of the Senate; or

(c) voters of not less than twenty thousand in number.

²³ *Ibid.*, section 270.

The complaint must clearly itemize the circumstances in which such a person has allegedly committed the act.²⁴

The President of the Senate then refers the matter to the National Counter Corruption Commission for inquisition without delay. When the inquisition is completed, the National Counter Corruption Commission will prepare a report for submission to the Senate. Such a report will clearly state whether, and to what extent, the accusation stated in the complaint contains a *prima facie* case, whether there are convincing evidences, and the resolution therefor.²⁵

Upon receipt of the report of the National Counter Corruption Commission, the President of the Senate will convoke a sitting of the Senate for considering the said matter without delay. A senator will have independence in casting a vote by secret ballot. A resolution for the removal of any person from office must be passed by the votes of not less than three-fifth of the total number of the existing members of the Senate.²⁶

The Oath of office

In Thailand, before taking office, every judge must have an audience with His Majesty the King to make a solemn declaration before the King in the following words:

“I (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the name of the King without any partiality in the

²⁴ *Ibid.*, section 271.

²⁵ *Ibid.*, section 272.

²⁶ *Ibid.*, sections 273 and 274.

interest of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”²⁷

Any solemn declaration before the King is considered the sacred act in Thailand. It is therefore widely believed that this declaration should at least serve as a constant reminder to each individual judge that he should abide by the declaration in the discharge of his judicial office, thereby promoting his independence.

III. Operating procedures of the Constitutional Court

Standing (*locus standi*) before the Constitutional Court

The Constitutional Court, as a court, cannot start the proceeding by itself at its own initiative. There must be some subjects who have legal standing (*locus standi*) according to the Constitution to file an application with the Constitutional Court to start the case. The Constitution provides that Courts of Justice, Administrative Courts, Military Courts, Constitutional organs, holders of certain important political positions, members of the House of Representatives, senators, Attorney-General and persons whose rights and liberties have been infringed have the right to file an application with the Constitutional Court for a ruling or order.

The filing of an application has to be in accordance with the procedures and conditions stipulated in the Constitution. Just to give examples. For a constitutional review of a bill, only

²⁷ *Ibid.*, section 201.

the Speaker of the House of Representatives, President of the Senate, President of the National Assembly and the Prime Minister will have *locus standi* before the Constitutional Court. However, for the Speaker of the House of Representatives or the President of the Senate or the President of the National Assembly (the Speaker of the House of Representatives also holds this position) to do so, he must be requested by members of the House of Representatives, Senators or members of both Houses constituting no fewer than one-tenth of the existing members of the those Houses. Or in the case of a constitutional review of provisions of promulgated laws, only Courts of Justice, Administrative Courts and Military Courts can apply for ruling if the court finds on its own accord or a party to the case objects with reasons that a provision of law to be applied to the case is contrary to or inconsistent with the Constitution.²⁸

A priori and *a posteriori* constitutional reviews

Thailand's system provides for both *a priori* and *a posteriori* constitutional reviews.

Just two examples of *a priori* review cases.

1. *A priori* review of an Organic Bill before it is presented to the King for Royal Signature. This is compulsory. The Constitutional Court has to complete its determination of its constitutionality within thirty days.²⁹

2. *A priori* review of a Bill before it is presented to the King for Royal Signature. If either members of the House of

²⁸ For detail, see *Office of the Constitutional Court, A basic Understanding of the Constitutional Court, supra.* note 14. pp. 34-49.

²⁹ *Ibid.*, section 141.

Representatives, senators or members of the both Houses of the National Assembly constituting no fewer than one tenth of the existing members of both Houses or the Prime Minister finds that such a bill contains provisions which are contrary to or inconsistent with the Constitution or the enactment process as provided by the Constitution was not properly complied with.³⁰

In its *a priori* review, the Constitutional Court will look into the substance of the bill as well as the enactment process. The effect of the Constitutional Court's decision will be examined in the next item regarding the role of "negative legislator".

A posteriori review, on the other hand, is a review of promulgated law in a concrete case. Contentious constitutional issues are usually referred to the Constitutional Court by the Courts of Justice, the Administrative Courts or the Military Courts. But the system in the Constitution also allows the Ombudsmen³¹ and the National Human Rights Commission³² to file applications to the Constitutional Court. Moreover, a person whose rights and liberties recognized by the Constitution has been violated by a provision of law has the right to file an application with the Constitutional Court for a ruling. However, in a case of complaint such as this all legal remedies must have been exhausted.

In its *a posteriori* review, the Constitutional Court can only look into the substance of the promulgated law. If the

³⁰ *Ibid.*, section 154.

³¹ *Ibid.*, section 245.

³² *Ibid.*, section 245.

provisions of law are found to be contrary to or inconsistent with the Constitution they will be unenforceable.³³

Role of “negative legislator”

In case of *a priori* review of an organic bill, if the Constitutional Court decides that the provisions of an organic bill are contrary to or inconsistent with the Constitution, such provisions shall lapse. But if the Constitutional Court decides that such provisions are the essential element thereof or the organic bill has not been duly enacted under the provisions of the Constitution, such organic bill shall lapse.³⁴

However, in the case where a decision of the Constitutional Court results in the lapse of provisions contrary to or inconsistent with the Constitution as stated above, such organic bill will be returned to the House of the Representatives and the Senate respectively for their reconsideration. The House of Representatives or the Senate will amend the organic bill by removing the provisions which are contrary to or inconsistent with the Constitution. The organic bill will then proceed towards promulgation.³⁵

In *a priori* review of an ordinary bill, the Constitution prescribes that if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, or has not been enacted in accordance with the provisions of this Constitution, and such provisions constitute an essential substance, the entire bill will lapse.³⁶ Such being a case, the enactment process for that bill will have to be restarted.

³³ *Ibid.*, section 6.

³⁴ *Ibid.*, section 141 para 2.

³⁵ *Ibid.*, section 141 para 3.

³⁶ *Ibid.*, section 154 para 3.

However, if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, but do not constitute an essential substance, only such contrary or inconsistent provision will lapse. The bill without the lapsed provisions, however, will be able to come into force upon promulgation.³⁷

These provisions of the Constitution show that in Thailand, a role of “negative legislator” played by the Constitutional Court is the acceptable norm for the Legislature.

Dissenting Opinions

The Constitution provides that the quorum of Justices of the Constitutional Court for hearing and rendering a decision will consist of not less than five Justices. The decision of the Constitutional Court will be made by a majority of votes, unless otherwise provided in the Constitution. Every Justice of the Constitutional Court who constitutes a quorum will give an opinion on his own part and make an oral statement to the meeting before passing a resolution. The decisions of the Constitutional Court and the opinions of all Justices will be published in the Government Gazette.³⁸

From this provision, it can be seen that the Justices of the Constitutional Court of Thailand are free to have separate opinions or dissenting opinions. Transparency is served since the Court’s decisions as well as each Justice’s opinion will appear in the Government Gazette. The process will surely enhance the independence of individual Justices.

³⁷ *Ibid.*, section 154 para 4.

³⁸ *Ibid.*, section 216.

Process of deliberation of the Court

The Justices of the Constitutional Court collectively will consider a case after accepting it for consideration and ruling. However, when an application has been filed with the Constitutional Court, the President usually appoints no fewer than three Justices to have charge of the case. The duties of Justices in charge are: consideration whether to accept the application for consideration and ruling or not; have charge over the case file; and issue any order which does not constitute a ruling of the case. An order of Justices in charge of a case will be made by a majority vote.

At present, the President has appointed two groups of four Justices in charge and this arrangement works well.

The Court which means the Justices of the Court collectively considers the case *in camera*. Confidentiality has to be preserved strictly. In the deliberation, the Justices are free to state their opinions on the case. The decision of the Court will be taken by votes on each issue of the case as set by the Court. No abstention will be allowed.

The confidentiality of the deliberation of the Constitutional Court will serve as a guarantee for the Court's independence.

CONCLUSION

Independence is a very important tenet of the judiciary, including the Constitutional Courts. It is a means which enables judges to decide cases impartially, without fear or favour, affection or ill will. The guarantees of independence of the Constitutional Court of Thailand as an institution as well as the

constitutional independence of individual justices as provided in the Constitution and related laws are certainly necessary. But are they sufficient? May be not.

At the present time, when diverse challenges – or even threats – to independence of the Constitutional Court happen to be on the rise, supports from the executive, the legislators, the administrators, the media, civil society organizations and the public in general are required. It is admitted that the diversity of challenges to independence of the Constitutional Court calls for diverse answers to how independence of the Constitutional Court could be defended and reinforced, both in the short term and long term.

In facing these challenges, the “state of mind” of the Justices of the Constitutional Court becomes all the more important. The Justices must stand firm, face the difficulties with great fortitude, and also maintain the high level of resilience in the discharge of their judicial duties with impartiality. Especially, they must abide by their oath of office solemnly declared before His Majesty the King at the time of their taking office.

The Role of the Constitutional Court in the Protection of the Rights and Liberties of the People : the case of Thailand^{1*}

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*“ Adhere to rule of law,
uphold democracy,
protect rights and liberties of the people. ”*

- Slogan of the Constitutional Court of Thailand

I. INTRODUCTION

A country that adopts constitutional democracy and adheres to the doctrine of constitutionalism usually has a written constitution which contains provisions on rights and liberties of its people as well as provisions on a body – either a constitutional court or an equivalent institution – to administer constitutional justice.

^{1*} A paper presented to the International Symposium on “Movements of Rights and Freedoms in 21st Century and the Role of Constitutional Courts” organized on the occasion of the 50th Anniversary of the Constitutional Court of Turkey.

As for Thailand, this practice started with the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In that constitution, enumeration of rights and liberties of the Thai people was systematically provided and the Constitutional Court set up as a judicial organ to adjudicate on constitutional matters for the first time. The Constitution of the Kingdom of Thailand, B.E. 2550 (2007), its successor, follows suit in this regard. While the substance of its predecessor was largely retained, the new Constitution brought more clarity and wider perspectives to the provisions regarding rights and liberties of the people. Moreover, with an addition of a provision on an individual constitutional complaint to the Constitutional Court, access to the Court by an individual was opened up.

This paper will assess the role of the Constitutional Court in the protection of rights and liberties of the Thai People. It will first look at the provisions of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) regarding rights and liberties of the Thai people. It will then consider the jurisdiction of the Constitutional Court and how it accords protection to rights and liberties of the Thai people. After that, jurisprudence of the Constitutional Court in some prominent cases will be reviewed, followed by conclusions.

II. CONSTITUTIONAL PROVISIONS ON RIGHT AND LIBERTIES OF THE PEOPLE

1. General Principles

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) (hereinafter referred to as “ the Constitution ”)² devotes 46 sections to the related issues of human dignity, rights, liberties and equality of the people. Two sections in Chapter I – General Provisions for the Constitution as a whole – state two general principles concerning human dignity, rights, liberties and equality of the people. The first principle is that human dignity, rights, liberties and equality of the people shall be protected.³ The second one is that the Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.⁴

The remaining 44 sections (section 26 to 69) are in Chapter III on Rights and Liberties of Thai People. Chapter III is divided into 13 parts. Part 1 is General Provisions of the Chapter, while Part 2 deals with Equality. Part 3 to 13 enumerate various rights and liberties of the Thai people.

As general provisions of the Chapter, Part 1, having 4 sections (section 26-29), states general principles concerning human dignity, rights and liberties of the Thai people as follows:

First, the exercise of powers by all State authorities is

² The text of Chapter I and Chapter III of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) appears as Annex to this paper.

³ The Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 4.

⁴ *Ibid.*, section 5.

commanded by the Constitution to pay due regard to human dignity, rights and liberties in accordance with the provisions of the Constitution.⁵

Second, rights and liberties recognised by the Constitution explicitly, by implication or by decisions of the Constitutional Court will be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, Constitutional Organs and State agencies with respect to the enactment, application and interpretation of all laws.⁶

Third, a person can invoke human dignity or exercise his rights and liberties insofar as it is not in violation of rights and liberties of other persons or contrary to the Constitution or good morals. A person whose rights and liberties recognised by the Constitution is violated can invoke the provisions of the Constitution to exercise rights in courts or to defend himself in courts. In addition, a person can directly exercise rights in courts to enforce the State's compliance with the provisions in this Chapter (Chapter III). If there is a law providing details on the exercise of any right and liberty recognised by the Constitution, the exercise of that right and liberty will be in accordance with such law. A person will also have the right to be promoted, supported and assisted by the State in the exercise of rights under this Chapter.⁷

Fourth, the restriction of rights and liberties of a person as recognised by the Constitution will not be imposed except by virtue of law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and

⁵ *Ibid.*, section 26.

⁶ *Ibid.*, section 27.

⁷ *Ibid.*, section 28.

provided that it will not affect the essential substances of such rights and liberties. Such a law will be of general application and will not be intended to apply to any particular case or person; provided that the provisions of the Constitution authorizing its enactment will also be mentioned therein. This principle also apply *mutatis mutandis* to rules or regulations issued by virtue of law.⁸

Part 2 of the Constitution deals with equality. This part has two sections (section 30 and 31). The first enunciates the principles of equality and non-unjust discrimination. The provision states that all persons are equal before the law and will enjoy equal protection under the law. Men and women will enjoy equal rights. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view not inconsistent with the provisions of the Constitution will not be permitted. However, measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise rights and liberties on the same basis as other persons will not be deemed as unjust discrimination.⁹

The second provision of Part 2 is about the rights and liberties of members of the armed forces or the police forces, Government officials, other officials of the State and officers or employees of State agencies who will enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law or rule issued by virtue of law specifically enacted in regard to

⁸ *Ibid.*, section 29.

⁹ *Ibid.*, section 30.

politics, efficiency, disciplines or ethics.¹⁰

2. Enumeration of rights and liberties

Enumeration of rights and liberties of the Thai people are in Parts 3 to 13 of Chapter III. These parts of the Constitution could be termed a catalogue of rights and liberties of the people. Since space precludes any detailed attention to the very extensive provisions of these rights and liberties, this paper will take brief reviews of them.

Part 3 – Rights and Liberties of an Individual

This part has 7 sections, grouping together various protected rights and liberties of an individual as follows:

(1) Right and liberty in life and person. A person will enjoy the right and liberty in his life and person.¹¹

(2) Liberty of dwelling. A person is protected for his peaceful habitation in and for possession of a dwelling. Unwarranted entry into a dwelling without the consent of its possessor or unwarranted search of a dwelling or private place cannot be made.¹²

(3) Liberty of travelling and making choice of residence. A person will enjoy the liberty of the travelling and the liberty of making the choice of his residence within the Kingdom.¹³

(4) Family rights, dignity, reputation and the right of privacy of a person will be protected.¹⁴

¹⁰ *Ibid.*, section 31.

¹¹ For detail, see *Ibid.*, section 32.

¹² For detail, see *Ibid.*, section 33.

¹³ For detail, see *Ibid.*, section 34.

¹⁴ For detail, see *Ibid.*, section 35.

(5) Liberty of communication by lawful means will be enjoyed by a person. ¹⁵

(6) Liberty to profess a religion, a religious denomination or creed is protected. ¹⁶

(7) Right against forced labour is protected. ¹⁷

Part 4 – Rights in Judicial Process

This part has 2 sections covering rights in judicial process as follows:

(1) Right against retrospective criminal penalties. (Nullum crimen, Nulla poena sine lege) and the right to be presumed innocent until proven guilty. ¹⁸

(2) Following rights in the judicial process:

(2.1) right of easy, convenient, expedient and comprehensive access to the judicial process;

(2.2) right to public trial, right to be adequately informed of the facts and to inspect documents, right to present one's facts, defences and evidence, right to object to judges, right to be considered by the full bench of judges and right to be informed of the reasons for a ruling, judgment or order;

(2.3) right to a proper, swift and fair trial;

(2.4) right to appropriate treatment in the judicial

¹⁵ For detail, see *Ibid.*, section 36.

¹⁶ For detail, see *Ibid.*, section 37.

¹⁷ For detail, see *Ibid.*, section 38.

¹⁸ For detail, see *Ibid.*, section 39.

- process, which includes the right to proper, swift and fair investigations and to withhold self-incriminating testimony;
- (2.5) right to necessary and appropriate assistance from the State;
 - (2.6) right to appropriate protection in the judicial process and the right to appropriate treatment in cases relating to sexual violence for a child, youth, women, senior person or disabled or handicapped person;
 - (2.7) a suspect or defendant in a criminal case will have the right to proper, swift and fair investigations or trial with an adequate opportunity to defend his case, the right to examine or to be informed of evidence as appropriate, right to be assisted counsel in legal proceedings and the right to bail;
 - (2.8) In a civil case, the right to appropriate legal assistance from the State.¹⁹

Part 5 – Property Rights

There are 2 sections in this part dealing with property rights, right of succession of a person and expropriation of immovable property.

They are as follows:

- (1) Property rights and right of succession are protected.²⁰

¹⁹ For detail, see *Ibid.*, section 40.

²⁰ For detail, see *Ibid.*, section 41.

(2) Expropriation of immovable property will not be made except by virtue of law specifically for the purposes mentioned in section 42 and with certain conditions mentioned therein.²¹

Part 6 – Rights and Liberties in Occupation

This part also has 2 sections covering rights and liberties in occupation as follows:

(1) Liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.²²

(2) Right to work safety and welfare and to living security.²³

Part 7 – Freedom of Expression of Individuals and the Press

Four sections are in this part. They deal with the following rights or liberties.

(1) Liberty to express opinions, speech, writing, printing, publication, and expressions by other means.²⁴

(2) Liberties for officials or employees in a private sector undertaking mass media business to present news and express their opinions under the constitutional restrictions without mandate of any government agency.²⁵

²¹ For detail, see *Ibid.*, section 42.

²² For detail, see *Ibid.*, section 43.

²³ For detail, see *Ibid.*, section 44.

²⁴ For detail, see *Ibid.*, section 45.

²⁵ For detail, see *Ibid.*, section 46.

(3) Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest. An independent regulatory body of the State will be set up to distribute such frequencies and supervise radio or television broadcasting and telecommunication businesses as provided by law.²⁶

(4) Persons holding political positions are not allowed to be owners or hold shares in a newspaper, radio or television broadcasting or telecommunication businesses.²⁷

Part 8 – Rights and Liberties in Education

This part covers rights and liberties in education and comprises 2 sections as follows:

(1) Equal right to receive at least twelve years of comprehensive and quality education as provided by the State free of charge for every person.²⁸

(2) A person will enjoy academic freedom. Education and training, learning and teaching, research and disseminating of research according to academic principles will be protected; provided that it is not contrary to his civic duties or good morals.²⁹

Part 9 – Rights to Public Health services and Welfare

The following rights in the 5 sections of this part are protected.

²⁶ For detail, see *Ibid.*, section 47.

²⁷ For detail, see *Ibid.*, section 48.

²⁸ For detail, see *Ibid.*, section 49.

²⁹ For detail, see *Ibid.*, section 50.

(1) Equal rights to receive appropriate, standard, comprehensive and efficient health services from the State, especially the right of the indigent to receive free medical treatment from the State's infirmaries.³⁰

(2) Right to survive and to receive physical, mental and intellectual development according to their potentials of children and youth.³¹

(3) Right to welfare, public facilities and appropriate aid from the State for persons of over sixty years of age and have insufficient income for living.³²

(4) Right of access to and utilise welfare services, public facilities and appropriate aid from the State for the disabled or handicapped.³³

(5) Right to appropriate aid from the State for persons who are homeless and have insufficient income for living.³⁴

Part 10 – Rights to Information and Complaints

Seven sections comprise this part and they concern various rights to information and complaints as follows:

(1) Right to be informed and to access public information in the possession of a government agency, State agency, State enterprise or local government organization.³⁵

(2) Right to receive information, explanation and reasons from a government agency, State agency, State enterprise

³⁰ For detail, see *Ibid.*, section 51.

³¹ For detail, see *Ibid.*, section 52.

³² For detail, see *Ibid.*, section 53.

³³ For detail, see *Ibid.*, section 54.

³⁴ For detail, see *Ibid.*, section 55.

³⁵ For detail, see *Ibid.*, section 56.

or local government organization before granting a licence or undertaking a project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interests concerning a person or a local community as well as the right to express his opinion on such matters to the concerned agencies for their consideration.³⁶

(3) Right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect a person's rights and liberties.³⁷

(4) Right to present a petition and to be informed of the result of its consideration within appropriate time.³⁸

(5) Right to take legal action against a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to assert liability for an act or omission of government officials, officials or employees of such agencies.³⁹

(6) Right of a person who is a consumer to receive truthful information as well as the right to make a complaint for remedy of damage and to unite with others to protect consumers' rights.⁴⁰

(7) Right to follow up and to request for examination of the performance of duties of a person holding political position, State agency and State officials.⁴¹

³⁶ For detail, see *Ibid.*, section 57.

³⁷ For detail, see *Ibid.*, section 58.

³⁸ For detail, see *Ibid.*, section 59.

³⁹ For detail, see *Ibid.*, section 60.

⁴⁰ For detail, see *Ibid.*, section 61.

⁴¹ For detail, see *Ibid.*, section 62.

Part 11 – Liberties to Assembly and Association

This part contains 3 sections relating to liberties to assembly and association as follows:

(1) Liberty to assemble peacefully and without arms. ⁴²

(2) Liberty to unite and form an association, union, federation, co-operatives, farmers' group, private organization, non-governmental organization or any other group. ⁴³

(3) Liberty to unite and form a political party. ⁴⁴

Part 12 – Community Rights

There are 2 sections in this part which concern the following community rights:

(1) Persons assembling as a community, local community or traditional local community will have the right to preserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion. ⁴⁵

(2) The rights of a person to participate with the State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life. ⁴⁶

⁴² For detail, see *Ibid.*, section 63.

⁴³ For detail, see *Ibid.*, section 64.

⁴⁴ For detail, see *Ibid.*, section 65.

⁴⁵ For detail, see *Ibid.*, section 66.

⁴⁶ For detail, see *Ibid.*, section 67.

Part 13 –Rights to Protect the Constitution

Two sections form this part which provides the following rights:

(1) No person can exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State or to acquire power to rule the country by any means which is not in accordance with the modes provided in the Constitution.⁴⁷

(2) A person will have the right to peacefully resist an act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in the Constitution.⁴⁸

The foregoing are the brief reviews of rights and liberties as contained in Chapter III of the Constitution to give an idea of how extensive these rights and liberties are.

Apart from prescribing all State organs and authorities how to exercise powers⁴⁹, the Constitution also empowers some constitutional organs to oversee and protect the people's rights and liberties within their own jurisdiction. The Constitutional Court is one of them.

In the next part of this paper, the composition of the Constitutional Court and its powers and duties or jurisdiction will be examined, especially the power of constitutional review with regard to the protection of rights and liberties of the people. Modes of review, namely, *a priori* review and *a posteriori* review as well as channels of referring cases or access to the

⁴⁷ For detail, see *Ibid.*, section 68.

⁴⁸ For detail, see *Ibid.*, section 69.

⁴⁹ *Supra* notes 4 and 5.

Constitutional Court in *a posteriori* review will also be discussed.

III. THE CONSTITUTIONAL COURT AND ITS JURISDICTION

The Constitutional Court performs the important function of safeguarding the supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translate into reality the protection of rights and liberties by the exercise of adjudicative power.

The Constitutional Court was established by virtue of the Constitution. It consists of the President and eight judges to be appointed by the King upon advice of the Senate.⁵⁰ Judges of the Constitutional Court are styled “Justices of the Constitutional Court”.

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties may be divided into the following nine categories:

(1) constitutional review of bills and draft rules of procedure of the legislative branch prior to their promulgation to ensure that they are not inconsistent with or contrary to the Constitution;⁵¹

(2) constitutional review of a promulgated law to ensure that it is not inconsistent with or contrary to the Constitution;⁵²

⁵⁰ *Supra* note 1, section 204 para. 1.

⁵¹ *Ibid.*, sections 141, 149, 154, 155.

⁵² *Ibid.*, sections 211, 245, 257, 212.

(3) constitutional review of the prerequisites for the enactment of an Emergency Decree to ensure that it is not inconsistent with or contrary to the Constitution;⁵³

(4) ruling on whether or not members of the House of Representatives, senators or members of the committee are involved directly or indirectly in the use of the appropriations;⁵⁴

(5) ruling on disputes regarding the powers and duties among the National Assembly, the Council of Ministers or the Constitutional organs other than the Courts which arise between two or more of such organs;⁵⁵

(6) review resolutions or regulations of political parties, consideration of appeals of members of the House of Representatives and ruling on cases concerning the constitutional exercise of political rights and liberties by a person or a political party;⁵⁶

(7) ruling on the membership or qualification of members of the National Assembly, Ministers and Election Commissioners;⁵⁷

(8) ruling on whether or not a treaty requires prior approval of the National Assembly;⁵⁸

(9) powers and duties prescribed under the Organic Act on Political Parties, B.E. 2550 (2007).⁵⁹

⁵³ *Ibid.*, section 184.

⁵⁴ *Ibid.*, section 168.

⁵⁵ *Ibid.*, section 214.

⁵⁶ *Ibid.*, sections 65, 106 (7), 237.

⁵⁷ *Ibid.*, sections 91, 182, 233.

⁵⁸ *Ibid.*, section 190.

⁵⁹ The Organic Act on Political Parties, B.E. 2550 (2007), section 13, 14, 20 (4), 31, 33, 41, 91, 93, 94, 98. See also, Office of the Constitutional Court, A Basic Understanding of the Constitutional Court of the Kingdom of Thailand, (2nd Edition) 2011 pp. 4 – 32.

Regarding the Constitutional Court's jurisdiction of constitutional review, the Constitution provides for both *a priori* review as mentioned in (1) above and *a posteriori* review as mentioned in (2) above.

As far as *a priori* review is concerned, there are two types of *a priori* review.

1. *A priori* review of an Organic Bill before it is presented to the King for Royal Signature. This is compulsory. The Constitutional Court has to complete its determination of its constitutionality within thirty days.⁶⁰

2. *A priori* review of a Bill before it is presented to the King for Royal Signature. If either members of the House of Representatives, senators or members of both Houses of the National Assembly constituting no fewer than one tenth of the existing members of both Houses or the Prime Minister finds that such a bill contains provisions which are contrary to or inconsistent with the Constitution or the enactment process as provided by the Constitution was not properly complied with.⁶¹

In its *a priori* review, the Constitutional Court will look into the substance of the bill as well as the enactment process. In case of *a priori* review of an organic bill, if the Constitutional Court decides that the provisions of an organic bill are contrary to or inconsistent with the Constitution, such provisions shall lapse. But if the Constitutional Court decides that such provisions are the essential element thereof or the organic bill has not been duly enacted under the provisions of the Constitution, such

⁶⁰ *Ibid.*, section 141.

⁶¹ *Ibid.*, section 154.

organic bill shall lapse.⁶²

However, in the case where a decision of the Constitutional Court results in the lapse of provisions contrary to or inconsistent with the Constitution as stated above, such organic bill will be returned to the House of the Representatives and the Senate respectively for their reconsideration. The House of Representatives or the Senate will amend the organic bill by removing the provisions which are contrary to or inconsistent with the Constitution. The organic bill will then proceed towards promulgation.⁶³

In *a priori* review of an ordinary bill, the Constitution prescribes that if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, or has not been enacted in accordance with the provisions of this Constitution, and such provisions constitute an essential substance, the entire bill will lapse.⁶⁴ Such being a case, the enactment process for that bill will have to be restarted.

However, if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, but do not constitute an essential substance, only such contrary or inconsistent provision will lapse. The bill without the lapsed provisions, however, will be able to come into force upon promulgation.⁶⁵

A posteriori review, on the other hand, is a review of promulgated law in a concrete case. In its *a posteriori* review, the Constitutional Court can only look into the substance of

⁶² *Ibid.*, section 141 para 2.

⁶³ *Ibid.*, section 141 para 3.

⁶⁴ *Ibid.*, section 154 para 3.

⁶⁵ *Ibid.*, section 154 para 4.

the promulgated law. If the provisions of law are found to be contrary to or inconsistent with the Constitution they will be unenforceable.⁶⁶

As regards channels of referring the constitutional cases to the Constitutional Court or access to the Constitutional Court for *a posteriori* review, normally questions as to whether one or more provisions of law are contrary to or inconsistent with one or more provisions of the Constitution or not are referred by the Courts, either the Courts of Justice or the Administrative Courts or even the Military Courts.⁶⁷ However, the Constitution also allows the Ombudsmen⁶⁸ and the National Human Rights Commission⁶⁹ to file applications to the Constitutional Court. Moreover, the Constitution further provides that a person whose rights and liberties recognised by the Constitution has been violated by a provision of law has the right to file an application with the Constitutional Court for a ruling.⁷⁰ But in case of individual constitutional complaint such as this, the following conditions must be satisfied:

(1) A person who submits a complaint must have been violated by a provision of law;

(2) Such a person submits a complaint to the Constitutional Court for a ruling that such a provision of law is contrary to or inconsistent with the Constitution; and

(3) All legal remedies must have been exhausted, namely the case must have gone through the Courts, the Ombudsmen

⁶⁶ *Ibid.*, section 6.

⁶⁷ *Ibid.*, section 211.

⁶⁸ *Ibid.*, section 245.

⁶⁹ *Ibid.*, section 257.

⁷⁰ *Ibid.*, section 212.

and the National Human Rights Commission. The complaint to the Constitutional Court must be a last resort remedy sought for.

These conditions are rather stringent, especially the third one. By far, there has been thinking, among a number of justices of the Constitutional Court, of relaxing the third condition somewhat so that cases could be accepted for consideration of the Constitutional Court. Since the promulgation of the Constitution in August 2007, of all individual constitutional complaints filed with the Constitutional Court (92 complaints) only one could satisfy all conditions required to be accepted for consideration.

The majority of cases for constitutional review seized by the Constitutional Court are naturally cases of *a posteriori* review that concern issues of human dignity, rights, liberties and equality of the people recognised and guaranteed by the Constitution. Cases of *a priori* review are few and far between, although there were some *a priori* review cases which the Constitutional Court found that provisions of laws violated the rights and liberties of the people.

It is a duty of the Constitutional Court, whenever a case comes up for review, to check whether one or more provisions of law under consideration are contrary to or inconsistent with the Constitution. In this way, it will be certain that the laws enacted by the legislature will conform to the Constitution and will not encroach upon human dignity, rights, liberties and equality of the people. Thus, through constitutional review of legislative acts, does the Constitutional Court play an important role in protecting human dignity, rights, liberties and equality guaranteed by the Constitution for the people.

IV. JURISPRUDENCE OF THE CONSTITUTIONAL COURT - SELECTED CASE SUMMARIES

There were numerous cases involving human dignity, rights, liberties and equality of people that the Constitutional Court rendered rulings. The following are some selected cases that are both *a priori* review cases and *a posteriori* review cases. Many cases were ruled during the time when the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was still in effect. However, almost all provisions relating human dignity, rights, liberties and equality of the Thai People are the same in the current Constitution.

1. Ruling No.21/2546 This case was submitted by the Ombudsmen. It involved the issue of equality between women and men. The issue considered by the Constitutional Court was whether or not section 12 of the Names of Persons Act, B.E. 2505 (1962) raised a question of constitutionality under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The point was whether the wording in section 12 of the Names of Persons Act, B.E. 2505 (1962), bore a meaning which made it mandatory for married women to use their husbands' surnames only or not. The Constitutional Court held that the crucial words of section 12 were "shall use", which expressly bore the characteristics of a mandatory provision. Once it had been determined that section 12 had the characteristics of a mandatory provision for married women to use their husband's surnames only, which was an encroachment of the rights to use the surnames of married women themselves resulting in an inequality in rights as between men and women, it followed that the provision created inequality under the law due to differences in sex and personal status. The case was also an unjust

discrimination because married women were one-sidedly compelled to use their husbands' surnames on the ground of marriage, and not on the ground of differences in physical attributes or obligations between men and women arising from the difference in sex such that discrimination was necessary.

The Constitutional Court, therefore, held that section 12 of the Names of Persons Act, B.E. 2505 (1962) was unconstitutional by reason of being contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provision was therefore unenforceable according to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Ruling 30/2548 This is *a priori* review case. It was referred by the President of the Senate for the Constitutional Court's ruling as to whether or not section 38 paragraph one of the CD Products Bill, B.E.... was contrary to or inconsistent with section 29, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 38 paragraph one of the CD Products Bill, B.E.... provided that a Court may order confiscation of machines in the following cases: failure to notify a competent official of a use of machines for the production of CD, failure to give notice of the place of production and relocation of place of production, failure to affix and display a product certificate and an original copy certificate, use of a product certificate and original copy certificate, counterfeiting or imitating a product certificate or original copy certificate, failure to give notice of acquisition or possession of machines, or failure to give notice of distribution, disposal or transfer of machines or loss of possession of machines. The Constitutional Court considered that in the case of section

38 paragraph one of the CD Products Bill, B.E...., a machines used for the production of CD was not a property whose manufacture or possession constituted an offence per se. In confiscating the machines, the Court had to issue a confiscation order without any discretion. No regard was given as to whether or not the owner of such machines connived at the commission of the offence, nor was the owner of the machines given an opportunity to prove whether or not he/she connived at the commission of the offence. The confiscation under such provision was absolute. No considerations were given to the offence or the suitability of penalties. The measures imposed on the owner of the properties were severed and amounted to restriction of a person's rights in property that was disproportional to necessity and affected the essential substances of a person's rights in property.

The Constitutional Court, therefore, held that section 38 paragraph one of the CD Products Bill, B.E.... was contrary to or inconsistent with section 29, section 30, section 31, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court also held that since section 38 paragraph one of the CD Products Bill, B.E.... was not of essence to the Bill, so only this section including paragraph two of the section lapsed.

3. Ruling No.11/2549 This is another *a priori* review case. In this case, liberty to assemble and its restriction were at issue.

The point to be decided by the Constitutional Court was whether or not section 20 of the Highway Bill (No....), B.E...., which add section 46/1, contained provisions which were contrary to or inconsistent with section 29 and section 44

of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows: Section 20 of the Highway Bill (No....), B.E.... provided that “the following shall be added as section 46/1 of the Highway Act, B.E. 2535 (1992)”, wherein section 46/1 paragraph one stated that “no person shall assemble in the highway zone in a manner which obstructs traffic or may pose a danger or cause injury to vehicles or highway users, except where written permission of the Director of Highways or a person delegated by the Director of Highways is obtained, or the assembly is constituted as a column, procession or traditional or cultural assembly, or a public benefit activity or situated within an area exempt from permission filings as prescribed by notification of the Minister,” and paragraph two stated that “applications for permission and the grant of permissions shall be in accordance with the rules and procedures prescribed by Ministerial Regulation.” Such provisions were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because it more than necessarily restricted the liberty to assemble peacefully and without arms, and affected the essential substance of the fundamental liberty of the people as provided under section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that section 20 of the Highway Bill (No....), B.E...., which added section 46/1, was contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore lapsed. Furthermore, it was held that the provision in section 30 which added a penal provision in section 73/1, only

with respect to the text stating “section 46/1”, which was connected to section 20 providing for the addition of section 46/1, also lapsed.

4. Ruling No.2/2552 In this case, the issue considered by the Constitutional Court was whether or not section 35(6) of the Attorneys Act, B.E. 2528 (1985) was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) (the current Constitution).

Section 29 of the Constitution was a provision which laid down the principles for safeguarding rights and liberties of a person whereby the enactment of law to restrict rights and liberties of the people was permitted only for the purposes prescribed by the Constitution and only to the extent of necessity and must not affect the essential substances of such rights and liberties. Such law should be of general application and should not be intended to apply to any particular case or person.

Section 35 (6) of the Attorneys Act, B.E. 2528 (1985) was a provision which stipulated the qualifications of an applicant for registration and obtaining an attorney’s licence, stating that a person who had previously served a prison term pursuant to a final judgment of imprisonment for a case which the Board of the Lawyers Council held as bringing disgrace to the honour of the profession, would be barred or disqualified from registration and obtaining an attorney’s licence. This provision meant that a person applying to register and obtain an attorney’s licence who once served a prison term pursuant to a final judgment of imprisonment would be barred or disqualified only upon the Board of the Lawyers Council finding that such person had served a prison term pursuant to a final judgment of imprisonment for a case that would bring disgrace to the honour of the profession.

Section 35 (6) was therefore not a provision which constituted an absolute restriction on the qualification of an attorney. This was a case where the law authorised the Board of the Lawyers Council to exercise judgment for the purpose of control and scrutiny of persons having qualification suitable for the attorney profession. Furthermore, the exercise of discretion by the Board of the Lawyers Council to reject the registration and issuance of an attorney's licence to an applicant had to be accompanied by the Board's explanation of clear reasons for rejection. In such event, the applicant would have the right to appeal against such rejection to the Special Honorary Chairman of the Lawyers Council. Moreover, the law did not deprive the right to file an action in the Administrative Court.

The Constitutional Court found that section 35(6) of the Attorneys Act, B.E. 2528 (1985), despite being the provisions empowering the Board of the Lawyer Council to exercise discretion in determining the cases that would bring disgrace to the honour of the attorney profession, thus constituting a restriction of rights and liberties of a person in engaging in the attorney profession, did provide for safeguards of the interests of the people and peace and order in the judicial process which was the public interest. Such public interest had a higher priority than the protection of individual interests of those engaged in the attorney profession which was a specific group interests. The provision was therefore a restriction of rights and liberties which was necessary and did not prejudice the essential substances of rights and liberties. The Board of the Lawyers Council could not exercise power absolutely but was subject to reviews by the Special Honorary Chairman of the Lawyers Council and the Courts.

The Constitutional Court therefore held that section 35 (6) of the Attorneys Act, B.E. 2528 (1985) was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

5. Ruling No.12/2552 This is a case which concerns the rights and liberties to engage in an enterprise or an occupation.

Saraburi Provincial Court referred the objection of the defendant in the case before it to the Constitutional Court for ruling. The defendant was charged with committing an offence of selling food and beverages during prohibited hours (between 01.00 hours to 05.00 hours) without a licence in accordance with clause 3 of the Announcement of the National Executive Council No.45 dated 17th January B.E. 2515 (1972), as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th May B.E. 2515 (1972).

The issues considered by the Constitutional Court was therefore whether or not clause 3 of the Announcement of the National Executive Council No.45 dated 17th January B.E. 2515 (1972) as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th May B.E. 2515 (1972) was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30, section 34 and section 43 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

The Constitutional Court considered that the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) section 43 paragraph one recognised the liberty of a person to engage in an enterprise or occupation. Restriction of such liberty must be made by a provision of law for the benefit of maintaining national or economic security, the protection of the people with regard to

public utilities, maintenance of public order or good morals of the people, maintaining order in occupation, consumer protection, city planning, preservation of natural resources or the environment, the people's welfare or to prevent monopolies or eradicate unfair behaviour in competition as provided in section 43 paragraph two. Moreover, the restriction could be imposed to the extent of necessity and should not affect the essential substances of such rights and liberties as provided in section 29 paragraph one.

The restriction were necessary at the time of issuance of the Announcement in B.E. 2515 (1972) because the National Executive Council (military regime) wanted the people to remain in peace without any disorder that would affect national security. The situation had changed significantly nowadays. The requirement that the people who engaged in the occupation of selling food and beverages between 01.00 hours to 05.00 hours should apply for a licence was unnecessary and without reasonable justification. It was apparent that the restriction of such liberty was not in any manner beneficial to the security of the state or national economy, the protection of the people with regard to public utilities, the maintenance of public order or good morals of the people, or other benefits as specified in section 43 paragraph two of the Constitution. The needs for maintenance of public order had changed. The measures were no longer suitable to the current way of life of the people. The restriction of the people's liberty as recognised under the Constitution therefore exceeded the extent of necessity and affected the essential substances of such liberty, thus prohibited under section 29 paragraph one of the Constitution.

The Constitutional Court therefore held that clause 3 of the Announcement of the National Executive Council No.45

dated 17th January B.E. 2515 (1972), as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th November B.E. 2515 (1972) was unconstitutional for being contrary to or inconsistent with section 29 paragraph one and section 43 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and therefore rendered unenforceable under section 6 of the Constitution.

6. Ruling No.47/2554 This is the first case of an individual constitutional complaint accepted for ruling by the Constitutional Court.

The Co-operatives Act, B.E. 2542 (1999) has a provision prohibiting a person who was removed from office of director of the Co-operatives by order of the Co-operatives Registrar from assuming the position of director or manager of a co-operatives. On 27 August B.E. 2543 (2000) the applicant was elected by the annual general meeting of the Agricultural Co-operatives of Suphanburi Ltd. to be its Chairman of the Board of Directors. But the Acting Co-operatives Registrar issued an order revoking the resolution of the annual general meeting of the Agricultural Co-operatives of Suphanburi Ltd. with regard only to the election of the applicant as the Chairman of the Board, reasoning that the applicant was a person who had been removed from office in accordance with the provision of the Co-operatives Act, B.E. 2511 (1968). The applicant was accordingly a person disqualified for the position of director or manager of a co-operatives.

In his application to the Constitutional Court, the applicant argued that the Co-operatives Act, B.E. 2542 (1999) section 52 (3) was contrary to or inconsistent with the Constitution section 39. Section 39 of the Constitutions reads: "No person shall be subject to a criminal penalty unless he has committed an act

which the law in force at the time of commission provides to be an offence and provides a punishment therefore, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence. A suspect or defendant in a criminal case shall be presumed innocent. Before a final judgment convicting a person for an offence, such person shall not be treated as a convict.”

The issue considered by the Constitutional Court was therefore whether or not section 52 (3) of the Co-operatives Act, B.E. 2542 (1999) was contrary to or inconsistent with section 39 of the Constitution.

The Constitutional Court considered that section 39 of the Constitution aimed to protect rights and liberties of a person regarding criminal liability by prohibiting an application of provisions of criminal law and penalties to the case retrospectively as well as by adhering to the presumption of innocence principle. However, the Co-operatives Act, B.E. 2542 (1999) section 52 (3) prescribed disqualifications of persons for the position of director or manager of co-operatives, not penalties under the criminal law or a law imposing criminal penalties.

The Constitutional Court therefore held that the Co-operatives Act, B.E. 2542 (1999) section 52 (3) was not contrary to or inconsistent with section 39 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

7. Ruling No.12/2555 This case was referred by the Supreme Court of Justice. It involves the presumption of innocence principle as recognized and guaranteed in section 39 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

The defendant in the case before the Supreme Court of Justice argued that section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) was contrary to or inconsistent with section 39 paragraph two, section 40 (5) together with section 30 of the Constitution.

Section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) reads: “In case an offender which will be inflicted with punishment according to this Act is a juristic person, a managing director, a manager or any person responsible for the operation of such a juristic person shall also be inflicted with punishment which the law stipulates for that offence unless he can prove that he has no part in the commission of the offence of that juristic person.”

The defendant reasoned that when the applicant could prove the commission of the offence by the juristic person and the court decided that the juristic person was guilty, the managing director, manager or any person responsible for the operation of such a juristic person would be presumed by section 54 of the Act to have committed the offence without any proof by the applicant. Instead, the burden was then shifted to the managing director, manager or any person responsible for the operation of the juristic person to prove that he had no part in the commission of the offence of the juristic person. While the juristic person was granted the right to be presumed innocence, they did not receive such right. This is against section 39 paragraph two of the Constitution.

The issue considered by the Constitutional Court was therefore whether or not section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

The Constitutional Court considered that the presumption of innocence principle as stated in section 39 paragraph two of the Constitution derived from human rights principle as enunciated in Article 11 of the Universal Declaration of Human Rights. The presumption of innocence principle is one of the fundamental principle of criminal justice as well as an important component of the rule of law generally accepted in most civilized countries and internationally through the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to which Thailand is a party.

As regards section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), the Constitutional Court considered that the section was a legal presumption of guilt of a managing director, manager or any person responsible for the operation of the juristic person without any need on the part of the applicant to prove that each one of them had taken part in the commission of offence by the juristic person. The burden of proof had been shifted to these persons. Each one of them, instead, had to prove that he or she had no part in the commission of offence. It was not a presumption of innocence but a presumption of guilt based on status of a person. Nor was it a presumption of facts which constituted some elements of the offence.

The Constitutional Court held that section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), specifically that part which presumed guilt on the part of a managing director, manager or any person responsible for the operation of the juristic person without proof that he or she had a part in the commission of the offence of the juristic person, was contrary to or inconsistent with section 39 paragraph two

of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and therefore rendered unenforceable under section 6 of the Constitution. It was thus unnecessary to make a further ruling on whether such provision of law was contrary to or inconsistent with other sections of the Constitution.

From the reviews of jurisprudence of the Constitutional Court, it can be seen that the Constitutional Court was so prudent as to exercise due diligence and care in its consideration and ruling in each case.

CONCLUSIONS

The Constitution of the Kingdom of Thailand, B.E. 2550 (2007) attaches great importance to human dignity, rights, liberties and equality of the people. This is evident by the fact that so many sections on these values are provided in the Constitution. Furthermore, the Constitution empowers various institutions to check on the intrusion or violation of these values. The Constitutional Court, with its powers and duties of constitutional review of law or legislative acts, plays a meaningful role in this regard.

Since provisions of law are the basis for the exercise of State powers, so if the law is within bounds set by the Constitution it is certain that human dignity, rights, liberties and equality of the people will be safeguarded.

It could be noted that almost all the cases which come to the Constitutional Court for constitutional review are cases that invoke the constitutional provisions on human dignity, rights, liberties and equality of the people as provisions to which provisions of law are alleged to be contrary or with which

provisions of law are alleged to be inconsistent. Through constitutional review can the Constitutional Court guard against violation of human dignity, rights, liberties and equality of the people. At the present time, cases for constitutional review which relate to human dignity, rights, liberties and equality of the people start to flood the docket of the Constitutional Court. This phenomenon shows the increasing awareness of the people about how to protect their highly cherished values. Just as in the past the Constitutional Court performed its function of constitutional review remarkably well, so it is quite certain that it will keep its outstanding records in the future.

Annex
(Translation) **Chapter I and Chapter III**
of Constitution of the Kingdom of Thailand,
B.E. 2550 (2007)

CHAPTER I
General Provisions

Section 1. Thailand is one and indivisible Kingdom.

Section 2. Thailand adopts a democratic regime of government with the King as Head of State.

Section 3. Sovereign powers belong to the Thai people. The King as Head of State shall exercise such powers through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution.

The performance of duties of the National Assembly, the Council of Ministers, the Courts, Constitutional organizations and State agencies shall be in accordance with rules of law.

Section 4. Human dignity, rights, liberties and equality of the people shall be protected.

Section 5. The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.

Section 6. The Constitution is the supreme law of the State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable.

Section 7. Whenever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional Conventions of the democratic regime of government with the King as Head of State.

CHARTER II

Rights and Liberties of Thai People

Part 1

General Provisions

Section 26. The exercise of powers by all State authorities shall pay due regard to human dignity, right and liberties in accordance with the provisions of this Constitution.

Section 27. Rights and liberties recognized by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, Constitutional organisations and State agencies with respect to the enactment, application and interpretation of all laws.

Section 28. A person can invoke human dignity or exercise his rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this Constitution or good morals.

A person whose rights and liberties recognized by this Constitution is violated can invoke the provisions of this Constitution to exercise rights in Courts or to defend himself in Courts.

A person can directly exercise rights in Courts to enforce the State's compliance with the provisions in this Chapter. If there is a law providing details on the exercise of any right and liberty recognized by this Constitution, the exercise of that right and liberty shall be in accordance with such law.

A person shall have the right to be promoted, supported and assisted by the State in the exercise of rights under this Chapter.

Section 29. The restriction of rights and liberties of a person as recognised by the Constitution shall not be imposed except by virtue of law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provisions of the Constitution authorizing its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of law.

Part 2

Equality

Section 30. All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view not inconsistent with the provisions of the Constitution, shall not be permitted.

Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise rights and liberties on the same basis as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 31. Members of the armed forces or the police force, Government officials, other officials of the State and officers or employees of State agencies shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law or rule issued by virtue of law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Part 3

Rights and Liberties of an Individual

Section 32. A person shall enjoy the right and liberty in his life and person.

Torture, brutal acts or punishment by cruel or inhumane means shall not be inflicted; but a punishment imposed pursuant to a Court Judgment or by virtue of law shall not be deemed as punishment by cruel or inhumane means under this paragraph.

Arrest and detention of person shall not be made except by order or warrant issued by the Courts or on other grounds as provided by law.

Search of person or any act affecting the right and liberty under paragraph one shall not be made except by virtue of law.

In the case where there is an act affecting the right and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to file a motion to the Courts to restrain or withdraw such act, which may also include the imposition of an appropriate measure, or a remedy for losses occurred therefrom.

Section 33. A person shall enjoy the liberty of dwelling.

A person is protected for his peaceful habitation in and for possession of a dwelling.

Entry into a dwelling without the consent of its possessor or search of a dwelling or private place shall not be made except by order or warrant issued by the Courts or on other grounds as provided by law.

Section 34. A person shall enjoy the liberty of travelling and the liberty of making the choice of his residence within the Kingdom.

Restrictions on liberties under paragraph one shall not be imposed except by virtue of law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of youth.

No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

Section 35. A person's family rights, dignity, reputation and the right of privacy shall be protected.

The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.

A person shall be protected from the unlawful exploitation of personal information in relation to oneself as provided by law.

Section 36. A person shall enjoy the liberty of communication by lawful means.

Censorship, detention or disclosure of communication between persons including any other act which discloses the content of a communication between persons shall not be made except by virtue of law specifically enacted for security of the State or maintaining public order or good morals.

Section 37. A person shall enjoy full liberty to profess a religion, a religious denomination or creed, and observe religious precepts or commandments or exercise a form of worship in accordance with his belief; provided that it is not contrary to his civic duties, public order or good morals.

In exercising the liberty referred to in paragraph one, a person shall be protected from any act of the State, which is derogatory to his rights or detrimental to his due benefits on the grounds of professing a religion, a religious denomination or creed or observing religious precepts or commandments or exercising a form of worship in accordance with his different belief from that of others.

Section 38. Forced labour shall not be imposed except by virtue of law specifically enacted for the purpose of averting imminent public calamity or by virtue of law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

Part 4

Rights in Judicial Process

Section 39. No person shall be subject to a criminal penalty unless he has committed an act which the law in force at the time of commission provides to be an offence and provides a punishment therefore, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence.

A suspect or defendant in a criminal case shall be presumed innocent.

Before a final judgement convicting a person for an offence, such person shall not be treated as a convict.

Section 40. A person shall have the following rights in the judicial process:

(1) right of easy, convenient, expedient and comprehensive access to the judicial process;

(2) fundamental rights in the judicial process which shall consist at least of the right to public trial; right to be adequately informed of the facts and to inspect documents, right to present one's facts, defences and evidence, right to object to judges, right to be considered by the full bench of judges, and right to be informed of the reasons for a ruling, judgement or order;

(3) right to a proper, swift and fair trial;

(4) an injured person, suspect, plaintiff, defendant, interested party, interested person or witness in a case shall have the right to appropriate treatment in the judicial process, which includes the right to proper, swift and fair investigations and to withhold self-incriminating testimony;

(5) an injured person, suspect, defendant and witness in a criminal case shall have the right to necessary and appropriate assistance from the State. Remuneration, compensation and necessary expenses shall be as provided by law;

(6) a child, youth, women, senior person or disabled or handicapped person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in cases relating to sexual violence;

(7) a suspect or defendant in a criminal case shall have the right to proper, swift and fair investigations or trial with an adequate opportunity to defend his case, the right to examine or to be informed of evidence as appropriate, right to be assisted counsel in legal proceedings and the right to bail;

(8) a person shall, in a civil case, have the right to appropriate legal assistance from the State.

Part 5

Property Rights

Section 41. Property rights of a person shall be protected. The extent and the restriction of such right shall be in accordance with the provisions of law.

Succession shall be protected. The rights of succession of a person shall be in accordance with the provisions of law.

Section 42. Expropriation of immovable property shall not be made except by virtue of law specifically for the purpose of a State activity with respect to public utilities, essential elements of national defence, procurement of national resources, town and country planning, promotion and preservation of environmental quality, agricultural or industrial development, land reform, conservation of ancient monuments and historical sites, or other public interests, and fair compensation shall be paid in due time to the owner thereof as well as to all persons having rights thereto, who suffer loss as a result of such expropriation, as provided by law.

The amount of compensation under paragraph one shall be fairly determined with due regard to the normal market price, mode of acquisition, condition and location of the immovable property, loss of the person whose property or right thereto is expropriated, and benefits that the State and the person whose property or right thereto is expropriated may receive from the use of the expropriated property.

An immovable property expropriation law shall specify the purpose of the expropriation and expressly prescribe a period of time for use of the immovable property. If the immovable property is not used to fulfil such purpose within such period of time, it shall be returned to the original owner or his heir.

The return of immovable property to the original owner or his heir under paragraph three and the claim for return of compensation paid shall be in accordance with the provisions of law.

Part 6

Rights and Liberties in Occupation

Section 43. A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of maintaining the security and safety of the State or the national economy, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources of the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Section 44. A person shall enjoy the right to work safety and welfare and to living security irrespective of whether he is employed or unemployed in accordance with the provisions of law.

Part 7

Freedom of Expression of Individuals and the Press

Section 45. A person shall enjoy the liberty to express opinions, speech, writing, printing, publication, and expressions by other means.

Restrictions on liberty under paragraph one shall not be imposed except by virtue of law specifically enacted for the purpose of maintaining the security and safety of the State,

protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.

The closure of a newspaper or other mass media in deprivation of the liberty under this section shall not be made.

The prevention of a newspaper or other mass media from presenting news or expressing their opinions, wholly or partly, or interference in any manner whatsoever in deprivation of the liberty under this section shall not be made except by virtue of law enacted in accordance with the provisions of paragraph two.

Censorship of news or articles by a competent official before publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media shall be a Thai national.

No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 46. Officials or employees in a private sector undertaking newspaper, radio or television broadcasting businesses or other mass media business shall enjoy the liberties to present news and express their opinions under the constitutional restrictions without mandate of any government agency, State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics, and shall enjoy the right to form an organization to protect

rights, liberties and fairness as well as a self-regulating mechanism for the professional organization.

Government officials, officials or employees of a government agency, State agency or State enterprise engaging in the radio or television broadcasting business or other mass media business shall enjoy the same liberties as those enjoyed by officials or employees in the private sector under paragraph one.

Any act committed by a person holding political position, State official or the owner of business with a view to obstruct or interfere with the presentation of news or expression of opinions on a public issue of a person under paragraph one or paragraph two, irrespective of whether such act has been done directly or indirectly, shall be deemed as a willful misuse of power and take no effect except where such act has been done to secure compliance with the law or professional ethics.

Section 47. Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest.

There shall be an independent regulatory body of the State having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law.

Undertakings under paragraph two shall have regard to the greatest benefit of the public at national and local levels with respect to education, culture, State security, other public interests and fair and free competition, including public participation in providing public mass media.

The supervision of the businesses under paragraph two shall also contain measures for the prevention of merger, cross-control or domination among the mass media or by other persons which may interfere with the public's liberty to access information or hinder the public from access to a variety of information.

Section 48. No person holding a political position shall be the owner of or hold shares in a newspaper, radio or television broadcasting or telecommunication business, whether in one's own name, or through the business ownership or shareholding of others on one's behalf, or by other direct or indirect means which enable the administration of such business in the same manner as an owner or shareholder of such business.

Part 8

Rights and Liberties in Education

Section 49. Every person shall enjoy equal rights to receive at least twelve years of comprehensive and quality education as provided by the State free of charge.

The indigent, disabled or handicapped, or destitute person shall enjoy equal rights under paragraph one and shall be supported by the State to receive education on an equal basis as other persons.

Education and training provided by professional or private organizations, alternative education of the public, self-learning and lifelong learning shall receive appropriate protection and promotion from the State.

Section 50. A person shall enjoy academic freedom.

Education and training, learning and teaching, research and disseminating of research according to academic principles shall be protected; provided that it is not contrary to his civic duties or good morals.

Part 9

Rights to Public Health Services and Welfare

Section 51. Every person shall enjoy equal rights to receive appropriate and standard public health service, and the indigent shall have the right to receive free medical treatment from a State infirmary.

A person shall have the right to receive comprehensive and efficient public health services from the State.

A person shall have the right to enjoy the prompt prevention and eradication of harmful contagious diseases from the State free of charge.

Section 52. Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development according to their potentials in a suitable environment with due regard to their participation.

Children, youth, women and family members shall have the right to receive protection against violence and unfair treatment from the State and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.

Interferences with and impositions of restrictions on the rights of children, youth and family members shall not be made except by virtue of law specifically enacted for the maintenance

of family institution or the greatest benefit of such person. Children and youth with no guardian shall have the right to receive appropriate care and education from the State.

Section 53. A person who is over sixty years of age and has insufficient income for living shall have the right to welfare, public facilities as fitting for such person's status and appropriate aid from the State.

Section 54. The disabled or handicapped shall have the right of access to and utilise welfare services, public facilities and appropriate aid from the State.

A person of unsound mind shall have the right to appropriate aid from the State.

Section 55. A person who is homeless and has insufficient income for living shall have the right to appropriate aid from the State.

Part 10

Rights to Information and Complaints

Section 56. A person shall have the right to be informed and to access public information in the possession of a government agency, State agency, State enterprise or local government organisation, except where the disclosure of such information shall affect the security of the State, public safety, the protected interests of other persons, or personal information as provided by law.

Section 57. A person shall have the right to receive information, explanation and reasons from a government agency, State agency, State enterprise or local government organization

before granting a license or undertaking a project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interests concerning him or a local community and shall have the right to express his opinions on such matters to the concerned agencies for their consideration.

The State shall arrange for a comprehensive public consultation process prior to the implementation of a social, economic, politic and cultural development plan, the expropriation of immovable property, the determination of town and country plan, the determination of land use, and the enactment of a rule which may affect the material interests of the public.

Section 58. A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his rights and liberties.

Section 59. A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time.

Section 60. A person shall have the right to take legal action against a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to assert liability for an act or omission of government officials, officials or employees of such agencies.

Section 61. The right of a person who is a consumer to receive truthful information shall be protected and a consumer shall have the right to make a complaint for remedy of damage and to unite with others so as to protect consumers' rights.

There shall be a consumer protection organisation which is independent from a State agency consisting of representatives of consumers to perform the functions of giving opinions to a State agency for consideration on the enactment and application of laws, rules and regulations and on the determination of various measures for consumer protection, and for examining and making a report on any act or omission related to consumer protection. The State shall provide financial support for an operation of such independent organisation.

Section 62. A person shall have the right to follow up and to request for examination of the performance of duties of a person holding political position, State agency and State officials.

A person who in good faith provides information related to the performance of duties of a person holding political position, State agency and State officials to the organisation examining the exercise of State power or State agency shall be protected.

Part 11

Liberties to Assembly and Association

Section 63. A person shall enjoy the liberty to assemble peacefully and without arms.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of law specifically enacted for the purpose of public assembling and for securing public convenience in the use of public places or for the maintenance of public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Section 64. A person shall enjoy the liberty to unite and form an association, union, federation, co-operative, farmers' group, private organization, non-governmental organisation or any other group.

Government officials and State officials shall enjoy the same liberty to association as other persons generally provided that the efficiency of State administration and the continuation of public services are not affected, as provided by law.

The restriction on such liberty under paragraph one and paragraph two shall not be imposed except by virtue of law specifically enacted for protecting the common interests of the public, maintaining public order or good morals or preventing economic monopoly.

Section 65. A person shall enjoy the liberty to unite and form a political party in order to manifest the political will of the people and to carry out political activities in fulfillment of such will through the democratic regime of government with the King as Head of State as provided in this Constitution.

The internal organisation, management and regulation of a political party shall be consistent with the fundamental principles of the democratic regime of government with the King as Head of State.

Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number prescribed by the Organic Act on Political Parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or

inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, have the right to refer it to the Constitutional Court for decision thereon.

In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, such resolution or regulation shall lapse.

Part 12

Community Rights

Section 66. Persons assembling as a community, local community or traditional local community shall have the right to preserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.

Section 67. The rights of a person to participate with the State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be appropriately protected.

Any project or activity which may seriously affect communities with respect to the quality of the environment, natural resources and biological diversity shall not be undertaken, unless its impacts on the quality of the environment and health

of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organisation, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to take legal action against a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to enforce the performance of duties under these provisions shall be protected.

Part 13

Rights to Protect the Constitution

Section 68. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

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

In the case where the Constitutional Court passes a ruling which compels the political party to cease the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court issues a dissolution order under paragraph three, the right to vote in an election of the leader and the executive committee of the dissolved political party at the time the act under paragraph one has been committed shall be suspended for a period of five years as from the date of such Constitutional Court order.

Section 69. A person shall have the right to peacefully resist an act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in this Constitution.

Promotion of Democracy and Constitutional Justice : the case of Thailand*

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I. INTRODUCTION

According to the Universal Declaration on democracy, adopted by the Inter-Parliamentary Council at its 161st Session (Cairo, 16 September 1997), democracy is a universally recognized ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences.¹ Democracy is both an ideal to be pursued and a mode of government to be applied according to modalities which reflect the diversity of experiences and cultural particularities without derogating from internationally recognized principles, norms and standards.² As an ideal,

* A paper presented to the Inaugural Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) on "Present and Future of Constitutional Justice in Asia," organized by the Constitutional Court of Republic of Korea.

¹ Universal Declaration on democracy, adopted by the Inter-Parliamentary Council at its 161st Session (Cairo, 16 September 1997), the principles of democracy no.1 at p.IV.

² *Ibid.*, the principles of democracy no.2 at p.IV.

democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.³

Democracy is also inseparable from the respect for and observance of the rule of law and human rights.

In the world today, most countries proclaim themselves democratic countries. The political regime adopted in these countries is normally “constitutional democracy”. This is a democracy in accordance with the constitution which is the supreme law of the land. In constitutional democracy, an institution (normally a judicial body) is usually established to rule on constitutional matters and to see to it that the provisions of the constitution will be observed by relevant government authority. This institution could be either a supreme court at the top of a court system with the final authority to interpret the constitution and settle constitutional disputes (the so-called “American Model”) or a specialized constitutional court or a body with other names that solely works on constitutional issues (the so-called “European Model”). Constitutional courts or equivalent institutions, through their power of constitutional review, can play a meaningful role in the promotion of democracy in their countries.

³ *Ibid.*, the principles of democracy no.3 at p.IV.

This paper will look into the case of Thailand. Its purpose is to study the role of the Constitutional Court of Thailand in the promotion of democracy. It will first address in brief the democratic principles as contained in the Constitution of Thailand. Powers and duties of the Constitutional Court will then be examined. After that, selected case summaries will be discussed. Conclusions will then follow.

II. BRIEF DESCRIPTION OF DEMOCRATIC PRINCIPLES IN THE CONSTITUTION

Thailand is a constitutional democracy. It is a democracy governed by a constitution. The current Constitution is the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The Constitution provides the legal foundation and basic structure, or framework, of the country's government. It prescribes the form and procedures of the government as well as grants certain powers to the government. It designates the major organs, or institutions, of government and the method by which the personnel – or top personnel – in each are to be selected. It assigns to each major governmental institution its particular area of authority and responsibility. Moreover, it defines the relationship between the government and the individual citizen as well as the relationships among the principal organs of government and establishes the metes and bounds of political authority – i.e., imposes limits on governmental power. Most importantly, it provides for the guarantees and the protection of rights and liberties of the people.

The Constitution is divided into 15 chapters and a transitory provisions. The 15 Chapters deal with the following matters.

- Chapter I - General Provisions
- Chapter II - The King
- Chapter III - Rights and Liberties of the Thai People
- Chapter IV - Duties of the Thai people
- Chapter V - Directive Principles of Fundamental State Policies
- Chapter VI - The National Assembly
- Chapter VII - Direct Political Participation of the Public
- Chapter VIII - Monetary, Public Finance and Budget
- Chapter IX - The Council of Ministers
- Chapter X - The Courts
- Chapter XI - Constitutional Organs
- Chapter XII - Inspection of the Exercise of State Power
- Chapter XIII - Ethics of Persons Holding Political Positions and State Officials
- Chapter XIV - Local Administration
- Chapter XV - Amendment of the Constitution

Various democratic principles such as, popular sovereignty, free and fair elections, majority rule and minority rights, separation of powers, checks and balances, rule of law, protection of rights and liberties of the people, independence of the judiciary, etc. are all enshrined in the Constitution.

The Constitution states that Thailand adopts a democratic regime of government with the King as Head of State.⁴ Sovereign

⁴ The Constitution of the Kingdom of Thailand, B.E. 2550 (2007),

powers, belonging to the Thai people, which are separated into legislative, executive and judicial powers are exercised through the National Assembly, the Council of Ministers and the Courts respectively in accordance with the provisions of the Constitution. The performance of duties of the National Assembly, the Council of Ministers, the Courts, Constitutional Organs and State agencies must be in accordance with the rule of law.⁵

Interestingly, the Constitution attaches great importance to the issues of human dignity, rights, liberties and equality of the people. There are 46 sections concerning these issues in the Constitution. As mentioned earlier, these issues are inseparable part of democracy.

It could be noted later on that most of the cases which come to the Constitutional Court for constitutional review are cases that invoke the constitutional provisions on human dignity, rights, liberties and equality of the people as provisions to which provisions of law are alleged to be contrary or with which provisions of law are alleged to be inconsistent. Cases concerning other issues or other parts of the Constitution are rather few and far between.

Thailand's system of government is a parliamentary system, just like the Westminster model. The separation of powers between the Legislature and the Executive is not strict. Rather, it is a fusion of powers: the Executive comes from the majority in the Legislature. The Legislature, apart from having the function of enactment of legislations, has the function of

section 2.

⁵ *Ibid.*, section 3.

controlling the administration of state affairs of the Executive. The Executive needs to submit the budget for the Legislature's approval. Most importantly, the Executive can remain in office so long as it enjoys the confidence of the Legislature. Without the Legislature's confidence, the Executive falls. However, as checks and balances, the Executive can recommend to the King to dissolve the Legislature for a new general election.

The Judiciary, on the other hand, is separated from the Legislature and the Executive and is independent of both of them. Trial and adjudication of cases are the powers of the Courts or the Judiciary, which must be carried out with due regard to justice in accordance with the Constitution, laws and in the name of the King. Judges are independent in the proper, swift and fair trial and adjudication of cases in accordance with the Constitution and laws.⁶ The principle of independence of the Judiciary is thus affirmed.

III. THE CONSTITUTIONAL COURT AND ITS JURISDICTION

In constitutional democracy, the constitution is regarded as supreme. Thus, it is provided in the Constitution that the Constitution is supreme law of the state. The provisions of any law, rule and regulation, which are contrary to or inconsistent with the Constitution will be unenforceable.

In this connection, the Constitutional Court performs the important function of safeguarding this supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translates

⁶ *Ibid.*, section 197 paras. 1 and 2.

into reality the protection of rights and liberties by the exercise of adjudicative power.

The Constitutional Court was established by virtue of the Constitution. It consists of the President and eight judges to be appointed by the King upon advice of the Senate. Judges of the Constitutional Court are styled “Justices of the Constitutional Court” .

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties may be divided into the following nine categories :

(1) constitutional review of bills and draft rules of procedure of the legislative branch prior to their promulgation to ensure that they are not inconsistent with or contrary to the Constitution;⁷

(2) constitutional review of a promulgated law to ensure that it is not inconsistent with or contrary to the Constitution;⁸

(3) constitutional review of the prerequisites for the enactment of an Emergency Decree to ensure that it is not inconsistent with or contrary to the Constitution;⁹

(4) ruling on whether or not members of the House of Representatives, senators or members of the committee are involved directly or indirectly in the use of the appropriations;¹⁰

(5) ruling on disputes regarding the powers and duties among the National Assembly, the Council of Ministers or the

⁷ *Ibid.*, sections 141, 149, 154, 155.

⁸ *Ibid.*, sections 211, 245, 257, 212.

⁹ *Ibid.*, section 184.

¹⁰ *Ibid.*, section 168.

Constitutional organs other than the Courts which arise between two or more of such organs;¹¹

(6) review resolutions or regulations of political parties, consideration of appeals of members of the House of Representatives and ruling on cases concerning the constitutional exercise of political rights and liberties by a person or a political party;¹²

(7) ruling on the membership or qualification of members of the National Assembly, Ministers and Election Commissioners;¹³

(8) ruling on whether or not a treaty requires prior approval of the National Assembly;¹⁴

(9) powers and duties prescribed under the Organic Act on Political Parties, B.E. 2550 (2007).¹⁵

Rulings by the Constitutional Court in the nine categories of constitutional cases can help promote and strengthen the principles of democracy in accordance with the Constitution.

Since constitutional review is the main jurisdiction of the Constitutional Court, it is therefore fitting that more detailed explanation should be given.

The Constitution provides for both *a priori* review as mentioned in (1) above and *a posteriori* review as mentioned

¹¹ *Ibid.*, section 214.

¹² *Ibid.*, sections 65, 106 (7), 237.

¹³ *Ibid.*, sections 91, 182, 233.

¹⁴ *Ibid.*, section 190.

¹⁵ The Organic Act on Political Parties, B.E. 2550 (2007), section 13, 14, 20 (4), 31, 33, 41, 91, 93, 94, 98. See also, Office of the Constitutional Court, A Basic Understanding of the Constitutional Court of the Kingdom of Thailand, (2nd Edition) 2011 pp. 4 – 32.

in (2) above. The significance of constitutional review, especially *a priori* review, is that the majority in the Legislature cannot make laws as it pleases just because it has majority vote but need to make sure that such laws are in consonant with the Constitution. So, the need to be within the bounds of the Constitution is crucial.

As far as *a priori* review is concerned, there are two types of *a priori* review.

1. *A priori* review of an Organic Bill before it is presented to the King for Royal Signature. This is compulsory. The Constitutional Court has to complete its determination of its constitutionality within thirty days.¹⁶

2. *A priori* review of a Bill before it is presented to the King for Royal Signature. If either members of the House of Representatives, senators or members of both Houses of the National Assembly constituting no fewer than one tenth of the existing members of both Houses or the Prime Minister finds that such a bill contains provisions which are contrary to or inconsistent with the Constitution or the enactment process as provided by the Constitution was not properly complied with.¹⁷

In its *a priori* review, the Constitutional Court will look into the substance of the bill as well as the enactment process. In case of *a priori* review of an organic bill, if the Constitutional Court decides that the provisions of an organic bill are contrary to or inconsistent with the Constitution, such provisions shall lapse. But if the Constitutional Court decides that such provisions are the essential element thereof or the organic bill has not been

¹⁶ *Ibid.*, section 141.

¹⁷ *Ibid.*, section 154.

duty enacted under the provisions of the Constitution, such organic bill shall lapse.¹⁸

However, in the case where a decision of the Constitutional Court results in the lapse of provisions contrary to or inconsistent with the Constitution as stated above, such organic bill will be returned to the House of the Representatives and the Senate respectively for their reconsideration. The House of Representatives or the Senate will amend the organic bill by removing the provisions which are contrary to or inconsistent with the Constitution. The organic bill will then proceed towards promulgation.¹⁹

In *a priori* review of an ordinary bill, the Constitution prescribes that if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, or has not been enacted in accordance with the provisions of this Constitution, and such provisions constitute an essential substance, the entire bill will lapse.²⁰ Such being a case, the enactment process for that bill will have to be restarted.

However, if the Constitutional Court rules that such bill contains provisions which are contrary to or inconsistent with the Constitution, but do not constitute an essential substance, only such contrary or inconsistent provisions will lapse. The bill without the lapsed provisions, however, will be able to come into force upon promulgation.²¹

A posteriori review, on the other hand, is a review of promulgated law in a concrete case. In its *a posteriori* review,

¹⁸ *Ibid.*, section 141 para 2.

¹⁹ *Ibid.*, section 141 para 3.

²⁰ *Ibid.*, section 154 para 3.

²¹ *Ibid.*, section 154 para 4.

the Constitutional Court can only look into the substance of the promulgated law. If the provisions of law are found to be contrary to or inconsistent with the Constitution they will be unenforceable.²²

As regards channels of referring the constitutional cases to the Constitutional Court or access to the Constitutional Court for *a posteriori* review, normally questions as to whether one or more provisions of law are contrary to or inconsistent with one or more provisions of the Constitution or not are referred by the Courts, either the Courts of Justice or the Administrative Courts or even the Military Courts.²³ However, the Constitution also allows the Ombudsmen²⁴ and the National Human Rights Commission²⁵ to file applications to the Constitutional Court. Moreover, the Constitution further provides that a person whose rights and liberties recognised by the Constitution has been violated by a provision of law has the right to file an application with the Constitutional Court for a ruling.²⁶ But in case of individual constitutional complaint such as this, the following conditions must be satisfied:

(1) A person who submits a complaint must have been violated by a provision of law;

(2) Such a person submits a complaint to the Constitutional Court for a ruling that such a provision of law is contrary to or inconsistent with the Constitution; and

²² *Ibid.*, section 6.

²³ *Ibid.*, section 211.

²⁴ *Ibid.*, section 245.

²⁵ *Ibid.*, section 257.

²⁶ *Ibid.*, section 212.

(3) All legal remedies must have been exhausted, namely the case must have gone through the Courts, the Ombudsmen and the National Human Rights Commission. The complaint to the Constitutional Court must be a last resort remedy sought for.

These conditions are rather stringent, especially the third one. By far, there has been thinking, among a number of justices of the Constitutional Court, of relaxing the third condition somewhat so that cases could be accepted for consideration of the Constitutional Court. Since the promulgation of the Constitution in August 2007, of all individual constitutional complaints filed with the Constitutional Court (92 complaints) only one could satisfy all conditions required to be accepted for consideration.

The majority of cases for constitutional review seized by the Constitutional Court are naturally cases of *a posteriori* review that concern issues of human dignity, rights, liberties and equality of the people recognised and guaranteed by the Constitution. Cases of *a priori* review are few and far between, although there were some *a priori* review cases which the Constitutional Court found that provisions of laws violated the rights and liberties of the people.

It is a duty of the Constitutional Court, whenever a case comes up for review, to check whether one or more provisions of law under consideration are contrary to or inconsistent with the Constitution. In this way, it will be certain that the laws enacted by the legislature will conform to the Constitution and will not encroach upon human dignity, rights, liberties and equality of the people. Thus, through constitutional review of legislative acts, does the Constitutional Court play an important role in

protecting human dignity, rights, liberties and equality guaranteed by the Constitution for the people, which in turn helps promote the rule of law and the principles of democracy.

IV. JURISPRUDENCE OF THE CONSTITUTIONAL COURT - SELECTED CASE SUMMARIES

Since its establishment in 1998, the Constitutional Court has rendered several important decisions or rulings. Only some of these decisions or rulings are mentioned here.

1. Case concerning the principle of equality. In the Ruling No. 21/2546, the Constitutional Court held that the Names of Persons Act B.E. 2505 (1962), was contrary to or inconsistent with the Constitution because it contained mandatory provisions requiring married women to use only their husbands' surnames would be an inequality in rights due to differences in sexes and therefore contravened the principle of equality. This ruling sets a precedent on the equality between men and women in society.

2. Case concerning the liberty to assemble. In the Ruling No. 11/2549 which is *a priori* review case, the Constitutional Court held that a new section introduced to revise the Highway Act, B.E. 2535 (1992) which stated that “no person shall assemble in the highway zone in a manner which obstructs traffic or may pose a danger or cause injury to vehicles or highway users, except where written permission of the Director of Highways or a person delegated by the Director of Highways is obtained, or the assembly is constituted as a column, procession or traditional or cultural assembly, or a public benefit activity or situated within an area exempt from permission filings as prescribed by notification of the Minister” and paragraph two stated that “applications for permission and the grant of

permissions shall be in accordance with the rules and procedures prescribed by Ministerial Regulation”, were contrary to or inconsistent with the provisions of the Constitution regarding limits of restriction of rights and liberties and the liberty to assemble because it more than necessarily restricted the liberty to assemble peacefully and without arms, and affected the essential substance of the fundamental liberty of the people. Such a new section therefore lapsed.

3. Case concerning incompatibilities because of conflict of interests. In the Ruling No. 12-13/2551, the Constitutional Court held that section 267 of the Constitution prohibits the Prime Minister and Ministers from being employees of any person to prevent conflict of interests. The fact that Mr. Samak Sundaravej, Prime Minister at that time, continued to act as a host for the TV cooking shows and accepted remuneration even after assuming the position of the Prime Minister, showed that he was employed as stipulated in section 267 of the Constitution. He therefore committed an act prohibited by or incompatible with section 267 of the Constitution, resulting in the termination of his premiership.

4. Case concerning the dissolution of political parties because of election frauds. In the Ruling No. 18/2551 (Ruling on the dissolution of Machima Thipathai Party), No. 19/2551 (Ruling on the dissolution of Chart Thai Party), and Ruling No. 20/2551 (Ruling on the dissolution of People Power Party), the Constitutional Court stated that the Election Commission or the Supreme Court of Justice, as the case may be, considered that there were reasonable grounds to believe that members of the executive committees of the three political parties did violate the Election Law resulting in the election of members of the

House of Representatives not proceeding in an honest and fair manner in order to acquire the power to rule the country by a means which is not in accordance with the modes provided in the Constitution. The Constitutional Court therefore decided to dissolve these three political parties. The effect of the ruling is thus laid down as a principle that a democratic regime of government must always go through an honest and fair election in accordance with the Constitution.

5. Case concerning the right of engagement in a business or an occupation. In the Ruling No. 12/2552, the Constitutional Court ruled that the Military Government Order issued in 1972 which prohibited owners or possessors of shops from operating food and beverage businesses between 1 a.m. to 5 a.m. without authorization, limited the liberties to run a business and to undertake a fair and free competition and held that that Military Government Order was against the provision on restriction of the rights and liberties of people as well as the right of engagement in a business or an occupation as provided by the Constitution. This decision therefore sets a standard on the protection of the right of engagement in a business or an occupation of individuals.

6. Case concerning the right to be presumed innocent. In the Ruling No. 12/2555, the Constitutional Court considered that the presumption of innocence principle as stated in section 39 paragraph two of the Constitution derived from human rights principle as enunciated in Article 11 of the Universal Declaration of Human Rights. The presumption of innocence principle is one of the fundamental principle of criminal justice as well as an important component of the rule of law generally accepted in most civilized countries and internationally through the

Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to which Thailand is a party.

The Constitutional Court, therefore, held that section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), specifically that part which presumed guilt on the part of a managing director, manager or any person responsible for the operation of the juristic person without proof that he or she had a part in the commission of the offence of the juristic person, was contrary to or inconsistent with section 39 paragraph two (presumption of innocence principle) of the Constitution.

Regarding compliance with decisions or rulings of the Constitutional Court, it could be said that all constitutional organs and state agencies are required by the Constitution to comply with such decisions. The Constitution stipulates that the decision of the Constitutional Court will be deemed final and binding on the National Assembly, the Council of Ministers, the Courts and other state organs. It is final in the sense that the parties may not file an appeal to any court or body. It is binding in the sense that the decisions of the Constitutional Court will be binding not only to the parties but also to third parties. Thus, once the Constitutional Court passes a ruling, that ruling will be directly binding on the National Assembly, the Council of Ministers, the Courts as well as constitutional organs and state agencies in the enactment, application and interpretation of laws.

In practice, so far, there has never been a case of non-compliance with the decision of the Constitutional Court once the decision has been rendered.

However, during the process of the Court's deliberation of a case, there may be criticisms, diverse challenges or any form of political pressure from some quarters. Take for example, on the day that the Constitutional Court would read its ruling on the case of dissolution of the three political parties, there were a blockade of the courthouse of the Constitutional Court by a mob who supported the three political parties to prevent the Justices of the Constitutional Court and officials of the Office of the Constitutional Court from entering the courthouse to perform their duties. The venue for hearing and decision on these three political parties' dissolution cases had finally been shifted to the courthouse of the Administrative Court.

V. CONCLUSIONS

Through constitutional review and the adjudication of other types of constitutional cases under its jurisdiction, the Constitutional court can help promote the democratic principles enunciated in the Constitution. How best the Constitutional Court can perform this function very much depends on its independence. As far as its institutional independence is concerned, it can be said that such institutional independence is at quite a satisfactory level.²⁷ However, as far as the individual independence of each Justice of the Constitutional Court is concerned, it is rather difficult to gauge. Very much depends on the "state of mind" of each Justice. All in all, we should trust that the Justices of the Constitutional Court will discharge their

²⁷ The issue of independence of the Constitutional Court was examined extensively in Chalermpon Ake-uru, Separation of Powers and Independence of the Constitutional Court of Thailand, a paper presented to the 2nd Congress of the World Conference on Constitutional Justice, Rio de Janeiro, Brazil, 16-18 January 2011.

judicial duties with impartiality, without fear or favour, affection or ill will, in accordance with their oath of office solemnly declared before His Majesty the King at the time of their taking office. The higher level of the Constitutional Court's independence, the more credibility and confidence it receives from the public and hence the better position to promote democracy in accordance with the Constitution.

The Constitutional court had a remarkable records in the promotion of democracy in the past, though sometimes not without difficulties or even damage. The fact that it could surmount obstacles and problems signifies its resilience. It cannot be said that in the future it will not experience any challenges. But it can be surely said that it will face problems with resolve and determination so as to fulfill what its slogan enjoins:

*“Adhere to rule of law,
uphold democracy,
protect rights and liberties of the people.”*

Constitutional Review by the Constitutional Court : the case of Thailand^{1*}

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Justice of the Constitutional Court of Thailand

I. INTRODUCTION

Constitutional democratic countries which adhere to the principle of supremacy of the constitution normally follow the so-called “European model” in establishing a specialized constitutional court or an organ equivalent to a constitutional court to exercise the power of constitutional review of legislative acts to ensure that the rights and liberties of the people will not be violated by the use of state powers. While constitutional review is the core jurisdiction of such a constitutional court or an equivalent institution, the constitution and other laws may provide it with other kinds of jurisdiction. To what extent a constitutional court or an equivalent institution may have other kinds of jurisdiction depends on the constitutional design by the constituent power of the country, having taken into account

^{1*} A paper presented to the International Conference on “Tradition and perspectives for the Constitutional Review” organized on the occasion of the 20th Anniversary of the Constitutional Court of Romania, Bucharest, 21-23 June 2012.

the historical, social and cultural background as well as the political and economic environment of the country. At a glance, the jurisdiction of a constitutional court or an equivalent institution of each country may sound or look the same. But, in fact, there are variation even in the substance of constitutional review, not to mention a wide difference in other kinds of jurisdiction. For instance, as regards constitutional review, one country may have only *a priori* review power while the other has only *a posteriori* review power. Still, another has both. A comparative study of jurisdiction of constitutional courts and equivalent institutions of many countries will enhance mutual understanding among countries in their co-operation with one another for mutual benefits.

The purpose of this paper is to explore constitutional review as practiced in Thailand. The focus of the paper will be on the constitutional review by the Constitutional Court of Thailand. But other jurisdiction of the Constitutional Court of Thailand will also be mentioned in passing so that a total picture can be seen. The paper will first look at the jurisdiction of the Constitutional Court in general. Further, the court's jurisdiction in constitutional review will be discussed in more detail. After that, selected case summaries of constitutional review will be examined, followed by conclusions.

II. THE CONSTITUTIONAL COURT OF THAILAND AND ITS JURISDICTION

Thailand is a constitutional democracy. It is a democracy governed by a constitution. The current constitution is the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The Constitution states that Thailand adopts a democratic regime

of government with the King as Head of State.² Sovereign powers, belonging to the Thai people, which are separated into legislative, executive and judicial powers are exercised through the National Assembly, the Council of Ministers and the Courts respectively in accordance with the provisions of the Constitution. The performance of duties of the National Assembly, the Council of Ministers, the Courts, Constitutional Organs and state agencies must be in accordance with the rule of law.³

In constitutional democracy, the constitution is regarded as supreme. Thus, it is provided in the Constitution that the Constitution is supreme law of the state. The provisions of any law, rule and regulation, which are contrary to or inconsistent with the Constitution will be unenforceable.

In this connection, the Constitutional Court performs the important function of safeguarding this supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translates into reality the protection of rights and liberties by the exercise of adjudicative power.

The Constitutional Court was established by virtue of the Constitution. It consists of the President and eight judges to be appointed by the King upon advice of the Senate. Judges of the Constitutional Court are styled “Justices of the Constitutional Court” .

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling

² The Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 2

³ *Ibid.*, section 3.

constitutional cases. These powers and duties may be divided into the following nine categories :

(1) constitutional review of bills and draft rules of procedure of the legislative branch prior to their promulgation to ensure that they are not inconsistent with or contrary to the Constitution;⁴

(2) constitutional review of a promulgated law to ensure that it is not inconsistent with or contrary to the Constitution;⁵

(3) constitutional review of the conditions for the enactment of an Emergency Decree to ensure that it is not inconsistent with or contrary to the Constitution;⁶

(4) ruling on whether or not members of the House of Representatives, senators or members of the committee are involved directly or indirectly in the use of the appropriations;⁷

(5) ruling on disputes regarding the powers and duties among the National Assembly, the Council of Ministers or the Constitutional organs other than the Courts which arise between two or more of such organs;⁸

(6) review resolutions or regulations of political parties, consideration of appeals of members of the House of Representatives and ruling on cases concerning the constitutional exercise of political rights and liberties by a person or a political party;⁹

⁴ *Ibid.*, sections 141, 149, 154, 155.

⁵ *Ibid.*, sections 211, 245, 257, 212.

⁶ *Ibid.*, section 184.

⁷ *Ibid.*, section 168.

⁸ *Ibid.*, section 214.

⁹ *Ibid.*, sections 65, 106 (7), 237.

(7) ruling on the membership or qualification of members of the National Assembly, Ministers and Election Commissioners;¹⁰

(8) ruling on whether or not a treaty requires prior approval of the National Assembly;¹¹

(9) powers and duties prescribed under the Organic Act on Political Parties, B.E. 2550 (2007).¹²

It can be noted that while powers and duties or jurisdiction (1) to (3) could be termed constitutional review, the other powers and duties or jurisdiction (4) to (9) could be called dispute resolution jurisdiction. In the next part of this paper, substance of the jurisdiction (1) to (3) will be examined one by one in more detail.

III. SUBSTANCE OF CONSTITUTIONAL REVIEW EXAMINED

Constitutional review is the power to examine legislative acts for conformity with the constitution. In Thailand, the Constitutional Court's power or jurisdiction covers the constitutional review of legislative acts or acts enacted by the National Assembly and acts of equivalent rank in the legal hierarchy, such as emergency decrees issued by the Executive or the Council of Ministers which have already been approved by the National Assembly or the legislature. Timing of review

¹⁰ *Ibid.*, sections 91, 182, 233.

¹¹ *Ibid.*, section 190.

¹² The Organic Act on Political Parties, B.E. 2550 (2007), section 13, 14, 20 (4), 31, 33, 41, 91, 93, 94, 98. See also, Office of the Constitutional Court, A Basic Understanding of the Constitutional Court of the Kingdom of Thailand, (2nd Edition) 2011 pp. 4 – 32.

could be before promulgation (*a priori* review) and after promulgation (*a posteriori* review). Moreover, the conditions for enactment of an emergency decree could also be reviewed.

Judicial review of lower ranking rules or regulations – the so-called “delegated legislation” and administrative acts, on the other hand, falls within the jurisdiction of Administrative Courts.

Another point which should be mentioned is that the Constitutional Court, as a court, cannot start the proceeding by itself at its own initiative. There must be some organs or persons who have legal standing (*locus standi*) as specified by the Constitution to file an application with the Constitutional Court to start the case.

In this part, each type of constitutional review will be examined in accordance with the following basis: legal standing (*locus standi*), scope of review and effect of review.

1. Constitutional review of bills and draft rules of procedure of the National Assembly prior to their promulgation.

This is *a priori* review which covers cases of organic bills, ordinary bills, draft rules of procedure of the National Assembly and withheld bills.

1.1 Constitutional review of organic bills.

An organic act is considered more important and holds a higher status than an ordinary act in the legal hierarchy. There are only 9 organic acts that can be enacted under the Constitution¹³, namely:

¹³ *Supra* note 10, section 138.

- (1) Organic Act on Election of Members of the House of Representatives and Obtaining the Senators;
- (2) Organic Act on Election Commission;
- (3) Organic Act on Political Parties;
- (4) Organic Act on Referendums;
- (5) Organic Act on Constitutional Court Procedures;
- (6) Organic Act on Criminal Procedures for Holders of Political Positions;
- (7) Organic Act on Ombudsmen;
- (8) Organic Act on Counter Corruption; and
- (9) Organic Act on State Audit.

a. Legal standing (locus standi)

Before an organic bill is presented to the King for royal assent, the Constitution provides for constitutional review of such an organic bill by the Constitutional Court.¹⁴ This is compulsory according to the Constitution. The Constitutional Court is required to complete its determination of constitutionality of such an organic bill within 30 days as from the receipt date of the matter.¹⁵

The President of the National Assembly (President of the House of Representatives is *ex officio* the President of the National Assembly)¹⁶ is the one who has a *locus standi* in this case.

b. Scope of review

As for the scope of review, in *a priori* review the Constitutional Court will look into the substance of the bill as

¹⁴ *Ibid.*, section 141.

¹⁵ *Ibid.*, same section.

¹⁶ *Ibid.*, section 89 para. 1.

well as the enactment process. In practice, normally, the Constitutional Court considers 2 issues: 1) whether an organic bill has been duly enacted under the provisions of the Constitution or not and 2) whether the provisions of an organic bill are contrary to or inconsistent with the Constitution or not.

Regarding the enactment process, for example, these issues will be considered:

- whether the organic bill is introduced by those who have authority or not;
- whether the organic bill is first submitted to the House of Representatives or not;
- whether the organic bill is submitted together with an explanatory memorandum or not;
- whether consideration of the organic bill in the House of Representatives and the Senate are made in three readings in accordance with the Constitution or not;
- whether at a sitting of each reading and at the time of voting a quorum is constituted in accordance with the Constitution or not.

etc

As regards consideration of the substance of the organic bill, the Constitutional Court has to consider every provision of the organic bill to examine its conformity with the Constitution.

c. Effect of review

In *a priori* review of an organic bill, if the Constitutional Court finds that the organic bill has not been duly enacted under the provisions of the Constitution, such an organic bill will

lapse. If the Constitutional Court decides that the provisions of an organic bill are contrary to or inconsistent with the Constitution, such provisions will lapse. However, if the Constitutional Court decides that such provisions are the essential element of the organic bill, such organic bill will lapse.¹⁷

In practice, the Constitutional Court usually begins its consideration by looking at the enactment process. If it finds that the enactment process is in conformity with the provisions of the Constitution, it will proceed to consider the substance of the organic bill.

In the case where a decision of the Constitutional Court results in the lapse of provisions contrary to or inconsistent with the Constitution as stated above, such an organic bill will be returned to the House of Representatives and the Senate respectively for their reconsideration. The House of Representatives or the Senate will amend the organic bill by removing the provisions which are contrary to or inconsistent with the Constitution. The organic bill will then proceed towards promulgation.¹⁸

In the case where the entire organic bill lapses, the enactment process for that organic bill will have to be restarted.

1.2 Constitutional review of ordinary bills.

a. Legal standing (locus standi)

With regard to an ordinary bill approved by the National Assembly prior to submission by the Prime Minister to the King for royal assent, or any ordinary bill reaffirmed by the National

¹⁷ *Ibid.*, section 141 para. 2.

¹⁸ *Ibid.*, section 141 para. 2.

Assembly and prior to re-submission of the bill by the Prime Minister to the King for royal assent:

(1) if members of the House of Representatives, senators or members of both Houses of the National Assembly of not less than one-tenth of the total number of the existing members of both Houses find that such a bill contains provisions which are contrary to or inconsistent with the Constitution or that the enactment process as provided by the Constitution was not properly complied with, an opinion may be submitted to the President of the House of Representatives or President of the Senate or President of the National Assembly, as the case may be, after which the President of the House receiving such opinion will forward the opinion to the Constitutional Court for decision, and the Prime Minister will be notified without delay;

(2) if the Prime Minister is of the opinion that such a bill contains provisions which are contrary to or inconsistent with the Constitution or the enactment process as provided by the Constitution was not properly complied with, such opinion will be sent to the Constitutional Court for ruling and the President of the House of Representatives and the President of the Senate will be notified without delay.¹⁹

Thus, those who have legal standing (*locus standi*) in the case of *a priori* review of an ordinary bill are one of the following:

(a) the President of the House of Representatives (at the request of not less than one-tenth of the total number of the existing member of the House); or

¹⁹ *Ibid.*, section 154 para. 1, 2 and 3.

(b) the President of the Senate (at the request of not less than one-tenth of the total number of the existing senators); or

(c) the President of the National Assembly (at the request of not less than one-tenth of the total number of the existing numbers of the House of Representatives and senators combined); or

(d) the Prime Minister.

b. Scope of review

The scope of review with regard to *a priori* review of an ordinary bill follows the same procedure as *a priori* review of an organic bill enumerated above. The Constitutional Court will look into the enactment process as well as the substance of the bill.

During the consideration of the Constitutional Court, the Prime Minister will suspend the proceedings in respect of the promulgation of the bill until the Constitutional Court gives a decision thereon.²⁰

c. Effect of review

In *a priori* review of an ordinary bill, the Constitution prescribes that if the Constitutional Court rules that such a bill contains provisions which are contrary to or inconsistent with the Constitution, or has not been enacted in accordance with the provisions of the Constitution, and such provisions form the essential element of the bill, the entire bill will lapse.²¹ Such being a case, the enactment process for that bill will have to be restarted.

²⁰ *Ibid.*, section 154 para. 2.

²¹ *Ibid.*, section 154 para. 3.

However, if the Constitutional Court decides that such a bill contains provisions which are contrary to or inconsistent with the Constitution, but such provisions do not constitute the essential element of the bill, only such conflicting or inconsistent provisions will lapse. The bill without the lapsed provisions, nonetheless, will be able to come into force upon promulgation.²²

1.3 Constitutional review of draft rules of procedure of the House of Representatives, the Senate and the National Assembly.

The Constitution stipulates that the provision of the Constitution regarding constitutional review of an ordinary bill will apply *mutatis mutandis* to draft rules of procedure of the House of Representatives, draft rules of procedure of the Senate and draft rules of procedure of the National Assembly which have already been approved by the House of Representatives, the Senate or the National Assembly, as the case may be, but not yet published in the Government Gazette.²³ The Constitutional Court, accordingly has jurisdiction to carry out this kind of constitutional review.

a. Legal standing (locus standi)

Persons having the legal standing to file such a case to the Constitutional Court are members of the House of Representatives or senators in the number no fewer than one-tenth of each respective House, or members of both Houses altogether constituting no fewer than one-tenth of both Houses in the case of an application for review of the draft rules of procedure of the National Assembly.

²² *Ibid.*, section 154 para. 4.

²³ *Ibid.*, section 155.

b. Scope of review

The scope of review in this case is the same as in the case of constitutional review of an ordinary bill. The review examines whether those draft rules of procedure contain provisions which are contrary to or inconsistent with the Constitution or have not been enacted in accordance with the provisions of the Constitution.

c. Effect of review

Regarding the effect of review in this case, the provision of the Constitution concerning constitutional review of an ordinary bill will be applied *mutatis mutandis*.

1.4 Review whether or not the principles of a bill are the same as or similar to principles of a bill which has been withheld.

The Constitution provides a legislative process whereby a bill will first be submitted to the House of Representatives for consideration.²⁴ Once the House of Representatives has given its approval, the bill would then be presented to the Senate for approval.²⁵ At this stage, if the Senate does not concur with the House of Representatives, it will be deemed that the Senate has withheld the bill which will be returned to the House of Representatives.²⁶ If the Senate amends the bill but the House of Representatives does not agree with the amendments, a joint committee will then be formed to consider the bill. But in an event that either House does not concur with the bill considered by the joint committee, the bill will be deemed

²⁴ *Ibid.*, section 142 para. 4.

²⁵ *Ibid.*, section 146 para. 1.

²⁶ *Ibid.*, section 147 para. 1 (2).

withheld too.²⁷ During the withholding of such a bill, the House of Representatives may reconsider the bill only after the lapse of 180 days (except for fiscal bills which it may consider immediately).²⁸ While such a bill is withheld, the Council of Ministers or members of the House of Representatives are prohibited from introducing a bill containing the same or similar principles as that of the bill so withheld.²⁹

a. Legal standing (*locus standi*)

In the case where the House of Representatives or the Senate finds that a bill so introduced or referred to for consideration has the same or similar principles as that of the bill being withheld, the President of the House of Representatives or the President of the Senate will refer the said bill to the Constitutional Court for decision.

So, in this case, the person who has legal standing (*locus standi*) is the President of the House of Representatives or the President of the Senate.

b. Scope of review

The review by the Constitutional Court in this case is to examine whether or not the bill referred by the applicant has the same or similar principles as that of the withheld bill.

c. Effect of review

If the Constitutional Court decides that a bill referred by the applicant is a bill having the same or similar principles as

²⁷ *Ibid.*, section 147 para. 1 (3).

²⁸ *Ibid.*, section 148.

²⁹ *Ibid.*, section 149 para. 1.

that of the withheld bill, such bill will lapse.³⁰

2. Constitutional review of promulgated laws.

This is a *posteriori* review. If it appears that a provision of the promulgated law may contain substances which are contrary to or inconsistent with the Constitution, the Constitution provides 4 channels for filing applications with the Constitutional Court for review.

a. Legal standing (locus standi)

(1) referral by the Courts

This involves a case which has already arisen in the court, whether that may be the Courts of Justice, Administrative Courts or Military Courts regardless of the court level which the case is pending. If the court finds on its own accord or a party (plaintiff – defendant or applicant - respondent) in the case raises an objection with reasons that a provision of law to be applied by the court to the case is contrary to or inconsistent with the Constitution and there has not yet been a decision of the Constitutional Court on such a provision, the court will submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision. During such period, the court may continue the trial, but the adjudication will be suspended until the Constitutional Court has made its decision.

In the case where the Constitutional Court is of the opinion that the objection of a party mentioned above is not essential for decision, the Constitutional Court may refuse to accept the case for consideration. The decision of the

³⁰ *Ibid.*, section 149 para. 2.

Constitutional Court will apply to all cases but will not affect the judgments of the Courts which have already been final.³¹

(2) Submission by the Ombudsmen

The submission of a matter by the Ombudsmen to the Constitutional Court for constitutional review of promulgated laws is usually involve a complaint received by the Ombudsmen. If the Ombudsmen is of the opinion that the provisions of law beg the question of constitutionality, the Ombudsmen will submit the case and the option to the Constitutional Court for decision or ruling.³²

(3) Submission by the National Human Rights Commission

The National Human Rights Commission has the power and duty to submit a matter together with an opinion to the Constitutional Court where it concurs with a complainant that a provision of law affects human rights and begs the question of constitutionality.³³

(4) direct application by persons whose rights and liberties have been violated

The Constitution provides that a person whose rights and liberties recognised by the Constitution are violated has the right to submit a motion to the Constitutional Court for its decision as to whether the provisions of law are contrary to or inconsistent with the Constitution. The exercise of rights must be a case of an inability to exercise the right by other means.³⁴

³¹ *Ibid.*, section 211.

³² *Ibid.*, section 245 (1).

³³ *Ibid.*, section 257 (2).

³⁴ *Ibid.*, section 212.

Hence, in case of individual constitutional complaint such as this, the following conditions must be satisfied:

(1) A person who submits a complaint must have been violated by a provision of law;

(2) Such a person submits a complaint to the Constitutional Court for a ruling that such a provision of law is contrary to or inconsistent with the Constitution; and

(3) All legal remedies must have been exhausted, namely the case must have gone through the Courts, the Ombudsmen and the National Human Rights Commission. The complaint to the Constitutional Court must be a last resort remedy sought for.

b. Scope of review

In *a posteriori* review, the Constitutional Court can examine only the substance of a provision of law whether it is contrary to or inconsistent with the Constitution or not. It cannot look into the enactment process as in *a priori* review.

c. Effect of review

If the Constitutional Court finds that a provision of law is contrary to or inconsistent with the Constitution, such a provision will be unenforceable.³⁵

3. Constitutional review of the conditions for enacting an emergency decree.

Emergency decrees are laws enacted by the Executive (the Council of Ministers) in a very special circumstance. The Constitution has laid down conditions for enacting an emergency decree which will have the force as an Act, as follows:

³⁵ *Ibid.*, section 6.

(1) the enactment is made in the interest of maintaining national security, public security, economic stability or the prevention of a public calamity;

(2) the enactment of an emergency decree under (1) above may only be made when the Council of Ministers is of the opinion that there is an urgent necessity which cannot be avoided.³⁶

When an emergency decree has come into force, the Council of Ministers must present the emergency decree to the National Assembly, and the latter will thereafter approve or disapprove such emergency decree. If approved by the National Assembly, an emergency decree will continue to have the force as an Act.³⁷

a. Legal standing (locus standi)

During the period when the House of Representatives or the Senate has not yet approved the emergency decree, members of the House of Representatives or senators of not less than one-fifth of the total number of the existing members of each House have the right to submit an opinion to the President of the House of which they are members that the emergency decree is not in accordance with (1) or (2) above. The President of such House will then refer the opinion to the Constitutional Court for decision. After the Constitutional Court has given a decision thereon, it will notify such decision to the President of the House referring such opinion.³⁸ The consideration of such an emergency decree will be deferred until the decision of the

³⁶ *Ibid.*, section 184 para.1 and 2.

³⁷ *Ibid.*, section 184 para.3 and 5.

³⁸ *Ibid.*, section 185 para.1.

Constitutional Court has been notified.³⁹

The persons who have legal standing in this case are: the President of the House of Representatives and the President of the Senate (at the request of not less than one-fifth of the total number of the existing members of each House to which they are members).

b. Scope of review

The Constitutional Court in this kind of review can only examine whether the enactment of an emergency decree by the Council of Ministers is in accordance with condition (1) or (2) mentioned above or not.

c. Effect of review

If the Constitutional Court decides that any emergency decree is not in accordance with condition (1) or (2) mentioned above, such an emergency decree will not have the force of law *ab initio*.⁴⁰ However, the decision of the Constitutional Court that an emergency decree is not in accordance with condition (1) or (2) mentioned above must be given by the votes of not less than two-thirds of the total number of Justices of the Constitutional Court.⁴¹

IV. SELECTED CASE SUMMARIES OF CONSTITUTIONAL REVIEW

Since its establishment in 1998, the Constitutional Court has rendered several important decisions or rulings. The following are some selected cases of *a priori* review cases and *a posteriori* review cases. Some of these selected cases were

³⁹ *Ibid.*, section 185 para.2.

⁴⁰ *Ibid.*, section 185 para.3.

⁴¹ *Ibid.*, section 185 para.4.

ruled during the time when the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the predecessor of the current Constitution (the Constitution of the Kingdom of Thailand, B.E. 2550 (2007)) was still in effect. However, if they concern the issues of human dignity, rights, liberties and equality of the people, almost all provisions relating to these issues in the two Constitution are the same.

a. *a priori* review cases

(1) Ruling 30/2548. This case was referred by the President of the Senate for the Constitutional Court's ruling as to whether or not section 38 paragraph one of the CD Products Bill, B.E.... was contrary to or inconsistent with section 29, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 38 paragraph one of the CD Products Bill, B.E.... provided that a Court may order confiscation of machines in the following cases: failure to notify a competent official of a use of machines for the production of CD, failure to give notice of the place of production and relocation of place of production, failure to affix and display a product certificate and an original copy certificate, use of a product certificate and original copy certificate, counterfeiting or imitating a product certificate or original copy certificate, failure to give notice of acquisition or possession of machines, or failure to give notice of distribution, disposal or transfer of machines or loss of possession of machines. The Constitutional Court considered that in the case of section 38 paragraph one of the CD Products Bill, B.E...., a machines used for the production of CD was not a property whose manufacture or possession constituted an offence *per se*. In confiscating the machines, the Court had to issue a confiscation order without any

discretion. No regard was given as to whether or not the owner of such machines connived at the commission of the offence, nor was the owner of the machines given an opportunity to prove whether or not he/she connived at the commission of the offence. The confiscation under such provision was absolute. No considerations were given to the offence or the suitability of penalties. The measures imposed on the owner of the properties were severed and amounted to restriction of a person's rights in property that was disproportional to necessity and affected the essential substances of a person's rights in property.

The Constitutional Court, therefore, held that section 38 paragraph one of the CD Products Bill, B.E.... was contrary to or inconsistent with section 29, section 30, section 31, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court also held that since section 38 paragraph one of the CD Products Bill, B.E.... was not of essence to the Bill, so only this section including paragraph two of the section lapsed.

(2) Ruling 11/2549. This is another *a priori* review case. This case was referred by the President of the National Assembly. In this case, liberty to assemble and its restriction were at issue.

The point to be decided by the Constitutional Court was whether or not section 20 of the Highway Bill (No....), B.E...., which add section 46/1, contained provisions which were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows: Section 20 of the Highway Bill (No....), B.E.... provided that "the following shall be added as section 46/1 of the Highway Act, B.E. 2535

(1992)”, wherein section 46/1 paragraph one stated that “no person shall assemble in the highway zone in a manner which obstructs traffic or may pose a danger or cause injury to vehicles or highway users, except where written permission of the Director of Highways or a person delegated by the Director of Highways is obtained, or the assembly is constituted as a column, procession or traditional or cultural assembly, or a public benefit activity or situated within an area exempt from permission filings as prescribed by notification of the Minister,” and paragraph two stated that “applications for permission and the grant of permissions shall be in accordance with the rules and procedures prescribed by Ministerial Regulation.” Such provisions were contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because it more than necessarily restricted the liberty to assemble peacefully and without arms, and affected the essential substance of the fundamental liberty of the people as provided under section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that section 20 of the Highway Bill (No....), B.E...., which added section 46/1, was contrary to or inconsistent with section 29 and section 44 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore lapsed. Furthermore, it was held that the provision in section 30 which added a penal provision in section 73/1, only with respect to the text stating “section 46/1”, which was connected to section 20 providing for the addition of section 46/1, also lapsed.

(3) Ruling No.8/2552. In this *a priori* review case, the President of the House of Representatives, in his capacity of the

President of the National Assembly, referred the Organic Bill on Ombudsmen, B.E...., which had already been approved by the National Assembly, to the Constitutional Court for a constitutional review.

Two issues to be considered and decided by the Constitutional Court were:

First issue whether or not the Organic Bill on Ombudsmen, B.E.... was duly enacted in accordance with the constitutional provisions; and

Second issue whether or not the Organic Bill on Ombudsmen, B.E.... contained provisions which were contrary to or inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

On the first issue regarding the enactment process, the Constitutional Court considered that the issues which required consideration were whether or not the Organic Bill on Ombudsmen, B.E.... was introduced by an authorized person; whether or not the introduction of this Organic Bill was accompanied by a memorandum on the analysis of the Organic Bill's essential substance; whether or not the Organic Bill was a money Bill which required the endorsement of the Prime Minister; whether or not the Organic Bill had proceeded according to section 147 of the Constitution; whether or not specifications were made of the provisions of the Constitution authorizing the enactment of a law to restrict the rights and liberties of a person pursuant to section 29 of the Constitution; and whether or not the consideration of this Organic Bill in the House of Representatives and the Senate were carried out in three readings and resolutions were voted upon in accordance with section 140 of the Constitution.

The Constitutional Court examined the facts in the application, documents in support of the application, statements of related parties, including the relevant evidence, and found that the Organic Bill on Ombudsman B.E.... had already been duly enacted in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

On the second issue, regarding the substance of the Organic Bill, the Constitutional Court examined the text of the provisions in the Organic Bill on Ombudsmen B.E...., with respect to all 51 sections, including the introductory texts (preamble) of such Organic Bill and found that they were consistent and did not contain any provision that was contrary to or inconsistent with the Constitution.

By virtue of the foregoing reasons, the Constitutional Court held that the Organic Bill on Ombudsmen B.E.... did not raise any issues of constitutionality under the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

b. *a posteriori* review cases

(1) Ruling No.21/2546 This case was submitted by the Ombudsmen. It involved the issue of equality between women and men. The issue considered by the Constitutional Court was whether or not section 12 of the Names of Persons Act, B.E. 2505 (1962) raised a question of constitutionality under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The point was whether the wording in section 12 of the Names of Persons Act, B.E. 2505 (1962), bore a meaning which made it mandatory for married women to use their husbands' surnames only or not. The Constitutional Court held that the crucial words of section 12 were "shall use", which

expressly bore the characteristics of a mandatory provision. Once it had been determined that section 12 had the characteristics of a mandatory provision for married women to use their husband's surnames only, which was an encroachment of the rights to use the surnames of married women themselves resulting in an inequality in rights as between men and women, it followed that the provision created inequality under the law due to differences in sex and personal status. The case was also an unjust discrimination because married women were one-sidedly compelled to use their husbands' surnames on the ground of marriage, and not on the ground of differences in physical attributes or obligations between men and women arising from the difference in sex such that discrimination was necessary.

The Constitutional Court, therefore, held that section 12 of the Names of Persons Act, B.E. 2505 (1962) was unconstitutional by reason of being contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provision was therefore unenforceable according to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) Ruling No.2/2552 This case was referred by the Supreme Administrative Court. The issue considered by the Constitutional Court in this case was whether or not section 35 (6) of the Attorneys Act, B.E. 2528 (1985) was contrary to or inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) (the current Constitution).

Section 29 of the Constitution was a provision which laid down the principles for safeguarding rights and liberties of a person whereby the enactment of law to restrict rights and

liberties of the people was permitted only for the purposes prescribed by the Constitution and only to the extent of necessity and must not affect the essential substances of such rights and liberties. Such law should be of general application and should not be intended to apply to any particular case or person.

Section 35 (6) of the Attorneys Act, B.E. 2528 (1985) was a provision which stipulated the qualifications of an applicant for registration and obtaining an attorney's licence, stating that a person who had previously served a prison term pursuant to a final judgment of imprisonment for a case which the Board of the Lawyers Council held as bringing disgrace to the honour of the profession, would be barred or disqualified from registration and obtaining an attorney's licence. This provision meant that a person applying to register and obtain an attorney's licence who once served a prison term pursuant to a final judgment of imprisonment would be barred or disqualified only upon the Board of the Lawyers Council finding that such person had served a prison term pursuant to a final judgment of imprisonment for a case that would bring disgrace to the honour of the profession. Section 35 (6) was therefore not a provision which constituted an absolute restriction on the qualification of an attorney. This was a case where the law authorised the Board of the Lawyers Council to exercise judgment for the purpose of control and scrutiny of persons having qualification suitable for the attorney profession. Furthermore, the exercise of discretion by the Board of the Lawyers Council to reject the registration and issuance of an attorney's licence to an applicant had to be accompanied by the Board's explanation of clear reasons for rejection. In such event, the applicant would have the right to appeal against such rejection to the Special Honorary Chairman of the Lawyers Council. Moreover, the law did not deprive the right to file an

action in the Administrative Court.

The Constitutional Court found that section 35(6) of the Attorneys Act, B.E. 2528 (1985), despite being the provisions empowering the Board of the Lawyer Council to exercise discretion in determining the cases that would bring disgrace to the honour of the attorney profession, thus constituting a restriction of rights and liberties of a person in engaging in the attorney profession, did provide for safeguards of the interests of the people and peace and order in the judicial process which was the public interest. Such public interest had a higher priority than the protection of individual interests of those engaged in the attorney profession which was a specific group interests. The provision was therefore a restriction of rights and liberties which was necessary and did not prejudice the essential substances of rights and liberties. The Board of the Lawyers Council could not exercise power absolutely but was subject to reviews by the Special Honorary Chairman of the Lawyers Council and the Courts.

The Constitutional Court therefore held that section 35 (6) of the Attorneys Act, B.E. 2528 (1985) was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

(3) Ruling No.12/2552 This is a case which concerns the rights and liberties to engage in an enterprise or an occupation.

Saraburi Provincial Court referred the objection of the defendant in the case before it to the Constitutional Court for ruling. The defendant was charged with committing an offence of selling food and beverages during prohibited hours (between 01.00 hours to 05.00 hours) without a licence in accordance with

clause 3 of the Announcement of the National Executive Council No.45 dated 17th January B.E. 2515 (1972), as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th May B.E. 2515 (1972).

The issues considered by the Constitutional Court was therefore whether or not clause 3 of the Announcement of the National Executive Council No.45 dated 17th January B.E. 2515 (1972) as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th May B.E. 2515 (1972) was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30, section 34 and section 43 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

The Constitutional Court considered that the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) section 43 paragraph one recognised the liberty of a person to engage in an enterprise or occupation. Restriction of such liberty must be made by a provision of law for the benefit of maintaining national or economic security, the protection of the people with regard to public utilities, maintenance of public order or good morals of the people, maintaining order in occupation, consumer protection, city planning, preservation of natural resources or the environment, the people's welfare or to prevent monopolies or eradicate unfair behaviour in competition as provided in section 43 paragraph two. Moreover, the restriction could be imposed to the extent of necessity and should not affect the essential substances of such rights and liberties as provided in section 29 paragraph one.

The restriction were necessary at the time of issuance of the Announcement in B.E. 2515 (1972) because the National Executive Council (military regime) wanted the people to remain in peace without any disorder that would affect national security.

The situation had changed significantly nowadays. The requirement that the people who engaged in the occupation of selling food and beverages between 01.00 hours to 05.00 hours should apply for a licence was unnecessary and without reasonable justification. It was apparent that the restriction of such liberty was not in any manner beneficial to the security of the state or national economy, the protection of the people with regard to public utilities, the maintenance of public order or good morals of the people, or other benefits as specified in section 43 paragraph two of the Constitution. The needs for maintenance of public order had changed. The measures were no longer suitable to the current way of life of the people. The restriction of the people's liberty as recognised under the Constitution therefore exceeded the extent of necessity and affected the essential substances of such liberty, thus prohibited under section 29 paragraph one of the Constitution.

The Constitutional Court therefore held that clause 3 of the Announcement of the National Executive Council No.45 dated 17th January B.E. 2515 (1972), as amended by clause 1 of the Announcement of the National Executive Council No.252 dated 16th November B.E. 2515 (1972) was unconstitutional for being contrary to or inconsistent with section 29 paragraph one and section 43 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and therefore rendered unenforceable under section 6 of the Constitution.

(4) Ruling No.47/2554 This is the first case of an individual constitutional complaint accepted for ruling by the Constitutional Court.

The Co-operatives Act, B.E. 2542 (1999) has a provision prohibiting a person who was removed from office of director

of the Co-operatives by order of the Co-operatives Registrar from assuming the position of director or manager of a co-operatives. On 27 August B.E. 2543 (2000) the applicant was elected by the annual general meeting of the Agricultural Co-operatives of Suphanburi Ltd. to be its Chairman of the Board of Directors. But the Acting Co-operatives Registrar issued an order revoking the resolution of the annual general meeting of the Agricultural Co-operatives of Suphanburi Ltd. with regard only to the election of the applicant as the Chairman of the Board, reasoning that the applicant was a person who had been removed from office in accordance with the provision of the Co-operatives Act, B.E. 2511 (1968). The applicant was accordingly a person disqualified for the position of director or manager of a co-operatives.

In his application to the Constitutional Court, the applicant argued that the Co-operatives Act, B.E. 2542 (1999) section 52 (3) was contrary to or inconsistent with the Constitution section 39. Section 39 of the Constitutions reads: "No person shall be subject to a criminal penalty unless he has committed an act which the law in force at the time of commission provides to be an offence and provides a punishment therefore, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence. A suspect or defendant in a criminal case shall be presumed innocent. Before a final judgment convicting a person for an offence, such person shall not be treated as a convict."

The issue considered by the Constitutional Court was therefore whether or not section 52 (3) of the Co-operatives Act, B.E. 2542 (1999) was contrary to or inconsistent with section 39 of the Constitution.

The Constitutional Court considered that section 39 of the Constitution aimed to protect rights and liberties of a person regarding criminal liability by prohibiting an application of provisions of criminal law and penalties to the case retrospectively as well as by adhering to the presumption of innocence principle. However, the Co-operatives Act, B.E. 2542 (1999) section 52 (3) prescribed disqualifications of persons for the position of director or manager of co-operatives, not penalties under the criminal law or a law imposing criminal penalties.

The Constitutional Court therefore held that the Co-operatives Act, B.E. 2542 (1999) section 52 (3) was not contrary to or inconsistent with section 39 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

(5) Ruling No.12/2555 This case was referred by the Supreme Court of Justice. It involves the presumption of innocence principle as recognized and guaranteed in section 39 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

The defendant in the case before the Supreme Court of Justice argued that section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) was contrary to or inconsistent with section 39 paragraph two, section 40 (5) together with section 30 of the Constitution. Section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) reads: "In case an offender which will be inflicted with punishment according to this Act is a juristic person, a managing director, a manager or any person responsible for the operation of such a juristic person shall also be inflicted with punishment which the law stipulates for that offence unless he can prove that he has no part in the commission of the offence of that juristic person." The defendant reasoned

that when the applicant could prove the commission of the offence by the juristic person and the court decided that the juristic person was guilty, the managing director, manager or any person responsible for the operation of such a juristic person would be presumed by section 54 of the Act to have committed the offence without any proof by the applicant. Instead, the burden was then shifted to the managing director, manager or any person responsible for the operation of the juristic person to prove that he had no part in the commission of the offence of the juristic person. While the juristic person was granted the right to be presumed innocent, they did not receive such right. This is against section 39 paragraph two of the Constitution.

The issue considered by the Constitutional Court was therefore whether or not section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

The Constitutional Court considered that the presumption of innocence principle as stated in section 39 paragraph two of the Constitution derived from human rights principle as enunciated in Article 11 of the Universal Declaration of Human Rights. The presumption of innocence principle is one of the fundamental principle of criminal justice as well as an important component of the rule of law generally accepted in most civilized countries and internationally through the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to which Thailand is a party.

As regards section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), the Constitutional Court considered that the section was a legal presumption of guilt of a managing director, manager or any person responsible for the

operation of the juristic person without any need on the part of the applicant to prove that each one of them had taken part in the commission of offence by the juristic person. The burden of proof had been shifted to these persons. Each one of them, instead, had to prove that he or she had no part in the commission of offence. It was not a presumption of innocence but a presumption of guilt based on status of a person. Nor was it a presumption of facts which constituted some elements of the offence.

The Constitutional Court held that section 54 of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), specifically that part which presumed guilt on the part of a managing director, manager or any person responsible for the operation of the juristic person without proof that he or she had a part in the commission of the offence of the juristic person, was contrary to or inconsistent with section 39 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and therefore rendered unenforceable under section 6 of the Constitution. It was thus unnecessary to make a further ruling on whether such provision of law was contrary to or inconsistent with other sections of the Constitution.

CONCLUSIONS

Laws are the basis for the exercise of state powers. So, laws must be kept within bounds set by the Constitution, the supreme law of the land. The Constitutional Court is empowered by the Constitution to perform the duty of constitutional review, checking whether or not the provisions of laws are contrary to or inconsistent with the Constitution. In this way, it will be certain that the laws enacted by the legislature will

be in conformity with the Constitution and will not encroach upon human dignity, rights, liberties and equality of the people. The significance of constitutional review, especially *a priori* review, is that the majority in the legislature cannot make laws as it pleases just because it has majority vote, but need to make sure that such laws are in consonant with the Constitution. Through constitutional review of legislative acts or laws, does the Constitutional Court play an important role in protecting human dignity, rights, liberties and equality of the people, which in turn helps promote the rule of law and the principles of democracy.

Provisions on Directive Principles of Fundamental State Policies in the Thai Constitution^{1*}

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I. INTRODUCTION

Written constitutions in modern times usually contain, *inter alia*, provisions regarding the structure and form of the government of the country, the separation of powers among organs that exercise sovereign powers, the principle of checks and balances, the independence of the judiciary and the so-called “bill of rights” of the people. However, in 1937 a new type of provisions “Directive Principles of Social Policy” did appear in Article 45 of the Constitution of the Republic of Ireland of 1937. The practice of having such a type of provisions in the Constitution was followed by many countries, notably in Asia and Africa, such as India, Thailand, Sri Lanka, Nigeria and Ghana, with a little change in the title into “Directive Principles of State Policy” or “Directive Principles of Fundamental State Policies” to suit the preference of each country.

^{1*} A paper presented to the International Conference on “The Constitution – A Basis of Strategy of Development of Society and the State” organized by the Constitutional Council of the Republic of Kazakhstan, Astana, 29-30 August 2013.

Provisions on Directive Principles of State Policy or Fundamental State Policies reflect the ideals and the national goals to which the State wishes to attain. They are fundamental in the governance of the country. In the case of India, it is said that the Directive Principles of State Policy in Part IV (Article 36-51) of the Constitution reflect a unique mixture of humanitarian, socialist precepts, Gandhian ideals and democratic socialism. They are in the nature of directions to the legislative and executive wings of government to be observed while formulating laws and policies.²

This paper will look into the provisions on Directive Principles of Fundamental State Policies as appeared in the current Thai Constitution (Constitution of the Kingdom of Thailand, B.E. 2550 (2007) – hereinafter referred to as “the Constitution”). It will first trace the history of the stipulation of this kind of provisions in the Thai Constitutions. Then, the status and sanctions of this type of provisions will be discussed. After that, the contents of the provisions will be examined and assessed as to whether they could be a basis of strategy for development of society and the State. Conclusions will then follow.

II. HISTORY OF THE PROVISIONS IN THE THAI CONSTITUTIONS

The provisions on Directive Principles of State Policy first appeared in the Constitution of the Kingdom of Thailand, B.E. 2492 (1949). It was assumed that the drafters of that

² Kamaluddin Khan, *Directive Principles for the establishment of the welfare state*, search from <http://twocircles.net/book/export/html/135418> p.1

Constitution were inspired by the Irish and Indian constitutions. Thailand is thus the third country that has Directive Principles of State Policy provided in its constitution. The Constituent Assembly, responsible for drafting the constitution at the time, considered that since the Constitution enunciated the rights, liberties and duties of the Thai people, it should also stipulate the duties that the state should perform for the benefit of the people. Provisions on Directive Principles of State Policy thus appeared as Chapter V of the Constitution. The Chapter set the general guidelines for the basic policies and functions which the State should perform so that these basic policies would not change whenever there were changes of governments.³

Directive Principles of State Policy was provided in Chapter V of the Constitution of B.E. 2492 (1949) which had 19 sections stipulating what the State “should” do. Section 54, the first section of the Chapter stated that “the provisions in this Chapter were intended for the general guidance of legislation and administration of State affairs in accordance with defined policies and did not give rise to any cause of action against the State.”⁴ The enumeration of what the State should do in terms of basic policies appeared in 18 sections that followed, covering national security policy, foreign policy, education policy, cultural policy, economic policy, agricultural policy, scientific policy, labour policy and public health policy.

The stipulation of the provisions on Directive Principles of State Policy then became a tradition. The provisions appeared

³ Choamsri Arayasiri, *Directive Principles of State Policy and Policy of Administration of State Affairs of the Government (in Thai)*, National Defense College (B.E. 2545 (2002)), pp.c-d.

⁴ Constitution of the Kingdom of Thailand, B.E. 2492 (1949), section 54.

in 6 Constitutions which were in force before the promulgation of the current Constitution (Constitution of the Kingdom of Thailand, B.E. 2550 (2007). They are Constitutions of the Kingdom of Thailand, B.E. 2475 (1932) (amended in B.E. 2495 (1952), B.E. 2511 (1968), B.E. 2517 (1974), B.E. 2521 (1978), B.E. 2534 (1991) and B.E. 2540 (1997).

In the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the name of this type of provisions was changed from “Directive Principles of State Policy” to “Directive Principles of Fundamental State Policies”, signifying that the provisions contained only important and fundamental policy matters. Wordings in the provisions were changed from “the State should...” to “the State shall...” and the phrase “do not give rise to any cause of action against the State” was deleted since, it was felt, the phrase “the State shall...” already showed commitments by the State.⁵

The directive principles provisions thus changed from “guidelines” to “framework and direction” for the enactment of legislation and the administration of State affairs the aim of which was to bring the country to the desired goals, such as the preservation and promotion of security of the nation, religion and monarchy, a steady progress of a democratic governance, the advancement of the national economy, the redistribution of income, the socio-cultural development, etc.

In addition, the Constitution of B.E.2540 (1997) invented new mechanism to monitor or follow up the implementation of

⁵ Pakorn Priyakorn, *State Policy Directives under the 2007 Constitution : From “Guidelines” to “Framework of actions for the State”* in KPI yearbook 4, *Exploring the 2007 Constitution*, Bangkok: King Prajarthipok’s Institute, 2008 (Wuttisarn Tanchai, ed.) p.84.

the directive principles by the government of the day. These mechanism are as follows:

(1) The requirement that in stating its policies to the National Assembly which must be done within 15 days of taking office, the Council of Ministers which will assume the administration of the state affairs must clearly state to the National Assembly the activities intended to be carried out for the administration of the State Affairs in implementation of the directive principles of fundamental state policies.⁶

(2) The council of Ministers must prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.⁷

(3) The State must establish the National Economic and Social Council to be charged with the duty to give advice and recommendations to the Council of Ministers on economic and social problems. Opinions of the National Economic and Social Council must be obtained before a national economic and social development plan and other plans as provided by law can be adopted and published.⁸

(4) The persons having the right to vote of not less than 50,000 in number have a right to submit a petition to the President of the National Assembly to consider such law as prescribed in the provisions on Directive Principles of Fundamental State Policies of the Constitution. A bill must be attached to such a

⁶ Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 88 para. 2 first part reading together with section 211 para. 1.

⁷ *Ibid.*, section 88 para. 2 second part.

⁸ *Ibid.*, section 89 paras. 1 and 2.

petition.⁹

The current Constitution still keeps these mechanism with some detailed changes.

III. DIRECTIVE PRINCIPLES IN THE CURRENT CONSTITUTION

The provisions on Directive Principles of Fundamental State Policies in the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) are adjustments of the said provisions in the Constitution of B.E.2540 (1997), making them clearer, grouping the policies that really connect together and adding some necessary details.

A. Status and sanctions of the provisions on directive principles

Chapter V of the Constitution contains 10 parts with 13 sections (sections 75 to 87). Part 1 or the first Part deals with General Provisions. Section 75 paragraph 1 states that the provisions in this chapter are the will that the State must follow in enacting legislation and in formulating policies for the administration of state affairs.¹⁰ Thus, the status of the provisions on directive principles was changed to become obligatory for the State, both the Legislature in the enactment of legislation and the Executive in the formulation of policies for the administration of state affairs. Moreover, according to Section 75 paragraph 2 and Section 176 paragraph 1., the Council of Ministers which will assume the administration of State affairs must, within 15

⁹ *Ibid.*, section 170 paras. 1 and 2.

¹⁰ Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 75.

days as from the date it takes office, state its policies and explanation for implementation of the directive principles of fundamental state policies. In stating its policies and the implementation of these policies, the Council of Ministers must clearly state to the National Assembly the activities and their implementation period intended to be carried out in pursuance of the directive principles. The Council of Ministers must prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.¹¹

Apart from these, Section 76 prescribes that the Council of Ministers must prepare a State administration plan stating the measures and details of guidelines for the discharge of official functions in each year of the administration of the State, which must be consistent with the directive principles of fundamental state policies. For the purpose of state administration, the Council of Ministers must prepare a plan for the enactment of legislation necessary for the implementation of policies and the State administration plan.¹²

It can, therefore, be seen that the directive principles serve as yardsticks with which the enactment of legislation, the formulation and implementation of policies will be measured.

Another issue that deserves discussion relating to this is the sanctions of the provisions on Directive Principles of Fundamental State Policies. When the provisions on Directive Principles first appeared in the Constitution of B.E. 2492 (1949), there was no question about their sanctions. As stated earlier in

¹¹ *Ibid.*, section 75 para. 2 and section 176 para. 1.

¹² *Ibid.*, section 76.

this paper, the first section of the Chapter, Section 54 stated clearly that the provisions were intended for the general guidance of legislation and administration of State affairs in accordance with defined policies and did not give rise to any cause of action against the State. So, even if the Legislature and the Government did not follow the general guidance, no sanctions could be applied against them. However, when the provisions changed from “guidelines” to “framework and direction” under the Constitution of B.E. 2540 (1997) together with new mechanism for following up the implementation of the directive principles, the issue of sanctions became more meaningful at least with regard to political sanctions.

Under the current Constitution, the provisions on Directive Principles are obligatory for the State to comply with in the enactment of legislation and in the formulation of policies for administration of state affairs with the strengthening of mechanism of follow-up but still the main sanctions are political ones. These sanctions may be in the forms of interpellation, general debate, debate of no-confidence, for example. However, since in the parliamentary system of government, the Government usually controls the majority vote in Parliament. The application of political sanctions is therefore not really effective.

As far as legal sanctions are concerned, the provisions on Directive Principles, by its very nature, only assigned duties upon the State without conferring any corresponding rights on persons or individuals. Thus, with or without the phrase “do not give rise to any cause of action against the State” as provided in the Constitution of B.E. 2492 (1949) section 54, no person can sue the State in court for failing to comply with the provisions on Directive Principles.

Nonetheless, a bill purported to implement the Directive Principles which has been approved by the National Assembly but before the Prime Minister presents it to the King for signature may be subject to review of its constitutionality. This may happen if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of such bill are contrary to or inconsistent with the Constitution or such bill is enacted contrary to the provisions of the Constitution, they can submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion will refer it to the Constitutional Court for decision.¹³ In this way, the provisions of the bill will be reviewed by the Constitutional Court against the Constitution (including provisions on Directive Principles of Fundamental State Policies) to find out whether they are contrary to or inconsistent with the Constitution or not. This is probably the only legal sanction available.

B. Contents of Directive Principles of Fundamental State Policies

The Constitution of the Kingdom of Thailand, B.E. 2550 (2007) Chapter V – Directive Principles of Fundamental State Policies – contains 10 Parts with 13 sections (Sections 75 to 87). Part 1 is the General Provisions which have already been discussed. Part 2 to Part 10 enumerate the contents of Directive Principles in 9 different areas, namely: national security policy, state administrative policies, religions, social, public health,

¹³ *Ibid.*, section 154 para. 1.

education and culture policies, law and justice policies, foreign policy, economic policies, land use, natural resources and environmental policies, science, intellectual properties and energy policies and public participation policy. Each of these Directive Principles will now be examined.

National Security Policy (Part 2)

Section 77 states that “The State shall protect and uphold the institution of kingship and the independence, sovereignty and integrity of its jurisdictions and shall arrange for the maintenance of necessary and adequate armed forces and ordnances as well as up-to-date technology for the protection and upholding of its independence, sovereignty, security of State, institution of kingship, national interests and the democratic regime of government with the King as Head of State, and for national development.”¹⁴

This is an adjustment of the Constitution of B.E. 2540 (1997) sections 71 and 72. A clause was added to make it clear that the state must provide weapons and military equipment and technology, making sure that they are modern, adequate and necessary for protecting national security.¹⁵

State Administration Policies (Part 3)

Section 78 stipulates that “The State shall act in compliance with the following State administration policies:

(1) to carry out the administration of State affairs with a view to establishing the sustainable development of society, the economy and national security by promoting the

¹⁴ *Ibid.*, section 77.

¹⁵ Pakorn Priyakorn, *supra* note 4. p.108.

implementation of the sufficiency economy philosophy with significant regard to overall benefits of the nation;

(2) to organize a system for the central administration, provincial administration and local administration with clear limits, powers, duties and responsibilities suitable for national development, and to support the *Changwat's* formulation of a development plan and provincial development budget for the benefit of the public within that area;

(3) to decentralize powers to local government organizations in order to promote self-dependency and self-determination of local affairs, to promote local government organization participation in the implementation of directive principles of fundamental State policies, to develop local economies, public utilities and assistances as well as a comprehensive and nationally uniform information infrastructure in the localities, including to develop a competent *Changwat* into a large-sized local government organization after having due regard to the will of the people in that *Changwat*;

(4) to develop a State sector working system by placing emphasis on the development of quality, merits and ethics of State officials along with the improvement of forms and methods of operations so as to enable the efficient administration of the State and to promote a State agency's adoption of good public governance principles as a guideline for the discharge of official functions;

(5) to organize a working system for official tasks and other tasks of the State in order to enable the swift, efficient, transparent and accountable formulation and provision of public services with due regard to public participation;

(6) to undertake that a legal agency providing legal opinions relating to State activities under the laws and examining draft laws for the State shall perform its duties independently so as to ensure that the administration of State affairs is in accordance with the rule of law;

(7) to prepare a political development plan as well as to establish an independent political development council to monitor the strict compliance of such plan;

(8) to ensure that government officials and State officials receive appropriate rights and benefits.”¹⁶

This section derived from sections 77 and 78 of the Constitution of B.E. 2540 (1997). The two sections were combined and the wordings improved to make a new provision clearer.¹⁷ The new section (as well as section 83 in Part 7 – economic policy) places emphasis on the sufficiency economy philosophy which is a philosophy expounded by His Majesty King Bhumibol Adulyadej of Thailand.¹⁸

Religious, Social, Public Health, Education and Cultural Policies (Part 4)

Part 4 has 2 sections. Section 79 deals with religions. It states that “The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, and shall also promote a good understanding and harmony among the followers of all religions as well as encourage the application of religious principles to create virtue

¹⁶ Constitution of the Kingdom of Thailand, *supra* note 9. Section 78; “*Changwat*” is the Thai word for “*province*”.

¹⁷ Pakorn Priyakorn, *supra* note 4. p.109.

¹⁸ Details of the concept of sufficiency economy philosophy will be given in a comment on section 83.

and develop the quality of life.”¹⁹

With respect to religions, the Constitution enjoin that the State must give patronage and protection to all religions, following the same principles as the Constitution of B.E. 2540 (1997). The phrase “Buddhism as the religion observed by most Thais for a long period of time “is freshly added.”²⁰

Section 80 deals with social, public health, education and culture policies. It states that “The State shall act in compliance with the following social, public health, education and culture policies:

(1) to protect and develop children and youths, to promote childhood nourishment and education, to promote equality between women and men, to reinforce and develop family integrity and the strength of communities, as well as to provide aid and welfare to the elderly, the indigent, the disabled or handicapped and the destitute person for their better quality of life and ability to become self-reliant;

(2) to promote, support and develop a health system with emphasis on health promotion for sustainable health conditions of the public, including the provision and promotion of people’s access to comprehensive and efficient standard public health services and encouraging private sector and the communities in participating in health promotion and providing public health service, and the person having duty to provide such service whose act meets the requirements of professional and ethical standards shall be protected as provided by law;

¹⁹ Constitution of the Kingdom of Thailand, *supra* note 9. section 79.

²⁰ Pakorn Priyakorn, *supra* note 4. p.109.

(3) to develop the quality and standard of education at all levels and forms in line with economic and social changes, to prepare a national education plan and a law for national education development, to provide development of the quality of teachers and educational personnel to meet the current changes in the present day world, and to instil awareness of being Thai, disciplines, common interests and a devotion to the democratic regime of government with the King as Head of the State to learners;

(4) to promote and support the decentralization of powers to the local government organizations, communities, religious organizations and the private sector in the provision of and participation in educational management for the development of a uniform educational quality standard in line with the fundamental State policies;

(5) to encourage and support researches in various disciplines of arts and sciences and disseminating all research results funded by the State;

(6) to encourage and instil a sense of national unity and love of learning, to create an appreciation of and publicize arts, tradition and culture of the nation as well as good value and local wisdom.”²¹

This section was taken from the Constitution of B.E. 2540 (1997) sections 80 to 82, with some new principles added, notably in (2) and (4) of the section.²²

Law and Justice Policies (Part 5)

Section 81 states that “The State shall act in compliance

²¹ Constitution of the Kingdom of Thailand, *supra* note 9. section 80.

²² Pakorn Priyakorn, *supra* note 4. pp.109-110.

with the following law and justice policies:

(1) to ensure compliance with and enforcement of laws in a proper, swift, fair and comprehensive manner, to promote the provision of legal aid and knowledge to the public, and to organize systems for carrying out official tasks and other tasks of the State in the administration of justice by enabling the participation of the public and profession organizations in the administration of justice, and to provide legal aid to the public;

(2) to protect the rights and liberties of an individual from violation whether by a State official or other persons, and to deliver justice to the public on an equal basis;

(3) to provide a law establishing an independent law reform organ for the purpose of reforming and developing laws of the nation, including the revision of existing laws for the compliance with the Constitution, whereby due regard must also be given to the opinions of persons affected by such laws;

(4) to provide a law establishing an independent organ for the purpose of reforming the judicial process in order to improve and develop the performance of all agencies concerned with the judicial process;

(5) to provide support for the operation of private organs rendering legal assistance to the public, especially for persons affected by domestic violence.”²³

This section retains the principle under section 75 of the Constitution of B.E. 2540 (1997) with some improvements in

²³ Constitution of the Kingdom of Thailand, *supra* note 9. section 81.

wording.²⁴ (3) and (4) of the section are new principles which would bring about progress in the areas of law and justice.

Foreign Policies (Part 6)

Section 82 states that “The State shall promote friendly relations with other countries and adopt the principle of non-discrimination and shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organizations. The State shall promote trade, investment and tourism with other countries and shall render protection and guardian to benefits of Thais living abroad.”²⁵

In general, this section reflects and emphasizes the foreign policy practiced by Thailand for a long time. This is probably the area of policy that has changed least.

Economic Policies (Part 7)

Part 7 has 2 sections. Section 83 states clearly that “The State shall encourage and support the implementation of the sufficient economy philosophy.”²⁶

The sufficiency economy philosophy has been mentioned in section 78 (1) whereby the state must carry out the administration of State affairs with a view to establishing the sustainable development of society, the economy and national security by promoting the implementation of the sufficiency economy philosophy with significant regard to overall benefits of the nation. In this section, the implementation of the sufficiency economy philosophy has been reemphasized.

²⁴ Pakorn Priyakorn, *supra* note 4. p.110.

²⁵ Constitution of the Kingdom of Thailand, *supra* note 9. section 82.

²⁶ *Ibid.*, section 83.

As mentioned earlier, the sufficiency economy philosophy was expounded by His Majesty King Bhumibol Adulyadej of Thailand, the current King. According to this philosophy, the importance of building a “good and stable foundation” before further progress could be developed is stressed. This means that instead of putting the emphasis on the expansion of the industrial sector prior to development, the stability of the basic economy should be established first, that is, assuring that the majority of rural people have enough to subsist first. This is a method of development that stress the distribution of income to build the overall economic foundation and stability of the country before going on to a higher level of development. On a personal level, the philosophy can be adopted by all people simply by adhering to the *middle path*. The awareness of virtue and honesty is also essential for people as well as public officials.

The philosophy has 3 pillars:

- *Moderation* : Sufficiency at a level of not doing something too little or too much at the expense of oneself or others.

- *Reasonableness* : The decision concerning the level of sufficiency must be made rationally with consideration of the factors involved and careful anticipation of the outcome that may be expected from such action.

- *Risk management* : The preparation to cope with the likely impact and changes in various aspects by considering the probability of future situations.²⁷

²⁷ http://www.chaipat.or.th/chaipat_english/index.php?option=com_content. More information about sufficiency economy philosophy can be searched from this website.

On economic policies, section 84 states that “The State shall act in compliance with the following economic policies:

(1) to support a free and fair economic system through market mechanism and to promote the sustainable development of economies by repealing and refraining from the enactment of laws and rules with respect to the regulation of businesses which do not correspond with economic necessity, and refraining from engagement in an enterprise in competition with the private sector, except where necessary for the purpose of maintaining the security of State, preserving common interests, or providing public utilities;

(2) to encourage entrepreneurs to apply merits, ethics and good corporate governance principles in carrying out of their businesses;

(3) to preserve monetary and financial disciplines in order to strengthen the economic and social stability and security of the nation, to improve the tax collection system to ensure fairness and compatibility with changing economic and social conditions;

(4) to provide a comprehensive savings system for old age living to the public and State officials;

(5) to regulate business activities to ensure free and fair competition, prevent monopolies, whether direct or indirect, and protect consumers;

(6) to undertake the fair distribution of incomes, and to protect, enhance and extend occupational opportunities to the public for the benefit of economic developments, including the promotion and support of the development of local wisdom and Thai wisdom for application to the manufacture of goods, provision of services and engagement in occupations;

(7) to promote people of working age to obtain employment, to protect child and woman labour, to provide a tripartite labour relations system which entitles workers to elect their representatives, to provide social security and to provide safeguards for workers working at equal value to obtain wages, benefits and welfares on a fair and indiscriminate basis;

(8) to protect and maintain the manufacturing and marketing interests of farmers, to promote the maximization of yields from farm products, including the promotion of farmers associations in the form of a farmers council in order to carry out agricultural planning and the protection of their mutual interests;

(9) to promote, support and protect the independent cooperatives system and associations of occupational or professional bodies as well as associations of the public for the purpose of carrying out economic activities;

(10) to provide basic utility services which are essential for the people's subsistence in the interest of maintaining the economic security of the State and to prevent the private sector from monopolising basic utility services which are essential for the people's subsistence that may be harmful to the State;

(11) to refrain from doing any act which may give rise to the transfer of ownership of the infrastructure or fundamental network of basic utility services which are essential for the people's subsistence or for national security to the private sector or which results in the State holding less than a fifty-one percent share of ownership;

(12) to promote and support merchant marine, rail transportation, including the operation of domestic and international logistics management systems;

(13) to promote and strengthen private sector economic organizations at national and local levels;

(14) to promote the agricultural product processing industry in order to create economic added value.”²⁸

This is perhaps a longest section in Chapter V of the Constitution. It combined what were sections 83 to 87 of the Constitution of B.E. 2540 (1997), with some new principles added.²⁹

Reading together with section 83, it shows that Thailand’s economic system must be a free and fair economic system through market mechanism. Within this broad economic system, the implementation of sufficiency economy philosophy must be encouraged and supported by the State.

Land Use, Natural Resources and Environmental Policies (Part 8)

This group of Directive Principles of Fundamental State Policies is provided in Section 85 which states that “The State shall act in compliance with the following land use, natural resources and environmental policies:

(1) to prescribe rules on land use applicable to the entire country with due regard to compatibility with environmental conditions, including land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for land use and opinion of the people in the area who may be affected by the rule on the use of land;

²⁸ Constitution of the Kingdom of Thailand, *supra* note 9. section 84.

²⁹ Pakorn Priyakorn, *supra* note 4. p.110.

(2) to undertake a fair distribution of landholdings and to carry out a comprehensive conferment of titles or rights in land for agricultural use to farmers by means of land reform or by other means, including the procurement of water sources for the adequate and appropriate use of water by farmers in agriculture;

(3) to provide town and country planning and to implement the town and country plans effectively and efficiently for the benefit of sustainable preservation of natural resources;

(4) to provide a systematic management plan for water and other natural resources for the common interests, which shall also enable the public to participate in the preservation, maintenance and balanced utilization of natural resources and biological diversity;

(5) to promote, conserve and protect the quality of the environment under sustainable development principles, and to control and eliminate pollution which may affect health and sanitation, welfare and quality of life of the public by encouraging the public, the local communities and the local government organizations to participate in the determination of measures.”³⁰

The stipulation in (2) is important because it obligates the State to undertake a fair distribution of landholdings and to carry out a comprehensive conferment of titles or rights in land for agricultural use to farmers by means of land reform or by other means. This will be beneficial to the farmers who constitute the majority of the Thai population.

³⁰ Constitution of the Kingdom of Thailand, *supra* note 9. section 85.

***Science, Intellectual Properties and Energy Policies
(Part 9)***

This group of policy directives is contained in Section 86 which states that “The State shall act in compliance with the following science, intellectual properties and energy policies:

(1) to promote the development of science, technology and innovation in all aspects by enacting specific laws for such purpose, allocating budgets for studies and researches, establishing institutions for research and development, providing for the utilization of products derived from research and development, the efficient transfer of technology and the appropriate development of personnel, including the dissemination of science and modern technology knowledge to the public and encouraging the public to apply science into their subsistence;

(2) to promote the invention or discovery of new knowledge, preserve and develop local wisdom and Thai wisdom, and protecting intellectual properties;

(3) to promote and support the continuous and systematic research, development and use of alternative energy that is derived from nature and beneficial to the environment.”³¹

This provision (1) concerns science and technology, (2) intellectual properties and (3) energy respectively.

Public Participation Policy (Part 10)

This is the last Part of the Chapter. Section 87 states that “The State shall act in compliance with the following public participation policies:

³¹ *Ibid.*, section 86..

(1) to promote public participation in the determination of public policies and economic and social development planning both at national and local levels;

(2) to encourage and support public participation in the decision making process with respect to politics, economic and social development planning and the provision of public services;

(3) to encourage and support public participation in the scrutiny of the exercise of State power at all levels in the form of a professional body or diverse occupational body or in other forms;

(4) to strengthening the political power of the people, and to prepare a law establishing a civil politics development fund for supporting the activities of people's groups in communities and for supporting the activities of groups of people that have united into networks of all forms so as to enable their expression of opinions and suggestions of communities' requirements in the localities;

(5) to support and provide education to the people in relation to the development of politics and public administration under the democratic regime of government with the King as Head of State, and to encourage the people to exercise their rights to vote honestly and uprightly.

Public participation under this section shall pay due regard to the proximate proportion between women and men.”³²

³² *Ibid.*, section 87..

The purpose of the public participation policy under this section is undoubtedly to increase the role of the citizens in political, economic and social development as well as the administration of the country so that democracy in Thailand could become more and more participatory democracy.

C. Directive Principles of Fundamental State Policies as a basis of strategy for development of society and the State

Looking at the 9 areas of the Directive Principles of Fundamental State Policies in the current Constitution, a question arises as to whether these provisions could serve as a basis of strategy for development of society and the State.

Before giving an answer to this question, one has to consider the status of the Directive Principles, the comprehensiveness of its substance as well as the mechanism of its implementation.

Firstly, regarding the status, as mentioned earlier the status of Directive Principles in this Constitution was changed from “guidelines” to “frameworks and direction” and became binding on the State to comply with. But the frameworks and direction in this respect are so fundamental and broad so that the State (e.g. the Legislature and the Executive) have some leeway and flexibility in the enactment of legislation and determination of policies in the administration of State affairs. The point is that the State should not overstep the parameters of the frameworks. For example, concerning economic policies, the State must support a free and fair economic system through market mechanism, the policies of the State should not be so drastic as to change the economic system to one which amounts to a centrally planned economy.

So, what the critiques say that the Directive Principles tie the hand of the Government in devising its policies is not correct. The purpose of the Directive Principles of Fundamental State Policies is that what constitute fundamental policies for the State should not change at the whim of the government in power.

Secondly, the substance of 11 sections in Part 2 to Part 10 of Chapter V encompassing 9 areas of fundamental state policies is indeed comprehensive. Sufficiency economy philosophy is designated as a leading philosophy of national development. Emphasis has equally been placed on all areas of fundamental state policies: national security policy, state administration policies, religions, social, public health, education and culture policies, law and justice policies, foreign policies, economic policies, land use, natural resources and environmental policies, science, intellectual properties and energy policies and public participation policy. If all of these 9 areas of fundamental state policies are implemented efficiently and effectively, it is believed that the country will be on the way towards remarkable development, not just economically, socially, culturally or politically but desirable balanced development with the participation of public sector, private sector and the people.

Thirdly, the procedures for implementation of the directive principles are set in the Constitution sections 75, 76 and 176. The Council of Ministers (the Government) which will assume the administration of state affairs must, within 15 days as from the date it takes office, state to the National Assembly its policies and explanation for implementation of the directive principles of fundamental state policies. It must state clearly the activities and their implementation period intended to be

carried out for the administration of State affairs in pursuance of the directive principles. The policies stated by the Council of Ministers would therefore be measured against the directive principles of fundamental state policies specified in the Constitution.

After that, the Council of Ministers must prepare a State administration plan. This plan will state the measures and details of guidelines for the discharge of official functions in each year of the administration of the State which must be consistent with the directive principles and, of course, the policies stated to the National Assembly. The Council of Ministers, for the purpose of State administration, must prepare a plan for the enactment of legislation necessary for the implementation of policies and the State administration plan. So, the State administration plan would be measured against the policies of the Government and, of course, the directive principles.

Moreover, each year the Council of Ministers must prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.

All these procedures make it necessary for the Government to come up with strategic planning in the administration of State affairs.

The answer to the question posed at the beginning of this section of the paper is therefore in the affirmative.

IV. CONCLUSIONS

The Directive Principles of Fundamental State Policies enunciate principles which are fundamental in the governance of the country. They direct and inspire legislative policy as well

as provide impetus for efficient and effective administration of State affairs. Many countries nowadays adopt the Directive Principles of Fundamental State Policies in their Constitution. This phenomenon proves that the provisions on Directive Principles of Fundamental State Policies have their own utility and significance. They are not absolutely useless as some critics may say. They are just like a Pole Star that provide direction. No government can afford to ignore those directive principles as they reflect the basic spirit of the Constitution. They are a mirror that the government could see the performance of itself.

In the case of Thailand, the provisions on Directive Principles of Fundamental State Policies afford the framework and direction to the State in the enactment of legislation and in determination of policies for the administration of State Affairs. The Directive Principles are very comprehensive in their approach the aims of which are sustainable development of society, the economy and national security and the happiness of the people. The leading philosophy of the Directive Principles is the sufficiency economy philosophy. If the Directive Principles are followed and implemented efficiently and effectively, it is believed that balanced development of the country will ensue. It is therefore fitting to say that the provisions on Directive Principles of Fundamental State Policies in the Constitution play a role of a basis of strategy for development of society and the State.

Annex
(Unofficial Translation) **Chapter V**
of Constitution of the Kingdom of Thailand,
B.E. 2550 (2007)

CHAPTER V

Directive Principles of Fundamental State Policies

Part 1

General Provisions

Section 75. The provisions of this Chapter are intended to serve as directive principles for legislating and determining policies for the administration of State affairs.

In stating its policies to the National Assembly, the Council of Ministers which will assume the administration of State affairs shall clearly state to the National Assembly the activities and their implementation period intended to be carried out for the administration of State affairs in pursuance of the directive principles of fundamental State policies provided in this Chapter and shall prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.

Section 76. The Council of Ministers shall prepare a State administration plan stating the measures and details of

guidelines for the discharge of official functions in each year of the administration of the State, which must be consistent with the directive principles of fundamental State policies.

For the purpose of State administration, the Council of Ministers shall prepare a plan for the enactment of legislation necessary for the implementation of policies and the State administration plan.

Part 2

National Security Policy

Section 77. The State shall protect and uphold the institution of kingship and the independence, sovereignty and integrity of its jurisdictions and shall arrange for the maintenance of necessary and adequate armed forces and ordnances as well as up-to-date technology for the protection and upholding of its independence, sovereignty, security of State, institution of kingship, national interests and the democratic regime of government with the King as Head of State, and for national development.

Part 3

State Administration Policies

Section 78. The State shall act in compliance with the following State administration policies:

(1) to carry out the administration of State affairs with a view to establishing the sustainable development of society, the economy and national security by promoting the implementation of the sufficiency economy philosophy with

significant regard to overall benefits of the nation;

(2) to organize a system for the central administration, provincial administration and local administration with clear limits, powers, duties and responsibilities suitable for national development, and to support the *Changwat's* formulation of a development plan and provincial development budget for the benefit of the public within that area;

(3) to decentralize powers to local government organizations in order to promote self-dependency and self-determination of local affairs, to promote local government organization participation in the implementation of directive principles of fundamental State policies, to develop local economies, public utilities and assistances as well as a comprehensive and nationally uniform information infrastructure in the localities, including to develop a competent *Changwat* into a large-sized local government organization after having due regard to the will of the people in that *Changwat*;

(4) to develop a State sector working system by placing emphasis on the development of quality, merits and ethics of State officials along with the improvement of forms and methods of operations so as to enable the efficient administration of the State and to promote a State agency's adoption of good public governance principles as a guideline for the discharge of official functions;

(5) to organize a working system for official tasks and other tasks of the State in order to enable the swift, efficient, transparent and accountable formulation and provision of public services with due regard to public participation;

(6) to undertake that a legal agency providing legal opinions relating to State activities under the laws and examining

draft laws for the State shall perform its duties independently so as to ensure that the administration of State affairs is in accordance with the rule of law;

(7) to prepare a political development plan as well as to establish an independent political development council to monitor the strict compliance of such plan;

(8) to ensure that government officials and State officials receive appropriate rights and benefits.

Part 4

Religions, Social, Public Health, Education and Culture Policies

Section 79. The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, and shall also promote a good understanding and harmony among the followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life.

Section 80. The State shall act in compliance with the following social, public health, education and culture policies:

(1) to protect and develop children and youths, to promote childhood nourishment and education, to promote equality between women and men, to reinforce and develop family integrity and the strength of communities, as well as to provide aid and welfare to the elderly, the indigent, the disabled or handicapped and the destitute person for their better quality of life and ability to become self-reliant;

(2) to promote, support and develop a health system with emphasis on health promotion for sustainable health conditions of the public, including the provision and promotion of people's access to comprehensive and efficient standard public health services and encouraging private sector and the communities in participating in health promotion and providing public health service, and the person having duty to provide such service whose act meets the requirements of professional and ethical standards shall be protected as provided by law;

(3) to develop the quality and standard of education at all levels and forms in line with economic and social changes, to prepare a national education plan and a law for national education development, to provide development of the quality of teachers and educational personnel to meet the current changes in the present day world, and to instil awareness of being Thai, disciplines, common interests and a devotion to the democratic regime of government with the King as Head of the State to learners;

(4) to promote and support the decentralization of powers to the local government organizations, communities, religious organizations and the private sector in the provision of and participation in educational management for the development of a uniform educational quality standard in line with the fundamental State policies;

(5) to encourage and support researches in various disciplines of arts and sciences and disseminating all research results funded by the State;

(6) to encourage and instil a sense of national unity and love of learning, to create an appreciation of and publicize arts,

tradition and culture of the nation as well as good value and local wisdom.

Part 5

Law and Justice Policies

Section 81. The State shall act in compliance with the following law and justice policies:

(1) to ensure compliance with and enforcement of laws in a proper, swift, fair and comprehensive manner, to promote the provision of legal aid and knowledge to the public, and to organize systems for carrying out official tasks and other tasks of the State in the administration of justice by enabling the participation of the public and profession organizations in the administration of justice, and to provide legal aid to the public;

(2) to protect the rights and liberties of an individual from violation whether by a State official or other persons, and to deliver justice to the public on an equal basis;

(3) to provide a law establishing an independent law reform organ for the purpose of reforming and developing laws of the nation, including the revision of existing laws for the compliance with the Constitution, whereby due regard must also be given to the opinions of persons affected by such laws;

(4) to provide a law establishing an independent organ for the purpose of reforming the judicial process in order to improve and develop the performance of all agencies concerned with the judicial process;

(5) to provide support for the operation of private organs rendering legal assistance to the public, especially for persons affected by domestic violence.

Part 6

Foreign Policies

Section 82. The State shall promote friendly relations with other countries and adopt the principle of non-discrimination and shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organizations.

The State shall promote trade, investment and tourism with other countries and shall render protection and guardian to benefits of Thais living abroad.

Part 7

Economic Policies

Section 83. The State shall encourage and support the implementation of the sufficient economy philosophy.

Section 84. The State shall act in compliance with the following economic policies:

(1) to support a free and fair economic system through market mechanism and to promote the sustainable development of economies by repealing and refraining from the enactment of laws and rules with respect to the regulation of businesses which do not correspond with economic necessity, and refraining from engagement in an enterprise in competition with the private sector, except where necessary for the purpose of maintaining the security of State, preserving common interests, or providing public utilities;

(2) to encourage entrepreneurs to apply merits, ethics and good corporate governance principles in carrying out of their businesses;

(3) to preserve monetary and financial disciplines in order to strengthen the economic and social stability and security of the nation, to improve the tax collection system to ensure fairness and compatibility with changing economic and social conditions;

(4) to provide a comprehensive savings system for old age living to the public and State officials;

(5) to regulate business activities to ensure free and fair competition, prevent monopolies, whether direct or indirect, and protect consumers;

(6) to undertake the fair distribution of incomes, and to protect, enhance and extend occupational opportunities to the public for the benefit of economic developments, including the promotion and support of the development of local wisdom and Thai wisdom for application to the manufacture of goods, provision of services and engagement in occupations;

(7) to promote people of working age to obtain employment, to protect child and woman labour, to provide a tripartite labour relations system which entitles workers to elect their representatives, to provide social security and to provide safeguards for workers working at equal value to obtain wages, benefits and welfares on a fair and indiscriminate basis;

(8) to protect and maintain the manufacturing and marketing interests of farmers, to promote the maximization of yields from farm products, including the promotion of farmers

associations in the form of a farmers council in order to carry out agricultural planning and the protection of their mutual interests;

(9) to promote, support and protect the independent cooperatives system and associations of occupational or professional bodies as well as associations of the public for the purpose of carrying out economic activities;

(10) to provide basic utility services which are essential for the people's subsistence in the interest of maintaining the economic security of the State and to prevent the private sector from monopolising basic utility services which are essential for the people's subsistence that may be harmful to the State;

(11) to refrain from doing any act which may give rise to the transfer of ownership of the infrastructure or fundamental network of basic utility services which are essential for the people's subsistence or for national security to the private sector or which results in the State holding less than a fifty-one percent share of ownership;

(12) to promote and support merchant marine, rail transportation, including the operation of domestic and international logistics management systems;

(13) to promote and strengthen private sector economic organizations at national and local levels;

(14) to promote the agricultural product processing industry in order to create economic added value.

Part 8

Land Use, Natural Resources and Environmental Policies

Section 85. The State shall act in compliance with the following land use, natural resources and environmental policies:

(1) to prescribe rules on land use applicable to the entire country with due regard to compatibility with environmental conditions, including land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for land use and opinion of the people in the area who may be affected by the rule on the use of land;

(2) to undertake a fair distribution of landholdings and to carry out a comprehensive conferment of titles or rights in land for agricultural use to farmers by means of land reform or by other means, including the procurement of water sources for the adequate and appropriate use of water by farmers in agriculture;

(3) to provide town and country planning and to implement the town and country plans effectively and efficiently for the benefit of sustainable preservation of natural resources;

(4) to provide a systematic management plan for water and other natural resources for the common interests, which shall also enable the public to participate in the preservation, maintenance and balanced utilization of natural resources and biological diversity;

(5) to promote, conserve and protect the quality of the environment under sustainable development principles, and to control and eliminate pollution which may affect health and sanitation, welfare and quality of life of the public by encouraging the public, the local communities and the local government organizations to participate in the determination of measures.

Part 9

Science, Intellectual Properties and Energy Policies

Section 86. The State shall act in compliance with the following science, intellectual properties and energy policies:

(1) to promote the development of science, technology and innovation in all aspects by enacting specific laws for such purpose, allocating budgets for studies and researches, establishing institutions for research and development, providing for the utilization of products derived from research and development, the efficient transfer of technology and the appropriate development of personnel, including the dissemination of science and modern technology knowledge to the public and encouraging the public to apply science into their subsistence;

(2) to promote the invention or discovery of new knowledge, preserve and develop local wisdom and Thai wisdom, and protecting intellectual properties;

(3) to promote and support the continuous and systematic research, development and use of alternative energy that is derived from nature and beneficial to the environment.

Part 10

Public Participation Policy

Section 87. The State shall act in compliance with the following public participation policies:

(1) to promote public participation in the determination of public policies and economic and social development planning both at national and local levels;

(2) to encourage and support public participation in the decision making process with respect to politics, economic and social development planning and the provision of public services;

(3) to encourage and support public participation in the scrutiny of the exercise of State power at all levels in the form of a professional body or diverse occupational body or in other forms;

(4) to strengthening the political power of the people, and to prepare a law establishing a civil politics development fund for supporting the activities of people's groups in communities and for supporting the activities of groups of people that have united into networks of all forms so as to enable their expression of opinions and suggestions of communities' requirements in the localities;

(5) to support and provide education to the people in relation to the development of politics and public administration under the democratic regime of government with the King as Head of State, and to encourage the people to exercise their rights to vote honestly and uprightly.

Public participation under this section shall pay due regard to the proximate proportion between women and men.
