

## *Translated Judgment*

# On Reform and Revolt: Constitutional Court Ruling No. 19/2564

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### I. INTRODUCTION

In July 2020, a youth-led democracy movement began in Thailand with three initial demands. First, the current prime minister, General Prayuth Chan-ocha must resign. General Prayuth was the head of the National Council for Peace and Order (NCPO), the junta that launched the most recent coup on 22 May 2014, Thailand's 13<sup>th</sup> since the end of absolute monarchy on 24 June 1932. He governed for five years as a dictator and then retained his position following the March 2019 general election through a series of antidemocratic maneuvers. The election was meant to mark the end of military dictatorship but instead signaled a new era of authoritarian repression cloaked in electoral democracy. Second, a new constitution must be drafted. The 2017 Constitution, Thailand's 20<sup>th</sup>, was drafted by a junta-appointed body and in sum, dispossessed the people of rights rather than strengthened rights protection. Third, the state must stop threatening dissidents through both excessive legal prosecution and extrajudicial intimidation and violence.

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In August 2020, a fourth demand was added: the institution of the monarchy must be reformed. Despite the end of the absolute monarchy close to 90 years ago, the position of the monarchy in the Thai polity, which is ruled by democracy with the king as head of state, remains unclear. One of the reasons for this enduring lack of clarity is the prohibition on criticism, and even open discussion, of the monarchy enforced through Article 112 of the Criminal Code. This law punishes those who commit *lèse majesté*—or insult, defame, or threaten the king, queen, heir-apparent or regent—with imprisonment of 3 to 15 years per count.<sup>1</sup> A broad interpretation of what constitutes *lèse majesté* combined with rising veneration of the monarchy during the last decades of the life of the former king, Rama 9 (Bhumipol Adulyadej), led to an upsurge in prosecutions under the law beginning with the 19 September 2006 coup and accelerating again following the 22 May 2014 coup.<sup>2</sup>

The demand for reform of the institution of the monarchy was first introduced by Arnon Nampa, a human rights lawyer and poet, during a speech on 3 August 2020 in which he promised that he would speak openly about the institution of the monarchy from that day forward and called on others to do so. A week later, on 10 August 2020, the United Front of Thammasat and Demonstration (UFTD), a new student organization based at Thammasat University, the historic center of student protest in Thailand, held a protest in which they unveiled a ten-point proposal for how to carry out the reform of the institution of the monarchy.

This demand is where the transformative power of the movement comes from as evidenced by the rapid growth of protests in the weeks and months following the declaration of the UFTD's ten-point proposal. The call for reform of the monarchy is also where the dangers to the liberty and lives of its leaders have arisen. Beginning in November 2020, criminal cases began to be brought against activists who participated in demonstrations, particularly those who called for the reform of the monarchy. Thai Lawyers for Human Rights (TLHR) reports that between 24 November 2020 and 11 October 2022, at least 215 individuals have been charged with violation of Article 112.<sup>3</sup>

Alongside the criminal proceedings under Article 112, another judicial process related to the 10 August 2020 demonstration took place. In September 2020, drawing on a constitutional provision intended to protect against future coups, Nattaporn Toprayoon submitted a petition to the Constitutional Court arguing that the peaceful, unarmed demonstration at Thammasat University by the UFTD and their ten-point

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<sup>1</sup> On the history of Article 112 and related defamation laws, see David Streckfuss, *Truth on Trial in Thailand* (Routledge 2010) <<https://doi.org/10.4324/9780203847541>>.

<sup>2</sup> Rama 9 died on 13 October 2016 and his son, Maha Vajiralongkorn, became Rama 10. Thongchai Winichakul has analyzed the veneration of the monarchy as a social, cultural and political formation of hyper-royalism. See Thongchai Winichakul, *Thailand's Hyper-royalism: Its Past Success and Present Predicament*, ISEAS Trends in Southeast Asia, no. 7 (Institute of Southeast Asian Studies 2016) <<https://doi.org/10.1355/9789814762380>>.

<sup>3</sup> These numbers are updated regularly here: “สถิติผู้ถูกดำเนินคดีมาตรา 112 ตั้งแต่วันที่ 24 พ.ย. 63–6 ธ.ค. 64” ศูนย์ทนายความเพื่อสิทธิมนุษยชน (01 เมษายน 2565) [“Statistics of Persons Prosecuted Under Section 112 From 24 November 2020 – 6 December 2021” Thai Lawyers for Human Rights (1 April 2022)] (Thai) <<https://tlhr2014.com/archives/23983>>.

proposal, constituted overthrow of democracy with the king as head of state.<sup>4</sup> Article 49 of the 2017 Constitution permits citizens who believe others are engaged in the exercise of their rights and freedoms to overthrow rule by democracy with the king as head of state to request that the Constitutional Court examine their actions, and to order their cessation if found to constitute overthrow. Although Article 49 specifies that allegations made under it are not linked to criminal proceedings, overthrow immediately references Article 113, the measure in the Criminal Code that sanctions overthrow or revolt against the government by a punishment of up to life imprisonment or the death penalty.

Three activists who spoke during the UFTD protest—Arnon Nampa, the lawyer poet, Panupong Jadnok, a student at Ramkhamhaeng University, and Panusaya Sithijirawattakul, a student at Thammasat University—were named in Nattaporn’s petition. They submitted a written counter statement to his petition explaining that they were calling for reform, not overthrow, of the institution of the monarchy, and indicated their willingness to provide verbal testimony to the Constitutional Court if needed. Despite the gravity and complexity of the case, the Constitutional Court did not request that either the three activists or the academics and other experts they prepared as witnesses provide verbal testimony.

The Constitutional Court spent over a full year considering the petition. During this period, the three activists named in it were arrested and charged with numerous violations of Article 112. On 10 November 2021, the Constitutional Court read an abbreviated version of their ruling in which they concluded that the activists’ actions constituted overthrow of rule by democracy with the king as head of state and ordered them to cease their activities immediately; the full ruling was published in the *Royal Thai Government Gazette* on 29 November 2021.<sup>5</sup> Immediate responses to it came from university lecturers, lawyers, student organizations and many others who issued statements criticizing the ruling in the aftermath of its release.<sup>6</sup> Although the ruling

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<sup>4</sup> The Constitutional Court was founded following the promulgation of the 1997 Constitution and has been involved in many highly politicized cases since the 19 September 2006 coup. For more information, several excellent analyses with which to begin include the following: Andrew Harding and Peter Leyland, *The Constitutional System of Thailand: A Contextual Analysis* (Bloomsbury 2011); Eugénie Mérieau, “Thailand’s Deep State, Royal Power and the Constitutional Court (1997–2015),” *Journal of Contemporary Asia* 46.3 (2016) 445–466 <<https://doi.org/10.1080/00472336.2016.1151917>>; Khemthong Tongsakulrungruang, “The Constitutional Court of Thailand: From Activism to Arbitrariness,” in *Constitutional Courts in Asia: A Comparative Analysis*, edited by Albert H. Y. Chen and Andrew Harding (Cambridge University Press 2018), 184–213; and Duncan McCargo, *Fighting for Virtue: Justice and Politics in Thailand* (Cornell University Press 2020) <<https://doi.org/10.7591/cornell/9780801449994.001.0001>>, especially Chapter 8, “Courting Constitutionalism,” 184–210.

<sup>5</sup> See ราชกิจจานุเบกษา เล่ม 138 ตอนที่ 80 ก หน้า 22–49 (29 พฤศจิกายน 2564) [Government Gazette, vol 138 pt 80 kor pp 22–49 (29 November 2021)] (Thai).

<sup>6</sup> See this statement by a group of twenty-three university student organizations criticizing the court and calling for the protection of the rights and freedoms of the people to peacefully express their political opinions: “23 องค์การนิสิต นศ. แกล้งปฏิเสธคำวินิจฉัยศาล รธน. ตัดสิน ‘อนันท์-ไมค์-รุ่ง’ ส้มล้างการปกครอง,” ประชาไท (11 พฤศจิกายน 2564) [“23 Student Organizations’ Students Reject the Ruling of the Constitutional Court Verdict ‘Anon-Mike-Rung’ Overthrows the Government,” (*Prachatai*, 11 November 2021)] (Thai) <<https://prachatai.com/journal/2021/11/95884>>; and this statement by seventy lawyers and law

was not entirely unexpected after the sharp crackdown on the protests, it immediately raised a series of challenging, and troubling, questions about the past, present, and future of democracy, law, sovereignty and history in Thailand. For example, what is the meaning of rule by democracy with the king as head of state? Who is permitted to define democracy in the Thai polity, and what does the silencing of dissidents mean for its future? What does it mean—for the polity, for the citizens of the polity, for the rulers of the polity—when peaceful calls for reform of rule are deemed to be equivalent to overthrow of rule? How did the Constitutional Court come to this conclusion without questioning the activists? What does it mean when the state refuses to believe the people? Finally, how is history related to this ruling? Both the petitioner and the Constitutional Court cited an unchanging Thai past in which the institution of the monarchy was central as justification for the conclusion that calling for its reform constituted overthrow of rule. But this is only one interpretation of the past. And, what are the possible future histories of this ruling and the broader political moment?<sup>7</sup>

An English translation of Constitutional Court Ruling No. 19/2564 is therefore presented here in order to contribute to the further and comparative examination of these questions.

#### *Note on the Translation*

This translation hews very close to the original for purposes of accuracy. At times, legal writing in Thai omits the subject of a sentence or other words that would be present in English. Therefore, when needed for clarity, additional words are added in [ ]. I have added footnotes with background and supplemental information for those who may not be familiar with Thai law and politics; these are all marked with —*trans*.<sup>8</sup>

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scholars noting that the ruling amounted to the overthrowing of the rights and freedoms of the people, “70 คณาจารย์-นักกฎหมาย แถลง ‘ล้มล้างสถาบันฯ หรือล้มล้างสิทธิเสรีภาพ ปชช.’ - เปิดความเห็น 3 คณบดีคณะนิติฯ, ประชาไท, (13 พฤศจิกายน 2564) [“70 Faculty Members and Lawyers Announce ‘Overthrow the Institution or Overthrow the Rights and Liberties of the People.’ - Open Opinion of 3 Deans of the Faculty of Laws” (*Prachatai*, 13 November 2021)] (Thai) <<https://prachatai.com/journal/2021/11/95926>>.

<sup>7</sup> This ruling is also significant as a record of this very political moment and as a historical source. A key caution is that in the petition, the speeches of the three activists were excerpted and quoted. Then, in the ruling, those excerpts were subject to further selection. The Constitutional Court states that they summarized the speeches, but they actually quote selectively from them without using quotation marks. The full text of the speeches has been published in English by PEN International and may be downloaded here: <<https://pen-international.org/news/thailand-pen-international-releases-booklets-speeches-thailand-protest-leaders>>. Readers may wish to examine the speeches alongside the translated ruling.

<sup>8</sup> Please note that the footnote numbering in the translation restarts at 1.

## II. TRANSLATION

[State Emblem]

In the Name of His Majesty the King  
The Constitutional Court

Ruling No. 19/2564

Matter for Examination No. 19/2563  
10 November 2021

*Between*

Mr. Nattaporn Toprayoon, Petitioner

*And*

Mr. Arnon Nampha, Respondent No. 1

Mr. Panupong Jadnok, Respondent No. 2

Miss Panusaya Sithijirawattanakul, Respondent No. 3

Mr. Parit Chiwarak, Respondent No. 4

Miss Juthathip Sirikhan, Respondent No. 5

Miss Siripatchara Chungthirapanich, Respondent No. 6

Mr. Somyot Prueksakasemsuk, Respondent No. 7

Miss Athitiya Pornphrom, Respondent No. 8

Re: Petition for the Constitutional Court to Rule in Accordance with Article 49 of the  
Constitution

Mr. Nattaporn Toprayoon (Petitioner) submitted a petition for the Constitutional Court to rule in accordance with Article 49 of the Constitution. The facts in the petition and accompanying documents can be summarized as follows:

The Petitioner claimed that a group of people, including activist groups of Thammasat University, the Student Union of Thailand, Mahasarakham University Democracy Front, and Seri Thai Plus, used various venues to organize demonstrations which included criminal actions according to Article 6 of the Constitution, Article 112 and Article 116 of the Criminal Code, and related laws. The violation of the institution of the monarchy, which is beloved and respected by the Thai people, is an action that is the overthrow of rule by democracy with the king as head of state and creates division, disorder, and insubordination among the people. In particular, the eight individuals who gave speeches about the institution of the monarchy, namely Mr. Arnon Nampha (Respondent No. 1), Mr. Panupong Jadnok (Respondent No. 2), Miss

Panusaya Sithijirawattanakul (Respondent No. 3), Mr. Parit Chiwarak (Respondent No. 4), Miss Juthathip Sirikhan (Respondent No. 5), Miss Siripatchara Chungthirapanich (Respondent No. 6), Mr. Somyot Prueksakasemsuk (Respondent No. 7), and Miss Athitiya Pornphrom (Respondent No. 8), who acted as a movement and brought ideas from a former political party, Future Forward, which provided backup support.<sup>1</sup> The three-finger salute was manifest and they rejected rule by democracy with the king as head of state.<sup>2</sup> This included the giving of speeches in public places including the following:

On 3 August 2020, at the Cast A Spell To Protect Democracy event at the Democracy Monument and on 9 August 2020 at the Chiang Mai Won't Stand For It event in Chiang Mai province, Respondent No. 1 gave a speech that can be summarized as that one of the reasons that university students and the people have assembled to make demands is because they want to raise questions about the institution of the monarchy. At present, we are facing an important problem which is that there is a process to make the institution of the monarchy grow more and more distant from democracy. In other words, the design of the structure of the constitution facilitated the expansion of the royal prerogative. Article 15, second paragraph, of the Constitution stipulates that the organization and personnel administration of Royal Household shall be at the King's pleasure. The intervention in the promulgation of the Constitution by the institution of the monarchy; the legislation of many laws to expand the royal prerogative of the institution of the monarchy; to have the units directly related to the king and the assets which once belonged to the public belong to the king; to transfer a portion of the armed forces and budget to the Royal Security Command, including the drafting of a law related to the national budget in relation to the institution of the monarchy. There is a proposal to amend portions of the Constitution about the institution of the monarchy with regard to appointing a regent when the king is abroad and amending the law regarding the management of the king's assets to return to be the public assets of the country that belong to the brothers and sisters, all of the people.

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<sup>1</sup> Future Forward is a political party that was founded in 2018 by Thanathorn Juangroongruangkit, Thai Summit Group executive and former student activist, and Piyabutr Saengkanokkul, a legal scholar from Thammasat University. Progressive and focused on equality and strengthening the people's participation in politics, they were very successful in the March 2019 election. This was the case even though the election, the first after nearly five years of dictatorship following the 22 May 2014 coup by the National Council for Peace and Order, was highly constrained with election regulations favoring junta-aligned political parties. Their success, and brave political ideas, were a profound threat to the elite. The party was dissolved by the Constitutional Court on 21 February 2020 in Ruling No. 5/2563. They cited as the reason that a loan of USD6 million made to the party by Thanathorn was a donation and therefore illegal. The full ruling was published in ราชกิจจานุเบกษา เล่ม 137 ตอนที่ 21 ก หน้า 23-46 (18 มีนาคม 2563) [Government Gazette vol 137 pt 21 kor pp 23-46 (18 March 2020)] (Thai). —*trans.*

<sup>2</sup> The three-finger salute refers to the holding up of three fingers in the air, inspired by the film *The Hunger Games* and signifying fraternity, liberty and equality. First used as a symbol of solidarity and dissent in protests following the 22 May 2014 coup, it is now a regular part of protest repertoire in Thailand. —*trans.*

On 10 August 2020, at the Thammasat Won't Stand For It event at Thammasat University, Rangsit campus, in Pathum Thani province, Respondent No. 1 gave a speech that can be summarized as we assembled here today in order to assert that in addition to the three proposals that we talk about at every demonstration, in truth, there is a proposal between the lines that is the most important of them all. This is to solve the problem of the expansion of the royal prerogative of the institution of the monarchy. And I assert, once again, that this is not a mob to topple the monarchy. It is not a mob to impinge upon the monarchy. It is a mob that is speaking the truth about the problems of the country. Thammasat University was established by Professor Pridi [Banomyong]. Today, we, each one of us, have taken the baton from the People's Party. We have taken the baton from our ancestors to clear up all of the problems. We, each of us, are the offspring of the People's Party who have come to act in their place. The important point that I have come to speak about today is our demand between the lines. A democracy with the king as head of state means that the king must be above politics and under the constitution. Whatever royal duties cause the king to become involved in politics must be loudly questioned in public. We want to see the institution of the monarchy adjust itself to approach the people, rather than us having to adjust ourselves to approach the institution of the monarchy. Being under the constitution is a key part of the kind of rule we have. But problems arose when the institution of the monarchy attempted to expand the royal prerogative through the junta in 2014. The king, if the king remains a king in a democracy with the king as head of state, must not sign to endorse a coup. If a coup takes place, the institution of the monarchy must stand only on the side of democracy. Respondent No. 2 gave a speech that can be summarized as today I am going to talk about the absolute monarchy that has not died. Absolute monarchy is the centralization of the power of nobles and bureaucrats in the service of the king. The king has absolute power. Absolute monarchy existed during the reigns of Rama 5, Rama 6, and Rama 7. But on 24 June 1932, the People's Party, led by Professor Pridi Banomyong and Phraya Phahonphayusena, carried out a revolution to change Siam from an absolute monarchy to a democracy and the king was placed under the constitution. I think that absolute monarchy has extended into the present reign because the king is above the sovereign power of all three branches: judiciary, executive, legislative. Let me ask, why do we have to speak like this? Are you aware that in the second chapter of the Constitution, the second paragraph of Article 6, it says that no person shall expose the king to any sort of accusation or action? This is as if to demonstrate that the king is above the sovereign power that belongs to the people. My intention in speaking this time is that I want the king to be placed in an appropriate location where he is able to co-exist with the Thai people. And when I say that he is above the sovereign power, it is that he is above the power of the people. The people are unable to touch him. Anyone who does will be hit with an Article 112 charge. What is most important is for the king to be able to adjust himself to co-exist with the people and return to Thailand to be their protector. I want him to return to Thailand in order to not waste the people's taxes. Respondent No. 3 read Declaration Number 1 of the United Front of Thammasat and Democracy, which can be summarized as since the People's Party fomented a revolutionary transformation, all the people have hoped

that our country would be a democracy with the king as head of state who is truly above politics. But it has not been as such since the king has exercised power to intervene in politics. For example, whenever a coup overthrows a government that has come from a democratic process, the king has signed to appoint the head of the junta. This constitutes the endorsement of each and every coup as legal. Moreover, the king moved troops and also transferred a significant amount of the national budget to belong to the king himself personally. In addition, the king exercised extralegal royal authority to amend the constitution, which had already passed a referendum, to allow him to reside outside the country without having to appoint a regent. This could be done because the dictatorship government bowed down under the shadow of the king and continues to claim the monarchy for its own benefit. It can be seen that they mutually benefit. Such a situation constitutes an enemy to the principles of democracy with the king as head of state. There is no democratic country in which such actions take place. The people ought to know that the king of our country is not above politics. This has consistently been the root of political problems. He has neglected his duties of being the head of state that binds him to the hearts of the people and uses the people's taxes to seek pleasure and reside outside the country. This takes place while the people are experiencing hardship from the economic downturn. He also has close relationships with the rebels who foment coups to topple democratic rule. It is therefore evidence that if there are no adjustments made for the monarchy to co-exist with the institution of the people, the people will necessarily lose faith in the monarchy. The United Front of Thammasat and Demonstration therefore makes the following demands in order to resolve the problems with the monarchy:

- 1) Revoke Article 6 of the 2017 Constitution that does not allow anyone to make any accusation against the king. And add an article to allow parliament to examine the wrongdoing of the king, as had been stipulated in the constitution promulgated by the People's Party.
- 2) Revoke Article 112 of the Criminal Code, as well as allowing the people to exercise freedom of expression about the monarchy and giving an amnesty to all those prosecuted for criticizing the monarchy.
- 3) Revoke the Crown Property Act of 2018 and make a clear division between the assets of the king under the control of the Ministry of Finance and his personal assets.
- 4) Reduce the amount of the national budget allocated to the king to be in line with the economic conditions of the country.
- 5) Abolish the Royal Offices. Units with a clear duty, for example, the Royal Security Command, should be transferred and placed under other agencies. Unnecessary units, such as the Privy Council, should be disbanded.



- 6) Cease all giving and receiving of donations by royal charity funds in order for all of the assets of the monarchy to be auditable.
- 7) Cease the exercise of royal prerogative to express political opinions in public.
- 8) Cease all public relations and education that excessively and one-sidedly glorify the monarchy.
- 9) Search for the facts about the murder of those who criticized or had some kind of relation with the monarchy.
- 10) The king must not endorse any further coups.

These demands are not a proposal to overthrow the monarchy. But they are a good-faith proposal made for the monarchy to be able to continue to be esteemed by the people within a democracy. Therefore, for the monarchy to be secure in the present-day world, it must not hold power related to politics. It should be able to be controlled, audited, and criticized, and it should not be a burden on the people. Then it will be able to be held as a monarchy that is dignified in line with the universal meaning of democracy.

On 20 August 2020 at the Khon Kaen Has Had Enough event in Khon Kaen province and on 21 August at the Democracy Has Not Ended in Ayutthaya in Ayutthaya province, Respondent No. 4 gave speeches that can be summarized as rule by democracy with the king as head of state means that he does not get involved in politics. Appointing a junta is the legal endorsement of a coup. At present, the institution of the monarchy has placed itself above the constitution and the people. Demand that the institution of the monarchy be urgently reformed. If not, the institution of the monarchy, the institution of the people, and the institution of democracy, will be unable to co-exist.

On 30 August 2020, at the Snap Your Fingers to Drive Out Dictators event in Samut Prakan province, Respondent No. 5 gave a speech that can be summarized as the budget of the institution of the monarchy is the king's portion of the government's budget that was discussed in committee. The total amount for 2020 was 7,685 million baht. For 2021, the amount for the institution of the monarchy was increased to 8,980 million baht without any explanation of the budget. It cannot be audited, and what is important is that it is the taxes of the people. This amount of money could be used to create a good quality of life for the people. Respondent No. 6 gave a speech that can be summed up as for those who follow the news on Twitter, there was a hashtag #ClosePhuketIsland and that "What can I do? We cannot choose to be born" and "The roads were closed for those who live from hand to mouth, taxi drivers, hawkers, who do not have any social security. The street is their workplace and where they make a living. But the city of Bangkok claimed they closed the roads to create order. And the people who close the roads and make it so ordinary people cannot walk, cannot make

a living, traffic is stopped for hours, why are they not subject to order being created?” Respondent No. 7 gave a speech that can be summarized as we are the country with the third greatest inequality between the poor and the rich. The king is the richest person in the world. If we took the money of the 50 richest families in Thailand and put it together, we would have enough to give all 65 million Thai people [money] for their entire lives. Respondent No. 8 gave a speech that can be summarized as the taxes for governing the country must be apportioned to all of the people in the country. Why are they given to one person alone, and the feudal capitalists and children of nobles and royals? Respondent No. 4 gave a speech that can be summarized up as the seizure of governing power by soldiers is a violation of Article 113 of the Criminal Code, overthrow of rule. If the king does not sign to endorse the soldiers’ actions, then they must be punished. Therefore, Article 6 of the Constitution must be revoked. Whether one is a king, an elite, or a serf, we must all be under the same law. Respondent No. 2 gave a speech that can be summarized as we do not want to overthrow in any way. If we want to pave a road, but there is a large tree in the way, are you going to dig up the tree and toss it aside, will you make the road circle around it, or will you move the tree out of the way? I think that moving the tree to be in an appropriate location and building a strong road, we will have both a tree and a road that are complete. It is like creating development in the country by having the institution of the monarchy in an appropriate location. We have good intentions and we want to co-exist with the institution of the monarchy, for the institution to be our protector, to be glorious. The people are able to criticize [the monarchy]. We pay taxes to him, we must be able to audit those taxes.

The Petitioner viewed the speeches at the specified times, dates, and venues by the aforementioned speakers as containing content that gravely distorts, encroaches upon, ridicules and defames the institution of the monarchy. It is action that has the intention to overthrow rule by democracy with the king as head of state as in Constitutional Court Ruling No. 3/2562. The claims of the aforementioned group of people demonstrate that they do not respect or admire rule by democracy with the king as head of state and they have not acted in line with the Constitution. The exercise of fundamental rights and freedoms in a democracy must be constitutional. Article 25 and Article 34 [stipulate that] claiming individual freedom of expression but ignoring the limitations on that exercise of freedom that are present in international conventions and supporting the exercise of freedom without respecting the limitations, is gravely dangerous because it is the promotion of the exercise of freedom in illegal ways. In addition, upon examining the various announcements and proposals, it is found that many proposals contravene the fundamental principles on the protection of the institution of the monarchy and the royal prerogative of the king in the constitution, which have been securely guaranteed continuously from the 1932 Constitution of the Kingdom of Siam until the present. It is unable to be amended because it will contravene the principles of the amendment of the constitution, and it could perhaps be interpreted that the proposal to amend Article 6 of the Constitution is the destruction of the fundamental constitutional principles that is related to the prohibition according to Article 255 of the Constitution.

The Petitioner submitted the petition to the attorney general on 18 August 2020, for the attorney general to request the Constitutional Court to rule to order to cease the aforementioned actions. But the Petitioner found that the attorney general did not take any action within 15 days from the date that he submitted his petition according to Article 49, paragraph three. The Petitioner therefore submitted the petition to the Constitutional Court to request that the Constitutional Court rule and order the group of individuals to cease the aforementioned activities according to Article 49.

The initial point which the Constitutional Court must examine is whether or not the Constitutional Court has the authority to accept the petition to examine and rule under Article 49. Although the Petitioner requested that the Constitutional Court examine if the actions of various groups of people in holding demonstrations and speeches six times were the exercise of rights or freedoms to overthrow rule by democracy with the king as head of state and order the aforementioned group of people to cease their actions according to Article 49 of the Constitution, the facts of the petition show that on 18 August 2020, the Petitioner submitted a petition to the attorney general to request that the Constitutional Court rule according to Article 49, second paragraph, about the holding of the demonstration and speeches of the group of people on 10 August 2020 at Thammasat University, Rangsit campus, Pathum Thani province. The petition specified that the demonstration and speeches on the aforementioned day by three speakers had actions as the Petitioner claimed. They were Respondents No. 1, No. 2, and No. 3, and are an instance in which the Petitioner can submit a petition directly to the Constitutional Court according to Article 49, paragraph three, of the Constitution. The Petitioner did not submit a petition to the attorney general according to Article 49, paragraph three, of the Constitution, about the speeches in other demonstrations. The Constitutional Court therefore has an order to accept only the petition about the actions during the demonstrations and speeches of Respondents No. 1, No. 2, and No. 3 on 10 August 2020 for examination and rule. Respondents No. 1, No. 2, and No. 3 were asked to submit counter statements in response to the accusation, and in the interest of the examination, the Constitutional Court asked the attorney general to inform them of their actions and to send related documentary evidence.

The attorney general provided a summary of their actions. The Office of the Attorney General issued an order to appoint a working group to examine the matter and were in the process of compiling additional facts and evidence to submit to the attorney general to examine according to Article 49 of the Constitution along with sending related documents. In sum, the Petitioner saw or learned of the actions via online social networks and thought that the speeches of the aforementioned group of people to propose to abolish the expression of political opinion [by the king], to abolish the glorification of the institution of the monarchy, to revoke Article 112 of the Criminal Code and Article 6 of the Constitution had the intention to destroy, overthrow and devastate the institution of the monarchy so that it no longer exists and is an opponent of the institution of the monarchy. This was action in order to erode and destroy in order to cause [the institution of the monarchy to become] decayed and weakened, and

is in contravention of the fundamental principles of rule by democracy with the king as head of state.

Respondents No.1, No. 2, and No. 3 submitted a counter statement in response to the allegations and accompanying documents that can be summarized as follows:

1. The petition and the allegations are not in line with Article 49 of the Constitution. They are ambiguous and unclear with regards to how Respondents No. 1, No. 2, and No. 3 exercised their rights or freedoms to overthrow rule. The facts in the petition are vague allegations and the petition does not specify how Respondents No. 1, No. 2, and No. 3 exercised their rights or freedoms or which actions were an overthrow of rule by democracy with the king as head of state. The Respondents do not understand how the actions of which they are accused [are in violation of Article 49 of the Constitution]. [The Petitioner] Did not describe how the basic elements of Article 49 [were met], as the aforementioned measure gives the Constitutional Court the authority to rule to order the cessation of actions that are “The exercise of rights or freedoms to topple rule by democracy with the king as head of state.” The object under examination in the case is the exercise of rights or freedoms by individuals, and must examine whether or not those individuals exercised their rights or freedoms with the intention to overthrow rule by democracy with the king as head of state. But the petition does not make an allegation about how Respondents No. 1, No. 2, and No. 3 “overthrow” rule. The Petitioner merely claims that the actions of Respondents No. 1, No. 2 and No. 3 contravene Article 6, Article 25, Article 34, and Article 50 of the Constitution, and rebuts the reasons for the 10-point proposal for the reform of the monarchy. The description in the petition is outside the basic elements and the character of the allegation is outside the intention of Article 49 of the Constitution. And it is a different point than examining whether or not the exercise of the freedom of assembly and the freedom of expression of Respondents No. 1, No. 2, and No. 3 were constitutional. Regarding the claim that the actions of Respondents No. 1, No. 2, and No. 3 were in violation of Article 112 and Article 116 of the Criminal Code, the examination of whether a given action is a crime against security under the Criminal Code is a legal matter that is separate from the exercise of rights or freedom to overthrow rule by democracy with the king as head of state. The Constitutional Court therefore does not have the authority to accept and rule on the petition of the Petitioner under Article 49 of the Constitution.

2. The Constitutional Court does not have the authority to order Respondents No. 1, No. 2, and No. 3 to cease their actions as they have already done so. These actions are too remote. According to the principles of Article 49 of the Constitution, the facts must show how the actions are an exercise of rights or freedoms that overthrow rule by democracy with the king as head of state, and that the actions are taking place according to the principle established in Constitutional Court Ruling No. 1/2563. The exercise of freedoms by Respondents No. 1, No. 2, and No. 3 in the expression of opinion about the institution of the monarchy and the peaceful, unarmed demonstration are all actions that are unrelated to the exercise of freedom to

overthrow rule by democracy with the king as head of state. Each demonstration and expression of opinion, including the 10-point proposal to reform the institution of the monarchy, a reasonable person would not expect that this could have the intention or wish to overthrow rule by democracy with the king as head of state. But the aforementioned actions were to promote rule by democracy with the king as head of state. In addition, the petition did not include clear facts sufficient to demonstrate the possible aim and method of how they were exercising their rights or freedoms to overthrow rule by democracy with the king as head of state. As a result of the content of the expression of opinion or assembling to make political demands being motivated by a lack of confidence in the administration by the government and the proposal to reform the institution of the monarchy being expression and a demonstration that the constitution provides for and guarantees, Respondents No. 1, No. 2, and No. 3 did not aim to overthrow rule by democracy with the king as head of state. In addition, the facts according to the petition and accompanying documents are only claims that rely on information from websites, printed materials, and internet media, which did not specify how Respondents No. 1, No. 2, and No. 3 could possibly or use what method to overthrow rule by democracy with the king as head of state. Respondents No. 1, No. 2, and No. 3 expressed their opinions sincerely and with good intentions for rule by democracy with the king as head of state and the political system in the country to develop.

3. The actions of Respondents No. 1, No. 2, and No. 3 are the exercise of freedom of assembly and freedom of expression that are constitutional, in line with Article 34 and Article 44 and the motivation was a lack of confidence in the administration by the government and the structure of the constitution that is not in line with rule by democracy with the king as head of state. The actions of Respondents No. 1, No. 2, and No. 3 are merely political demands for the government to dissolve parliament and to amend the Constitution, which according to the rulings in Constitutional Court Order No. 59/2556, No. 61/2556, and No. 63/2556, actions with the aforementioned characteristics are not overthrow of rule by democracy with the king as head of state. The proposal to reform the institution of the monarchy does not contain any defamatory wording and does not encroach upon rule by democracy with the king as head of state in any way. The prohibition on exercising rights or freedoms according to Article 49 of the Constitution must be actions to “overthrow” rule by democracy with the king as head of state. The word “overthrow” is an action that has the intention to destroy or devastate the system of rule until it completely dissolves and no longer exists. In other words, there must be an intention or goal to destroy the fundamental principles of the constitution and the fundamental principles of democratic rule. For example, transformation from a democracy to a dictatorship. The exercise of freedoms by Respondent No. 1, No. 2, and No. 3 do not have the intention to overthrow rule by democracy with the king as head of state in any way. As a result, the interpretation of this constitutional measure must take into account the reasons and spirit of the Constitution. Article 49 of the Constitution is related to the idea of the right to protect the Constitution and the exercise of this right to oppose the seizure of power, or coups.

Therefore, actions that are the exercise of rights or freedoms to overthrow rule by democracy with the king as head of state as in Article 49 of the Constitution have the spirit of protecting against the exercise of rights or freedoms under the Constitution in order to lead to a coup only. The exercise of the right to assemble and the freedom to express opinions about the institution of the monarchy on 3 August 2020 and 10 August 2020 do not meet the reasons and spirit of Article 49 of the Constitution, as Respondent No. 1, No. 2, and No. 3 did not wish to cause a coup. In addition, the exercise of rights or freedoms to express opinions through a demonstration or proposing the 10-point proposal to reform the institution of the monarchy is in line with Constitutional Court Ruling No. 6/2543, according to the principle that the king “reigns but does not rule.” This is a constitutional principle in a parliamentary democracy as in civilized countries that have monarchs as head of state. The aforementioned expression of opinion was expressed with respect for the institution of the monarchy with the hope of seeing political reform, amendment of the constitution, and reform of the institution of the monarchy to make it secure and exist side-by-side with rule by democracy as it is in many civilized countries. They did not intend to foment a coup or hope for the elements of rule by democracy with the king as head of state to disappear.

4. The three political demands and the 10-point proposal for the reform of the institution of the monarchy are not overthrow of democracy with the king as head of state, but are in order to promote rule by democracy with the king as head of state. This can be carried out through methods stipulated by the Constitution. The three political demands are to dissolve parliament, to amend the Constitution, and to stop threatening the people. They are all political demands that have methods of being carried out that can be done legally and constitutionally. In other words, the dissolution of parliament is a political instrument of the executive, which is used to balance the power of the legislative branch in a parliamentary political system. The amendment of the Constitution is an operation according to Chapter 15 of the Constitution. And stopping threatening the people, for example, stopping criminal prosecution of people who exercise their right to peacefully demonstrate without weapons, can be done legally, as the state officials are able to use their discretion as appropriate to the situation and to not do that which unnecessarily violates the fundamental rights of the people. Regarding the 10-point proposal to reform the institution of the monarchy, all the methods for reform are according to constitutional mechanisms. It is not the overthrow of democracy with the king as head of state for the following reasons:

1) It is an amendment of the Constitution that is in line with and according to the spirit of rule by democracy with the king as head of state. If the king commits a crime, he must be examined by the Parliament, which is in accordance with the principle that no one is above the law. This principle is accepted and exists in democracies in civilized countries.

2) Freedom of expression of opinion is fundamentally important to the development of society and the political system under democratic rule. Political figures or the head of state have to be able to be criticized. Even though in some countries there is special protection provided for the reputation of the head of state who is a king by legislating it [criticism] to be a crime. But the laws do not disproportionately punish people the way that Article 112 of the Criminal Code does, which is a punishment that creates a disproportionate burden and limits the constitutional right to expression of opinion.

3) It is a criterion that is in line with the standards of civilized countries that have rule by democracy with a king as head of state to divide the responsibility of the aforementioned assets clearly and for there to be no ambiguity on the matter of the public property and the assets that the king uses according to his pleasure.

4) In order for the national budget that comes from the peoples' taxes to be able to be used to administer the country successfully.

5) In order to be a proposal to organize the units of the state and various organs of the state.

6) In order to protest and not have people claim [the monarch] and seek a profit from receiving donations to give to royal charity funds and to be protection against the institution of the monarchy being pulled in to be an instrument of illegitimate benefit-seeking.

7) The institution of the monarchy, as a constitutional organ, must be politically neutral. Therefore, there may not be royal orders given without being countersigned, because it may impact political neutrality.

8) If there are only one-sided public relations about the institution of the monarchy, it may cause the institution of the monarchy to become a political instrument. This proposal is a measure to protect [people from] illegitimate benefit-seeking from the institution of the monarchy.

9) This is in order to protect the institution of the monarchy from becoming tarnished.

10) As coups are actions that are the overthrow of rule by democracy with the king as head of state, they must be prohibited as in line with Article 49 of the Constitution. In principle, the king in a democracy is a constitutional organ who has a duty to protect rule by democracy with the king as head of state. Prohibiting the king from signing to endorse coups is in order to promote rule by democracy with the king as head of state and is in line with all constitutional principles.

For the aforementioned reasons, [the Respondents] view that the petition of the Petitioner is not in line with Article 49 of the Constitution. The Court may not rule to order the cessation of activities, as they are too remote and the facts are insufficient to demonstrate the intention and method of how it could be a possible exercise of rights or freedoms in order to overthrow rule by democracy with the king as head of state. And the exercise of rights and freedoms of Respondents No. 1, No. 2, and No. 3 have ceased. The actions of Respondents No. 1, No. 2, and No. 3 are not actions that are the exercise of rights or freedoms in order to overthrow rule by democracy with the king as head of state. [The Respondents] Request that the Constitutional Court dismiss the Petitioner's petition.

The Constitutional Court carried out the process of examination by having the Petitioner and Respondents No. 1, No. 2, and No. 3 demonstrate the reasons behind the allegation and counter statements in response to the allegation and submit accompanying evidence in order to listen to both sides. Article 27, paragraph one, of the 2018 Organic Act on the Procedures of the Constitutional Court allows for the examination of a case to be conducted on the basis of the inquisitorial system, whereby the Court shall have the power to find facts whether they are favorable or prejudicial to any party and, in deciding questions of fact, the Court may admit all types of evidence. In addition, in this case, which is a case about state security and the safety of the people, which, according to the Constitution, law and principles of the rule of law, for the benefit of the examination relying on the authority according to Article 27, paragraph three of the 2018 Organic Act on the Procedures of the Constitutional Court, the Constitutional Court sent a letter asking the Superintendent of the Khlong Luang Police Station in Pathum Thani Province, the Commissioner-General of the Royal Thai Police, Secretary-General of the National Security Council, and the Director of the National Intelligence Agency to send all related information and evidence, and for the Rector of Thammasat University to send a copy of the file of the investigation of the facts about the demonstration about the 10-point proposal about the institution of the monarchy on 10 August 2020 at Thammasat University, Rangsit campus, Pathum Thani province, to the Court.

The Superintendent of the Khlong Luang Police Station, Pathum Thani province, sent the document "The Day the Sky Trembled, 10 August, 10 Demands about the Institution of the Monarchy," which included the speeches and the ten-point proposal of 10 August 2020 at Thammasat University, Rangsit campus, Pathum Thani province, of Respondents No. 1, No. 2, No. 3 and No. 4, and Declaration No. 1 of the United Front of Thammasat and Demonstration.<sup>3</sup>

The Secretary-General of the National Security Council sent related information and evidence that can be summarized as the United Front of Thammasat and Demonstration organized the Thammasat Won't Stand For It event at Phaya Nak

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<sup>3</sup> An English translation of this booklet has been disseminated by PEN International and can be downloaded here: <<https://pen-international.org/app/uploads/The-Day-the-Sky-Trembled-complete-r18-August-2021.pdf>>—*trans*.



field at Thammasat University, Rangsit campus, Pathum Thani province. Respondent No. 1 and leaders gave speeches calling for the amendment of the Constitution.

The Director of the National Intelligence Agency sent related information and evidence that can be summarized as on 10 August 2020, the Thammasat University Student Union and the United Front of Thammasat and Demonstration organized the Thammasat Won't Stand For It event at Phaya Nak field at Thammasat University, Rangsit campus, Pathum Thani Province, under the idea of "We don't want reform, but we want revolution." Respondents No. 1, No. 2. and No. 3 gave speeches about the institution of the monarchy and spoke directly about amending the royal prerogative, the impact of absolute monarchy, and the use of the national budget. They proposed for the issue of the king to be able to be spoken about in public without [those speaking] being threatened. Respondent No. 3 read Declaration No. 1 of the United Front of Thammasat and Demonstration, which contained the 10-point proposal. That proposal subsequently appeared in online social media. The content was taken to be used in political speeches at events all over the country. The proposal was repeated in official contexts, including the submission of the 10-point proposal of the United Front of Thammasat and Demonstration to the Parliamentary Subcommittee on Political Development, Mass Communications, and Public Participation on 26 August 2020. The proposal was submitted to the chair of the Privy Council through Police Lieutenant General Phukphong Phongphetra, Commissioner of the Metropolitan Police Bureau, on 20 September 2020.

The Rector of Thammasat University sent a copy of the file of the investigation of the facts, which can be summarized as the group of students responsible for organizing the event on 10 August 2020 asked for permission to use space at Thammasat University to hold an event to propose the three demands, which were the dissolution of parliament, drafting a new constitution, and the cessation of the threatening of the people. Thammasat University granted permission for the students to carry out the activity in line with the aforementioned purpose. The group of students did not inform the administrators and officials of the university with the responsible duty about the points of other demands, including the demands about the institution of the monarchy. In addition, the university administrators, police, and security officials did not know ahead of time about the demands other than the 3 for which the students asked for permission.

The Commissioner-General of the Royal Thai Police sent related information and evidence that can be summarized as on 10 August 2020, the United Front of Thammasat and Demonstration organized a demonstration at Thammasat University, Rangsit campus, Pathum Thani Province. Respondents No. 1, No. 2 and No. 3 gave speeches which had content about the reform of the institution of the monarchy. There were speeches severely attacking the institution of the monarchy. Respondent No. 3 read Declaration No. 1 of the United Front of Thammasat and Demonstration, proposing the 10 demands.

The Petitioner submitted a petition to submit additional documentary evidence and an index of documents. In sum, on 10 December 2020, Respondent No. 3 gave a speech at the 14 October Memorial emphasizing the necessity of revoking Article 112

because if we say that our country is a democracy, then is it not correct that everyone should be able to express their opinions freely? Many people would not have to seek asylum or be deprived of their freedom through being imprisoned. Therefore, Article 112 should not exist. But the same law used with the people should be used. The masses yelled “Down with feudalism! Long live the people!” On 12 December 2020, the Khana Ratsadorn 2563, which is a network of various groups of the people, for example the United Front of Thammasat and Demonstration, Free People, Free Youth, and Bad Student, began demonstrations that took place continuously. On 14 January 2021, Respondents No. 1, No. 2 and No. 3 engaged in symbolic expression. They raised a red flag with the numbers “112” in yellow up the flagpole at the Khlong Luang police station. On 9 February 2021, Respondent No. 3 and the Khana Ratsadorn 2563 announced a demonstration at the Pathum Wan Skywalk in order to demonstrate their power to call to revoke Article 112 of the Criminal Code and to push for the temporary release of the leaders who were facing criminal accusations of Article 112 and Article 116. On 10 February 2021, demonstrators from the Khana Ratsadorn 2563 marched from the area of the plaza in front of the Bangkok Art and Culture Center at Pathum Wan Intersection to the Pathum Wan Police Station. Respondent No. 2 proposed the condition to the police officials that if they did not release the demonstrators whom they were holding, they would force their way inside the Pathum Wan Police Station. On 13 February 2021, Respondent No. 2, one of the leaders of the Khana Ratsadorn 2563, organized the activity Count From 1 to a Million to Return Power to the People in the area of the Democracy Monument. There were calls to revoke Article 112 and the 3 demands, which are that General Prayuth Chan-ocha, the prime minister, and his cabinet must resign; Parliament must immediately hold a special meeting in order to accept the drafts of the amendments to the Constitution; and reform of the institution of the monarchy. There was the setting off of firecrackers and flares in the demonstration. There was the sound of a bomb from the line of fighting and the throwing of water bottles. On 20 February 2021, there was a demonstration in front of Parliament at Kiakkai Intersection. Respondent No. 3, along with masses, assembled in front of the entrance gate and held up signs and the symbolic three fingers. After that, the Khana Ratsadorn 2563 read a declaration of the United Front of Thammasat and Demonstration on “Marking Our Next Struggle,” the core of which can be summarized as at this time it is clear that we are unable to place our hope in parliamentary politics. It shows the interrelation of the feudal system and interest groups. This causes us to maintain our 3 demands. Various groups of the masses continued the movement and did activism continuously. For example, the erasure of the dark blue stripe from the three-colored flag; the destruction of the fence of the Criminal Court; bringing various things, including images of the king, to burn; and forcing their way into various government places. Therefore, the Constitutional Court sent a copy of the petition to submit additional documentary evidence and the index of the documentary evidence to Respondents No. 1, No. 2, and No. 3, but Respondents No. 1, No. 2, and No. 3 did not counter or oppose it.

The Constitutional Court examined the petition, the additional petition, the counter statements in response to the allegations, the evidence of the related agencies,

and the related documents. The opinion [of the Court] is that this case has questions of fact and questions of law. There is sufficient evidence on which to examine and rule on the questions of facts. The Constitutional Court can rule on the questions of law without needing to have witnesses provide testimony. Therefore, the Constitutional Court ended the inquiry according to Article 58, paragraph one, of the 2018 Organic Act on the Procedures of the Constitutional Court. The matter which must be examined and ruled on is whether or not the actions of Respondents No. 1, No. 2, and No. 3 are the exercise of rights or freedoms in order to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution.

The admissible facts according to the petition, the counter statements and various pieces of evidence, including audio files of the speeches by Respondents No. 1, No. 2 and No. 3 are that Respondents No. 1, No. 2 and No. 3 gave speeches in public many times at many locations beginning on 3 August 2020. At the demonstration at Thammasat University, Rangsit campus, Pathum Thani Province, on 10 August 2020, Respondents No. 1, No. 2 and No.3 called for the transformation of the institution of the monarchy through 10 demands, which were:

- 1) Revoke Article 6 of the 2017 Constitution that does not allow anyone to make any accusation against the king. And add an article to allow parliament to examine the wrongdoing of the king, as had been stipulated in the constitution promulgated by the People's Party.
- 2) Revoke Article 112 of the Criminal Code, as well as allowing the people to exercise freedom of expression about the monarchy and giving an amnesty to all those prosecuted for criticizing the monarchy.
- 3) Revoke the Crown Property Act of 2018 and make a clear division between the assets of the king under the control of the Ministry of Finance and his personal assets.
- 4) Reduce the amount of the national budget allocated to the king to be in line with the economic conditions of the country.
- 5) Abolish the Royal Offices. Units with a clear duty, for example, the Royal Security Command, should be transferred and placed under other agencies. Unnecessary units, such as the Privy Council, should be disbanded.
- 6) Cease all giving and receiving of donations by royal charity funds in order for all of the assets of the monarchy to be auditable.
- 7) Cease the exercise of royal prerogative to express political opinions in public.

- 8) Cease all public relations and education that excessively and one-sidedly glorify the monarchy.
- 9) Search for the facts about the murder of those who criticized or had some kind of relation with the monarchy.
- 10) The king must not endorse any further coups.

An objection that must be ruled on first is whether or not the petition is ambiguous, unclear and does not fulfill the elements of Article 49 of the constitution. Upon examining the petition and accompanying documents, the view of the court is that this is a case in which the Petitioner claimed that the speeches of Respondents No. 1, No. 2, and No. 3 on 10 August 2020 at the Thammasat Won't Stand For It demonstration, at Thammasat University, Rangsit campus, Pathum Thani Province, contained content that distorted, encroached upon, mocked and defamed the institution of the monarchy and were actions with the intention to overthrow rule of democracy with the king as head of state according to Article 49 of the Constitution. The Petitioner cited various documents including transcripts of audio files which illustrated the actions of Respondents No. 1, No. 2, No. 3, and those like them, which were appended to and included as part of the petition. The petition is therefore sufficiently clear for Respondents No. 1, No. 2, and No. 3 to understand the conditions of the actions for which they are accused and to fight the case. The objection of Respondents No. 1, No. 2, and No. 3 is therefore not tenable.

The point which must be examined and ruled on is whether or not the actions of Respondents No. 1, No. 2, and No. 3 were the exercise of rights or freedoms to overthrow rule by democracy with king as head of state according to Article 49, paragraph one, of the Constitution.

The Constitutional Court has examined and found that the constitutional principles lay a foundation for rule by democracy with the king as head of state. The constitutional values, which are the kernel of rule by democracy with the king as head of state, include important values such as the protection of rights and freedoms of Thai people. The protection of rights and freedoms of the people was first provided for in the 1932 Constitution of Siam (10 December 1932 version) in Chapter 2, Rights and Duties of the Siamese People, and have been continuously provided for in every constitution up until the present. Article 25, paragraph one, of the 2017 Constitution of the Kingdom of Thailand stipulates that, "As regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons." The aforementioned measure defines the guarantee of rights and freedoms of the people, which can be divided into two portions as follows: those that are stipulated specifically in the

Constitution and those that are not prohibited by the Constitution or other laws. Thai people have the aforementioned constitutionally-protected rights and freedoms. Therefore, the Constitution then provides protection of the exercise of rights and freedoms in every case as specifically stipulated and that are not prohibited or limited by the Constitution and other laws, with the condition that constitutionally-protected exercise of rights or freedoms must not impact state security, contravene peace and order or good morals of the people, or violate the rights and freedoms of other people.

When an individual has rights and freedoms, they also have accompanying duties and responsibility. This clearly appears in Chapter 4, Duties of All Thai People, of the Constitution. Article 50 (1) (3) (6) stipulates that the people have the duty to protect and preserve the nation, religion, king, and rule by democracy with the king as head of state, to strictly follow the law, respect and not violate the rights and freedoms of other people, and not do anything that might create division or hatred in society.

Article 49, paragraph one, of the Constitution stipulates that, “No person shall exercise their rights or liberties to overthrow the democratic regime of government with the King as Head of State.” Paragraph two stipulates that, “Any person who has knowledge of an act under paragraph one shall have the right to petition to the Attorney-General to submit a motion to the Constitutional Court for an order to cease such act.” Paragraph three stipulates that, “In the case where the Attorney-General orders a refusal to proceed as petitioned or fails to proceed within fifteen days as from the date of receiving the petition, the person making the petition may submit the petition directly to the Constitutional Court.” And paragraph four stipulates that, “The action under this section shall not prejudice the criminal prosecution against the person committing an act under paragraph one.” The spirit of the aforementioned article is to protect rule of the country and for it to be rule by democracy with the king as head of state, and for people to know that they have the right to petition the attorney general if there are actions that are the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state, and that in cases in which the attorney general issues an order not to proceed as petitioned, or does not proceed within fifteen days from receipt of the petition, the petitioner is able to submit the petition directly to the Constitutional Court. In addition, it stipulates for the proceedings under this article to not impact criminal cases against those who act to overthrow rule by democracy with the king as head of state. Therefore, Article 49 of the Constitution aims for all Thai people to participate in protecting and preserving rule by democracy with the king as head of state and provides for the Constitutional Court to be the organization with the authority to perform the duty of monitoring, ruling and ordering the cessation of actions that overthrow rule by democracy with the king as head of state. The principle of Article 49, paragraph one, was first stipulated in Article 35 of the 1932 Constitution (1952 Revision), and stipulated in the same manner in every subsequent constitution. It is a principle to protect rule by democracy with the king as head of state from threats arising from the exercise of constitutional rights and freedoms. It aims for the constitutional principles and constitutional values that support the maintenance of rule by democracy with the king as head of state to not be abnegated or lost. The principle according to Article 49, paragraph two, was stipulated

for the first time in Article 63 of the 1997 Constitution, and similarly stipulated in Article 68 of the 2007 Constitution. It is an article that aims to define that if anyone knows of actions that are the overthrow of rule by democracy with the king as head of state, that person has the right to petition the attorney general to send the matter to the Constitutional Court to rule to cease the aforementioned actions. However, to create greater clarity, the 2017 Constitution further stipulates that if the attorney general has an order to not proceed as petitioned or does not proceed within fifteen days from the receipt of the petition, the petitioner is able to submit the petition directly to the Constitutional Court. This aforementioned article is a guarantee of the rights of citizens to protect the constitution from actions of persons or groups of persons who exercise their rights or freedoms under the constitution in a way that may lead to the overthrow of democracy with the king as head of state. Therefore, the exercise of rights to preserve and protect the constitution is a mechanism of the constitutional judicial process. People who exercise their right in preserving and protecting the constitution must submit a petition to the attorney general to examine and audit the facts in the petition before proposing the matter of the petition to ask the Constitutional Court to examine and rule to order the cessation of the aforementioned activities. Even if the attorney general orders to not accept to proceed as requested or does not proceed within fifteen days from the day the petition is received, the Constitution guarantees the right of the petitioner to submit the petition directly to the Constitutional Court. The guarantee of the rights of the petitioner in the aforementioned situation is the creation of a guarantee of the preservation whose principle is an important aspect of rule by democracy with the king as head of state. Whenever there are actions that are within the scope of the exercise of rights or freedoms to overthrow rule by democracy with the king as head of state, actions of the aforementioned characteristic can be brought for accusation in a case in the Constitutional Court.

The facts in the petition, the additional petition, the counter statements, the documents accompanying the petition and all evidence that the Attorney General, the Superintendent of Khlong Luang Police Station, Pathum Thani Province, the Secretary-General of the National Security Council, the Director of the National Intelligence Agency, the Rector of Thammasat University, and the Commissioner-General of the Royal Thai Police submitted to the court can be summarized as that on 10 August 2020, Respondents No. 1, No. 2, and No. 3 organized a demonstration and speeches at the Thammasat Won't Stand For It event at Thammasat University, Rangsit campus, Pathum Thani Province. In the speech of Respondent No. 1, he spoke about the institution of the monarchy. The important content can be summarized as that we have assembled here today to assert that in addition to the three proposals that we talk about at every demonstration, in truth there is a proposal between the lines which is the most important of them all. This proposal is to solve the problem of the expansion of the royal prerogative of the institution of the monarchy. And I assert, once again, that this is not a mob to topple the monarchy. It is not a mob to impinge upon the monarchy. But it is a mob that is speaking the truth about the problems of the country. The important point that I have come to speak about is our demand

between the lines. A democracy with the king as head of state is one in which the king is above politics and under the constitution. From now on, whatever royal duties cause the monarchy to become involved in politics will be loudly questioned in public. We want to see the institution of the monarchy adjust itself to meet with the people, rather than us having to adjust ourselves to meet with the monarchy. Being under the constitution is a key aspect of the kind of rule we have. But problems arose when the monarchy attempted to expand the royal prerogative through the junta in 2014. If the king remains a king in a democracy with the king as head of state, he must not sign to endorse a coup. If a coup takes place, the institution must stand only on the side of democracy. Respondent No. 2 spoke about the institution of the monarchy, with the important content summarized as from the time of the People's Party, led by Pridi Banomyong and Phraya Phahonphayusena, a revolution changed Siam from an absolute monarchy into a democracy and the king was placed under a constitution. I think that absolute monarchy has extended into the present reign because the king is above the sovereign power of all three branches: judiciary, executive and legislative. Let me ask, why do we have to speak like this? Are you aware of what is at the end of Article 6, in the second chapter of the 2017 Constitution? It says that no person shall expose the king to any sort of accusation. This is as if to demonstrate that the king is above the sovereign power that belongs to the people. My intention in speaking this time is that I want the king to be in an appropriate location and able to co-exist with the Thai people. And when I say that he is above the sovereign power, it means that he is above the power of the people. The people are unable to touch him. And if anyone does, they will be hit with an Article 112 charge. Respondent No. 3 read Declaration 1 of the United Front of Thammasat and Demonstration, of which the important content can be summarized as since the People's Party fomented a revolutionary transformation, [the people] have hoped that [our] country would be a democracy with the king as head of state in which the king is truly above politics. But it has not been as such as the king has exercised power to intervene in politics from above. Whenever a coup takes place, the king has signed to appoint the head of the junta. The king has moved troops and transferred the national budget to belong to the king personally. He has exercised extralegal royal authority to amend the constitution, which had already passed a referendum, to allow him to reside outside the kingdom without having to appoint a regent. The dictatorship government bowed down under the shadow of the king and claimed the monarchy for its own benefit. It can be seen that they mutually benefit. It is a threat to rule by democracy with the king as head of state. The people ought to know that the king of our country is not above politics. This has consistently been the root of political problems. In addition, he has neglected his duties of being the head of state that binds him to the hearts of people and used the people's taxes to seek pleasure and reside outside the country. This takes place while the people are experiencing hardship. He also has close relationships with the rebels who foment coups to overthrow democratic rule. The United Front of Thammasat and Demonstration therefore makes the 10 demands to resolve problems with the monarchy.

The Constitution has articles to prohibit the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state. Such articles appear in Article 63 of the 1997 Constitution, Article 68 of the 2007 Constitution, and Article 49 of the 2017 Constitution. Constitutional Court Ruling No. 18-22/2555 and Ruling No. 3/2562 formulate that the word “overthrow” denotes a grave threat to the constitution and the system of rule that is impossible to rectify. In addition, it is action to destroy or devastate the system of rule until it completely dissolves and no longer exists.

Exercising one’s rights and freedoms to call for the amendment of the constitution to change the royal status of the king, who is under the constitution and above political responsibility according to the constitutional legal principle that the king can do no wrong and to revoke the law prohibiting the violation and defamation of the institution of the king, in which the aforementioned amendment of the constitution and law would cause the king to not be in a position of being respected and worshipped. It creates turbulence and insubordination among the people. It is the exercise of rights and freedoms in excess of what is appropriate. It has dangerous repercussions for the security of the state, peace and order and the good morals of the people. It will undermine rule by democracy with the king as head of state. The king and the Thai nation have been indivisible from the past until the present, and will exist together in the future. Even though Thailand is a democracy, the Thai people remain in agreement to invite the king to be head of state, to be the primary institution paired with the Thai nation, and pay homage to his inviolability in order to maintain Thai nation-ness. This was stipulated in Article 1 of the 1932 (Interim) Charter of Siam, that stipulated that the supreme power in this country belongs to the people. Article 2 stipulated that the following persons and groups of persons shall exercise this power on behalf of the people as is specified further in this chapter, namely 1. The king, 2. Parliament, 3. The People’s Committee, 4. The courts. Article 3 stipulated that the king is the supreme head of the country. Acts, judicial decisions, and other actions which are to be specifically designated by legal provisions must be done in the name of the king. Subsequently, there was the promulgation of the Constitution of the Kingdom of Siam on 10 December 1932. In the Chapter on General Provisions, Article 2 stipulated that the sovereign power emanates from the Siamese nation. The king, who is the head of the nation, exercises it in conformity with the provisions of this constitution. In the second chapter, on the king, Article 3 stipulated that the person of the king is sacred and inviolable. Article 5 stipulated that the king is the head of the Siamese forces. Article 6 stipulated that the king exercises legislative power by and with the advice and consent of the Assembly of the People’s Representatives. Article 7 stipulated that the king exercises executive power through the cabinet. Article 8 stipulated that the king exercises judicial power through the courts duly established by law. From the aforementioned provisions of the 1932 (Interim) Charter of the Administration of Siam and the 1932 Constitution of the Kingdom of Siam (10 December 1932 version), it can be seen that from the Sukhothai period through the Ayutthaya period and up to the Rattanakosin period, in Thai rule, the governing power has belonged to the king. The king has the gravely important mission to preserve the survival of the country and the people, by holding the position of the Supreme Commander of the Thai Army and



leading the military to fight to always protect and expand the kingdom in previous eras. Along with ruling in adherence to Buddhist principles, which is rule according to the Ten Perfections.<sup>4</sup> The king therefore has been respected and the spiritual center inseparable from all Thai people for many hundreds of years. Therefore, even with the transformation of rule in 1932, which gave the ruling power to the people or coming from all Siamese people, the People's Party who fomented the transformation and the Thai people were in agreement to invite the king, who is the primary institution, to co-exist with democratic rule, and the king would exercise the sovereign power according to constitutional provisions. This form of rule is called rule by democracy with the king as head of state and the Thai kingdom has maintained this system continuously. [Thailand is] The same as various other countries, which have different histories of nationhood and independence, but what is the same is that there are laws to prohibit the identity, symbolism, and national treasures from becoming stained or damaged. The demand to revoke Article 6 of the Constitution, which is the provision that guarantees the royal status of the king as the head of state who is not subject to accusation and is inviolable, is an action with a clear intention to destroy the institution of the monarchy. The actions of Respondents No. 1, No. 2 and No. 3 are the erosion and subversion of rule by democracy with the king as head of state. The making of demands that attack in public and claiming that they are exercising their constitutionally-provided rights and freedoms is incorrect. In addition, they use profanity and violate the rights and freedoms of other people who have different views. They are setting an example for other people to follow. Further, Respondents No. 1, No. 2 and No. 3 have acted as a movement to reach their purpose and goals. Even though the speeches of Respondents No. 1, No. 2 and No. 3 on 10 August 2020 at the Thammasat Won't Stand For It demonstration at Thammasat University, Rangsit campus, Pathum Thani Province, had passed, Respondents No. 1, No. 2 and No. 3 still joined in demonstrations with various people and groups after the Petitioner submitted his petition to the court. They used different tactics, formats, speakers, and the new ploy of not identifying any specific persons as leaders. But the form of the actions was continued by a group of people who share the same ideas. The movement of Respondents No. 1, No. 2, and No. 3 and their networks is a movement that has had the same intention from the beginning. Respondents No. 1, No. 2 and No. 3 have repeated their actions continuously, with these actions characterized by agitation and using false information to foment chaos and the use of violence in society.

There are three principles of democracy. They are "liberty," which means everyone has the right to think, say and do anything not prohibited by law; "equality," which means everyone is equal; and "fraternity," which means all people are united and support their brothers and sisters.

The Thai system of democracy with the king as head of state is one in which the Thai people and the king have been bound together for many hundreds of years. The

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<sup>4</sup> The Ten Perfections in Theravada Buddhism are as follows: generosity, moral conduct, renunciation, wisdom, energy, patience, truthfulness, determination, loving-kindness, and equanimity. See Venerable San Van Xien, "A Study of the Concept of Perfections in Theravada Buddhism," (Master of Arts dissertation, Mahachulalongkornrajavidyalaya University 2018).—*trans.*

king is the head of state and therefore receives consent from the Thai people to exercise sovereignty according to the constitution through the parliament, prime minister, and courts. The Thai institution of the monarchy is an important pillar that is essential to rule by democracy with the king as head of state. Therefore, the various actions with the intention to destroy or cause the institution of the monarchy to cease to exist, whether it is speech, writing, or other actions in order to undermine, make insignificant, or weaken the institution, are those that demonstrate an intention to overthrow the institution of the monarchy.

The exercise of rights and freedoms of Respondents No. 1, No. 2, and No. 3 is not in line with the principles of democracy. The actions of Respondents No. 1, No. 2, and No. 3 are the claiming of rights and freedoms without taking equality and fraternity into consideration. Respondents No. 1, No. 2, and No. 3 exercised their freedom of expression and did not listen to the opinions of other people. They did not accept views that were different and violated the rights of other people by reviling them, invading their personal space, and agitating and inciting using facts that distorted reality. Facts and eyewitness evidence show that Respondents No. 1, No. 2, and No. 3 have organized groups in the form of a network to use violence continuously. In some instances, Respondents No. 1, No. 2, and No. 3 have used provocative parts of their speeches to stir up violence and create disharmony among the people in the nation. This has created division among the people in the nation and is the destruction of the principles of equality and fraternity. The effect of the actions of Respondents No. 1, No. 2, and No. 3 will be to ultimately overthrow democracy. In addition, the facts show that in many demonstrations there was destruction of portraits of the king. There was the removal of the blue sections from the national flag, which means the removal of the institution of the monarchy from the national flag. The ten demands of Respondents No. 1, No. 2, and No. 3, such as the revoking of Article 6 of the Constitution, the abolishing of the giving and receiving of donations by royal charity funds, the abolishing of the royal prerogative to express political opinions in public, are demands to cause the status of the institution of the monarchy to not be as it is in the tradition of democratic rule to which the Thai nation has always adhered. The continuous conduct and actions of Respondents No. 1, No. 2, and No. 3 illustrate that Respondents No. 1, No. 2, and No. 3 had the ulterior motive to exercise their rights and freedoms to overthrow rule by democracy with the king as head of state. It is not reform.

The exercise of rights and freedoms by Respondents No. 1, No. 2 and No. 3 are the expression of opinion that is not sincere. It is the violation of law. It has the motive to overthrow rule by democracy with the king as head of state as stipulated in Article 49, paragraph one, of the Constitution. Even though the incident according to the petition has passed, Respondents No. 1, No. 2, and No. 3, including their network of organizations, still continue the aforementioned acts. It is not distant from leading to the overthrow of rule by democracy with the king as head of state. Article 49, paragraph two, of the Constitution provides the Constitutional Court with the authority to order the cessation of the aforementioned activities from arising in the future.

On the basis of the aforementioned reasons, the Constitutional Court therefore rules that the actions of Respondents No. 1, No. 2, and No. 3 are the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the constitution. The Constitutional Court orders Respondents No. 1, 2, and 3, including related organizations and networks, to cease the aforementioned actions in the future as well, according to Article 49, paragraph two, of the constitution.

Mr. Warawit Kangsasitiam  
President of the Constitutional Court

Mr. Twekiat Menakanist  
Constitutional Court Judge

Mr. Punya Udchachon  
Constitutional Court Judge

Mr. Wiroon Sangtian  
Constitutional Court Judge

Mr. Noppadon Theppitak  
Constitutional Court Judge

Mr. Nakharin Mektrirat  
Constitutional Court Judge

Mr. Udom Sittiwirattham  
Constitutional Court Judge

Mr. Chiranit Havanond  
Constitutional Court Judge

Mr. Bunjongsak Wongprachaya  
Constitutional Court Judge