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Case Summaries

Selected Thai Constitutional Court Cases 2019–2022

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The Thai Constitutional Court has an undeniable influence upon Thai constitutional law, and the Court's jurisprudence has certainly raised debates. This observation is evident from several other entries in this journal issue. Indeed, the cases that passed through the Constitutional Court's docket between 2019 to 2022 have continued to influence public discourse.

In 2019, Thailand transitioned back to democracy (at least formally), with the election seeing General Prayuth Chan-o-cha remain in the position of Prime Minister, albeit now in a legitimately democratic form. As an aftermath of this election, many cases concerning qualifications for political positions arrived on the Constitutional Court's doorstep. Additionally, the three following years also saw the Court rendering significant decisions in terms of civil rights, while political actions (or mistakes) made by previous governments were adjudicated upon as well.

In this compilation, 12 Constitutional Court cases that are not discussed by other entries in this journal issue have been chosen based on the author's perception of their significance and interestingness. Hopefully, these cases may be able to provide a glimpse of the Constitutional Court's influence on Thai society during these three eventful years.

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Table 1. Overview of selected Constitutional Court cases

Year	Case No.	Issue
2019	3/2562	Dissolution of the Thai Raksa Chart Party
	11/2562	Prime Minister Prayuth's official status as the Head of the NCPO
	14/2562	Disqualification of Thanathorn Juangroongruangkit from MP status
2020	4/2563	Constitutionality of the anti-abortion provisions in the Criminal Code
	29/2563	Prime Minister Prayuth's use of state housing
	30/2563	Unconstitutionality of NCPO's orders
2021	4/2564	Parliament's powers regarding Constitutional amendments
	5/2564	Constitutionality of the decision by the General Assembly of Judges of the Supreme Administrative Court in the Hopewell dispute
	6/2564	No disqualification of Thammanat Prompao from MP and minister status despite foreign court sentence
	10–13/2564	Constitutionality of the Public Assembly Act B.E. 2558 (2015)
2022	6/2565	Constitutionality of Emergency Decree provisions
	10/2565	Constitutionality of the prohibition of online alcohol sales

Case No. 3/2562: Dissolution of the Thai Raksa Chart Party

The general election held on 24 March 2019 was the first election since the coup d'état in 2014.[1] During the build-up to this election, the Constitutional Court rendered its decision No. 3/2562 on the dissolution of the Thai Raksa Chart party, a political party deemed by many to belong to the exiled ex-prime minister Thaksin Shinawatra's faction.[2]

Facts

On 24 January 2019, the Election Commission called on political parties to submit their candidates for the office of prime minister. In response to this announcement,

[1] "Thailand Votes in First Post-Coup Election" *BBC* (24 March 2019) <https://www.bbc.com/news/world-asia-47664201>.

[2] Mongkol Bangprapa and Agencies, "Dissolve Thai Raksa Chart, Election Commission Decides" *Bangkok Post* (13 February 2019) <https://www.bangkokpost.com/thailand/politics/1628478/dissolve-thai-raksa-chart-election-commission-decides>.

the Thai Raksa Chart Party nominated Princess Ubolratana Rajakanya Sirivadhana Barnavadi as its candidate on 8 February 2019. Notably, Princess Ubolratana is the daughter of the late King Bhumibol and the sister of the current King Vajiralongkorn, but had by that time given away her royal title. On the same day that Thai Raksa Chart announced its decision, the palace issued a Royal Command criticising the nomination as being against the constitutional order. Although Thai Raksa Chart promptly obeyed the Royal Command and withdrew the nomination of Princess Ubolratana, the Electoral Commission filed a case to the Constitutional Court to dissolve the party and prohibited the members of its executive committee from running for elections and from being involved in any political party.

Decision on the Merits

In coming to its decision, the Constitutional Court first cited Section 11 of the 1932 Constitution, the first Constitution to come into effect after Thailand had become a democracy, and a royal rescript by King Rama VII to point out that the principle of a politically neutral monarchy had existed within the Thai constitutional tradition since the very beginning. The Constitutional Court then used a previous decision, No. 6/2543, as evidence of the principle that the monarchy reigns but does not rule. Thereafter, the Court contrasted the Thai constitutional monarchy with a system of absolute monarchy. It then found that the nomination of Princess Ubolratana as part of an election campaign is an action that would foreseeably cause the Thai political system to change into a system in which the monarch is both head of state and ruler, thereby contravening the "reign, but not rule" principle.

In its next line of reasoning, the Constitutional Court pointed out that the intent of the current 2017 Constitution is to decrease conflict within the state, while protecting the exercise of citizens' rights and liberties. Still, the Court found that the exercise of rights must not be detrimental to the basic constitutional principles of a self-defending democracy. Hence, political parties exercising their rights and liberties are subject to the consideration that their actions must not conflict with the principles of Thai constitutional monarchy. Interestingly, regarding the status and identity of the monarchy, the Court stated that the monarch "shall reign in righteousness for the benefit and happiness of the Siamese people" – which is a quote from a famous speech given by the late King Bhumibol during his coronation.[3] Accordingly, if the monarchy is politicised, the monarchy can no longer be the spiritual anchor for the Thai people.

The Constitutional Court then found from the interpretation of Section 5 Paragraph 2 of the Constitution that there are four elements to the convention of Thai constitutional monarchy:

(1) it must be a convention long held as a good governance system;

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[3] หน่วยราชการในพระองค์, "พระราชประวัติ" (หน่วยราชการในพระองค์, 14 ตุลาคม 2565) [Royal Office, "Royal Biography" *Royal Office* (14 October 2022)] (Thai) <https://www.royaloffice.th/2022/10/14/%E0%B8%9E%E0%B8%A3%E0%B8%B0%E0%B8%A3%E0%B8%B2%E0%B8%8A%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B8%A7%E0%B8%B1%E0%B8%95%E0%B8%B4-2489-2559/>.

(2) it must be a convention accepted as good and worthy of preservation in Thailand and not that of another country or of another tradition;
(3) the convention must exist during the time that Thailand is a democracy; and
(4) it must be a convention of constitutional monarchy and not of other forms of political governance.

Consequently, the Court found that despite not being explicitly provided for in the Constitution, "conventions of Thai constitutional monarchy" is an applicable concept according to Section 5 Paragraph 2.

The Court moved on to consider Section 92 Paragraph 1 of the Constitution, which provides for instances where the Election Commission shall request the Constitutional Court to dissolve a political party. These instances include the commission of an act by a political party that abolishes or may be contrary to constitutional monarchy. The Court stated that political parties could not use ignorance as an excuse for such commissions. The Court then interpreted the term "may be contrary" using the objective standard of a reasonable person and found that the Thai Raksa Chart party had, for its political goals, consciously nominated Princess Ubolratana, whom the members of its executive committee had known was still part of the Chakri Dynasty. Hence, the action of the Thai Raksa Chart party is an act that may be contrary to constitutional monarchy. Accordingly, the Court then ordered the dissolution of the party.

As for the members of Thai Raksa Chart's executive committee, the Court applied Section 92 Paragraph 2, which consequently prohibited their candidacy upon the application of the previous paragraph. When deciding on the length of the prohibition, the Court took into account the principle of proportionality to assess the limitation of the right to political participation, examining the seriousness of the action and the prompt withdrawal of the Princess's nomination by the party. Consequently, the Court found that the members of the executive committee had shown respect for the monarchy, resulting in the prohibition of candidacy being limited to 10 years following the date of the decision.

Lastly, the Constitutional Court applied Section 94, which prohibits those who have been prohibited from candidacy due to party dissolution from being involved with a political party within 10 years from the dissolution. Hence, the Thai Raksa Chart executive committee members were prohibited from being involved with a political party for 10 years.

Case No. 11/2562: Prime Minister Prayuth's official status as the Head of the NCPO

In 2014, amid political turmoil, the Thai military launched a coup d'état against the then-Prime Minister Yingluck Shinawatra. After the successful coup, General Prayuth Chan-o-Cha was appointed as the leader of the National Council for Peace and Order (NCPO), which assumed the role of government at that time. Later, the interim

Constitution of 2014 was enacted, and General Prayuth was chosen as the Prime Minister under that Constitution.[4]

Facts

On 5 July 2022, 110 Members of Parliament requested the Constitutional Court to consider the eligibility of General Prayuth Chan-o-Cha in his role as a Minister. The Members of Parliament claimed that Prayuth was not qualified to be a Minister according to Section 160(6) in conjunction with Section 98(15) of the Constitution, which in essence prohibits "an official or an employee of a government agency, state agency, or state enterprise or other state official" from holding a ministerial post. It was argued that General Prayuth's role as the leader of the NCPO was that of an "other state official," and that General Prayuth's status as a Minister should thus be terminated under Section 170 of the Constitution.

Decision on the Merits

The Constitutional Court started by citing Decision No. 5/2543, a previous decision that provided a definition of the term "other state official." In this decision, the Court had found that the term "other state official" in relation to the disqualification from candidacy for the House of Representatives must be interpreted narrowly since such interpretation will affect the rights of political candidates.

The need for a narrow interpretation thus leads to the *ejusdem generis* principle being the appropriate interpretation method. This principle entails that within a list, a more general term should be interpreted in the context of preceding specific terms; the definition of such general term should also be narrower than such specific terms. Hence, in the context of Decision No. 5/2543, the term "other state official" was interpreted to be more narrow than the phrase "an official or employee of a state agency, state enterprise or local government organisation."

Moreover, the Constitutional Court also found in this previous case that the term "other state official" must be interpreted in accordance with the intention of the provision, namely to prevent civil servants from becoming politicians. Thus, the Constitutional Court in Decision No. 5/2543 had provided four criteria to define the term "other state official": the person in question (1) is appointed or elected by law; (2) has the authority to perform regularly under the law; (3) is under the State's control; and (4) receives legal remuneration.

The Constitutional Court then moved on to consider the appointment of General Prayuth as a Minister. According to the Court's reasoning, the appointment of the leader of the NCPO was the result of a coup d'état. Furthermore, his issuance of announcements and orders in the role of NCPO leader proves that the NCPO leader

[4] News Wires, "Thailand Coup Leader Prayuth Chan-ocha Voted Prime Minister" *France24* (21 August 2014) <https://www.france24.com/en/20140821-thailand-prayuth-chan-ocha-coup-leader-prime-minister-parliament>.

used sovereign power, the highest power in the land, to rule the country. Consequently, the NCPO leader was not under control of any other state agency.

Furthermore, the NCPO leader was not appointed by law, and there existed no law that provided the procedure for the appointment. Also, the position of the NCPO leader was temporary, intended to preserve peace for the country and its citizens. Therefore, the Court concluded that the position of the NCPO leader did not have a similar status and scope of work to that of an official or an employee of a government agency, state agency, state enterprise, or other state official. Hence, General Prayuth was not disqualified under Section 170 Paragraph 1(4) in conjunction with Section 160(6) and Section 98(15) of the 2017 Constitution.

Case No. 14/2562: Disqualification of Thanathorn Juangroongruangkit from MP status

The Future Forward was a newly created party that was opposed to General Prayuth Chan-o-Cha's faction. Its leader was Thanathorn Juangroongruangkit, a billionaire who was idolized by the party's supporters. Future Forward later won a significant number of seats in the 2019 election, with Thanathorn consequently gaining the status of a member of the House of Representatives.[5]

Facts

The Future Forward Party submitted its list of candidates for the 2019 election on 6 February 2019. After the conclusion of the general election on 24 March 2019, Thanathorn was announced as a party-listed Member of Parliament for the Future Forward party. However, the Election Commission requested the Constitutional Court to disqualify Thanathorn from his status as a Member of the House of Representatives according to Section 101(6) in conjunction with Section 98(3) of the Constitution. In essence, these Sections prohibit an owner or a shareholder of a newspaper or mass media business from running for an election to become a Member of the House of Representatives. The Election Commission alleged that Thanathorn had held shares in a media company called V-Luck Media Co., Ltd. when the Future Forward Party submitted his name on 8 February 2019. However, Thanathorn argued that he had already transferred the shares to his mother on 8 January 2019.

Decision on the Merits

The Constitutional Court considered V-Luck Media to be a newspaper or media company by reason of first referring to the definitions of "newspaper" within the Act on Notification of Printing Recordation Act B.E. 2550 (2017). The Court further found

[5] James Ockey, "Future-Forward? The Past and Future of the Future Forward Party" in Malcolm Cook and Daljit Singh (eds), *Southeast Asian Affairs 2020* (ISEAS Publishing 2020) 355 <https://doi.org/10.1355/9789814881319-020>.

that the purpose of V-Luck Media, as stated in its Memorandum of Association and the company's registration documents, was to conduct a newspaper and advertisement business. The Court also cited V-Luck's submission under the Notification of Printing Recordation Act and the company's financial declarations, in order to determine V-Luck's purpose as a media company. Even though V-Luck Media had already stopped its magazine business and terminated its employment contracts in 2018, and had notified the Social Security Office of the temporary halt to its business, the Court pointed out that V-Luck Media had not used the process specified under the Notification of Printing Recordation Act to disclose its termination of operation. Therefore, the Court decided that V-Luck Media was still operating a mass media business at the time that the Future Forward Party submitted its nomination of Thanathorn as a Member of Parliament.

Regarding Thanathorn's claim that he had already transferred the shares to his mother on 8 January 2018, the Court concluded that this was not credible. The Court pointed out that the record of shareholders on 12 January 2015 of V-Luck Media showed that Thanathorn still had possession of the disputed shares, while the record on 21 March 2019 showed that the shares belonged to his mother. Furthermore, the Court noted that V-Luck Media had in the past been quick in submitting its records of shareholders. Hence, a new record of shareholders not being submitted promptly after the shares transfer on 8 January 2019 cast doubt on the credibility of Thanathorn's argument, especially considering that the shares transfer record would be important for Thanathorn's political aspirations.

Likewise, other statements by Thanathorn and his family members were also disputed by the Court as not being plausible. For example, the Court opined that the credibility of Thanathorn's claim was further reduced by a cheque for the money as evidence of the transfer of shares being deposited late. In another instance, Thanathorn's mother explained that the second record of shareholders was submitted on 21 March 2019 (instead of promptly after 8 January 2019), since there were further transfers, resulting in a transfer being made on 21 March 2019. However, the Court also dismissed this explanation mainly on the ground that these transfers were not evidenced by share payments.

Based on its credibility assessment, the Constitutional Court decided to dismiss Thanathorn's claim and the legal presumption of the validity of the transfer of the shares enshrined in the Civil and Commercial Code. Therefore, the Court concluded that Thanathorn had held shares in a mass media company when his name was submitted for election. Consequently, Thanathorn's status as a member of the House of Representatives was terminated by the Court by virtue of Section 101(6) in conjunction with Section 98(3).

Case No. 4/2563: Constitutionality of the anti-abortion provisions in the Criminal Code

Facts

A doctor who was a supporter of safe abortion was arrested and charged on the grounds of performing abortion under Section 302 of the Criminal Code. Her patient was also accused of committing the crime of abortion under Section 301 of the Criminal Code. This led the doctor to request the National Ombudsman to ask the Constitutional Court to examine the constitutionality of the anti-abortion provisions in the Criminal Code. However, the National Ombudsman decided not to make such a request. Thus, the doctor made the application to the Constitutional Court herself.

Decision on the Merits

The Constitutional Court had to consider three issues. The first issue was whether Section 301 of the Criminal Code, which makes it a crime for a woman to abort or to get an abortion, is contrary to Sections 27 and 28. The second issue was whether Section 305, which provides for exceptions to Section 301, violated Sections 27, 28, and 77 of the Thai Constitution. Regarding the third issue, the Court had to consider whether and how the law on abortion should be amended.

The decision started with the consideration of the contents of the relevant constitutional provisions: Section 27 prohibits unfair discrimination, but measures to promote the exercise of equal rights of persons are not considered unfair discrimination. Section 28 guarantees the rights to life and bodily integrity, but the exercise of rights and liberties must not interfere with others' rights. Finally, Section 77 provides that the state should only create necessary laws, and terminate or amend those which are no longer necessary or relevant.

Regarding Section 301 of the Criminal Code and Section 28 of the Constitution, the Court stated that abortion is a sensitive issue in a social, medical, legal, and moral sense. According to the Court, although the anti-abortion law is intended to protect the life of the fetus, society does not place value solely on the protection of human life. Hence, if only the rights of the fetus are to be protected without considering the rights of the mother, which existed before the fetus' rights, the right of the mother over her body will be violated. Here, the Court also provided that this right of the mother over her body is a fundamental natural right, being integral to human dignity. The Court then added that the mother's "right to make a decision" will also be affected by this unbalanced consideration. The Court then opined that the protection of the rights of the fetus and of those of the mother must be balanced by using the gestation period as a guideline. To the Court, the outright denial in Section 301 of the mother's rights without any appropriate condition or timeline is disproportionate. This conclusion, along with the State's obligation to promote safe abortion to protect the rights of mothers and fetuses, led to the finding that Section 301 violates Section 28 of the Constitution.

However, the Court did not find that Section 301 of the Criminal Code violated Section 27 of the Constitution on equality. In the Court's view, abortion, as regulated by Section 301, could only be committed by women due to their natural characteristics. Therefore, extending Section 301 to apply to the mother's male partner, considering their significantly different physical bodies, would be discrimination against the male partner. Hence, Section 301 did not violate Section 27 of the Constitution.

As for Section 305, it provides for situations that act as exceptions to the crimes of abortion under Section 301 and the procurement of abortion under Section 302. Exceptions under Section 305 consist of situations where: (1) the abortion is necessary for the mother's health; and (2) the mother is pregnant due to the commission of certain sexual crimes. These situations correspond with the content of a Rule issued by the Medical Council, which provides the details of situations in which doctors are allowed to administer abortion procedures. Since the Court found the Medical Council Rule to be clear while also taking into account the physical and mental health of the pregnant mother, Section 305 was found to be proportionate and non-discriminatory, thereby not violating Sections 27 and 28 of the Constitution.

Regarding the interaction between Section 305 of the Criminal Code and Section 77, it was found that Section 77 is a provision in a chapter on State policy which the Court deems merely hortatory; in other words, Section 77 does not prescribe a strict obligation for the State. In addition, the Court observed that since abortion is a sensitive societal issue affecting public peace and morals, Section 305 of the Criminal Code was created to safeguard the life of the mother by requiring a licensed doctor to administer the abortion. Therefore, the Court dismissed the claim that "Section 305, which does not protect medical practitioners who are not doctors, is not up to date with developments in medical science, with a focus on abortion pills."

Finally, the Court noted that the law on abortion had been in use for 60 years and had resulted in many illegal abortions dangerous to the mother and many unwanted pregnancies. The Court further considered that the advancement in medical science had allowed the mother to safely exercise the right of decision at an appropriate time. These considerations, combined with the lack of legal protection for medical practitioners, led the Court to suggest that the laws related to abortion should be amended by the relevant authorities.

Case No. 29/2563: Prime Minister Prayuth's use of state housing

Facts

The Speaker of the House of Representatives filed a case against General Prayuth Chan-o-Cha, challenging the General's positions as Prime Minister and Minister of Defense.

Before becoming the Prime Minister and Minister of Defense, General Prayuth was a military officer and had thus been entitled to state housing as part of a welfare program for high-ranking military officers. However, General Prayuth stayed on in the

housing, despite his retirement from military service during his premiership. Members of the House of Representatives then tried to use General Prayuth's overstay as a ground to disqualify him from his positions. It was argued that benefiting from the accommodation without paying rent or any related costs was a breach of the Constitution on two grounds: (1) it was a conflict of interest in which additional special entitlement was received from the State; and (2) it was a grave breach of moral standards.

Therefore, the Constitutional Court had to consider the potential disqualification of General Prayuth from his positions under Section 170 Paragraph 1(4), in conjunction with Section 160(5) and Section 170(5), and in conjunction with Section 186 Paragraph 1 and Section 184 Paragraph 1(4) of the Constitution.

Decision on the Merits

The Constitutional Court found that General Prayuth was entitled to stay in state housing despite his retirement from military service. It was pointed out that the Rule of the Army on the Entitlement to Army Guesthouses B.E. 2548 (2005) states the required characteristics of persons entitled to state housing provided by the Army. According to this Rule, government officers of the rank of general and high-ranking commanders who had been the Army Chief are entitled to such housing. According to the Court, General Prayuth was not staying in the state housing only in his capacity as a Prime Minister; he was also a high-ranking commander and an ex-Chief of the Army. Thus, he was entitled to stay in the housing. The Court clarified its point by stating that Prime Ministers with a civilian background would not have the same entitlement under this Rule of the Army.

Furthermore, the Court found that the Rule of the Army on the Entitlement to Army Guesthouses B.E. 2548 (2005) also allows the Army to grant extensions for those who have lost their entitlements, which the Army had done in the case of General Prayuth. It was also noted by the Court that similar entitlements had been given in other cases as part of the Army's customs, and that the electricity bills and related costs are covered by the Army under this Rule. Apart from this line of argument, the Court further supported its decision by explaining the importance of providing a safe and private accommodation for the Prime Minister, and also stated that the designated housing for the Prime Minister was at that time not in an appropriate condition. The Court then concluded that there was no additional special entitlement received by General Prayuth from the military, which would have disqualified him. Instead, these entitlements received by Prayuth were part of a personal right derived from having been an ex-Chief of the Army, which was a normal procedure in the military.

Finally, the Court used its conclusions on the lack of a conflict of interest and additional special benefits received by General Prayuth to further decide that General Prayuth did not fail the moral standard required of a minister under the Constitution.

Therefore, General Prayuth Chan-o-cha was again not disqualified by the Constitutional Court.

Case No. 30/2563: Unconstitutionality of NCPO's orders

Facts

After the successful coup d'état in 2014, activists and academics were ordered to report themselves to the National Council for Peace and Order (NCPO).[6] One of those summoned was Worachet Pakeerut, a public law lecturer at Thammasat University's Faculty of Law. In spite of the order, Worachet refused to comply and did not report himself. This led to the prosecutor of the military court charging Worachet with a criminal case on the grounds of violation of two NCPO orders: Order No. 29/2557 and Order No. 41/2557. While prior NCPO orders had merely obliged the individuals specified therein to report to the NCPO without providing for any criminal punishment for non-compliance, Order No. 29/2557 referred to these prior summoning orders and imposed a sentence of imprisonment of no more than two years or a fine of not more than 40,000 baht for non-compliance. Meanwhile, Order No. 41/2557 provided for similar punishment against those who fail to report to the NCPO, but in more general and forward-looking terms.

At the district court level, Worachet argued that the NCPO orders applied against him were unconstitutional on various grounds. It was argued that the NCPO orders violated the following constitutional provisions:

(1) Section 26, since the NCPO orders provided for disproportionate criminal offences;
(2) Section 4 and 27, since the NCPO orders infringed human dignity and caused unequal treatment; and
(3) Section 29, since the NCPO orders violated the principle of non-retroactivity of criminal law under Section 29.

Due to these questions of constitutionality, the district court referred the case to the Constitutional Court according to Section 212 of the Constitution.

Decision on the Merits

The Court first considered the contents of NCPO Order No. 29/2557 and NCPO Order No. 41/2557, and found that Section 239 of the transitional provision of the Constitution approves the status of NCPO announcements and orders as legally binding under the Constitution. Hence, these NCPO orders were found to still have legal force even if the NCPO had been dissolved. The Constitutional Court thus had jurisdiction to consider the constitutionality of these orders.

The Court then indicated that the protection of rights and liberties under the Constitution must take into account the situation in the country and the way of life of the population at the time of legislation and application of the law. At the time of the application of the NCPO orders, the NCPO had successfully staged the coup and

[6] Human Rights Watch, "Thailand: Two Months Under Military Rule: Deepening Censorship, Persecution, Draconian Orders" *Human Rights Watch* (21 July 2014) <https://www.hrw.org/news/2014/07/21/thailand-two-months-under-military-rule>.

repealed the 2007 Constitution, and had centralised power in order to secure peace. Therefore, there must be some restrictions on citizens' rights, and the Court found the criminal penalty for non-compliance with the NCPO orders to be necessary.

However, the Court pointed out that the way of life of individuals is different during ordinary situations, especially after the 2017 Constitution had guaranteed the fundamental rights to criminal due process in Section 29 Paragraph, 1 and had provided for the principle of proportionality in restricting individual rights in Section 26.

Regarding proportionality, the Court found that although the summoning orders were intended to maintain peace, they did not explain why the individuals were summoned. Moreover, alternative security measures could be imposed instead of criminal punishment, such as those in Section 46 of the Criminal Code (measures imposable against a person who poses a security risk but has not yet committed an offence). Likewise, the Criminal Code also provides for a lower punishment for the compoundable offence of non-compliance with officers' orders in Section 368 Paragraph 1. Similarly, the failure to report to the NCPO was not serious enough to warrant a punishment of imprisonment of no more than two years or a fine of not more than 40,000 baht. Accordingly, the NCPO orders were found by the Court to be unsuitable, unnecessary, and disproportionate, and thus in violation of the principle of proportionality under Section 26 of the Constitution.

Concerning Order No. 29/2557, the Court indicated that it had criminalised the failure to report under a prior order (Order No. 24/2557). Whereas Order No. 24/2557 had specified that the individuals named therein must report to the NCPO on 24 May 2014, Order No. 29/2557 was enacted on 29 May 2014. Consequently, Order No. 29/2557 was found to be against the principle of "No crime, no punishment without law."

Finally, the Court concluded that both Order No. 29/2557 and Order No. 41/2557 violated the principle of proportionality in Section 26 of the Constitution, while Order No. 29/2557 additionally violated Section 29 Paragraph 1 of the Constitution on the non-retroactivity of criminal law. Because the NCPO Orders had been deemed unconstitutional on these grounds, the Court thus did not consider their compatibility with Section 4 on human dignity and Section 27 Paragraphs 1 and 3 on equality.

Case No. 4/2564: Parliament's powers regarding Constitutional amendments

Facts

The President of Parliament referred to the Constitutional Court a question regarding the power of Parliament to amend Section 256 and add Chapter 15/1 to the Constitution. This question was referred to the Constitutional Court as the result of three proposals to amend the Constitution. These proposals intended to allow

Parliament to prepare a new draft Constitution. Section 256/1 intended to establish a parliamentary commission responsible for preparing a new draft Constitution, while the proposed Chapter 15/1 refers to the creation of a new Constitution.

It was argued by the opposition against this amendment that Parliament does not have the authority to prepare a new Constitution, under the doctrine of "no power without law." They pointed out that the existing Section 256 only provides for the power to amend the Constitution on a specific issue (i.e., amendment on a section-by-section basis) and does not provide the power to prepare a whole new constitution. If the Constitution intended to allow a complete amendment, it would have explicitly provided for this in the text. Hence, any act that would allow the preparation of a new Constitution would be unconstitutional. The three proposed amendments were not merely amendments of a specific issue, since they did not specify the constitutional section intended to be repealed. Accordingly, the opposition alleged that Parliament did not have the power to proceed with these amendment proposals.

Decision on the Merits

The Constitutional Court began its decision by considering the importance of the Constitution and the necessity for it to be flexible. As pointed out by the Court, the drafters must have foreseen the dynamism of the Constitution and consequently provided for the procedures regarding constitutional amendments.

The Court proceeded to analyse the relevant provisions on constitutional amendments, namely Sections 255 and 256 of the Constitution. In its analysis, the Court separated constitutional amendments into two levels and three categories. The first level of amendment concerns essential sections for which amendments are exceptionally difficult, while the second level concerns sections that do not significantly affect the governance of the country, for which amendment is less difficult.

Regarding the three categories, the first category concerns amendments that change the system of constitutional monarchy or change the type of state: this first category of amendment is prohibited. The second category concerns amendments to the General Provisions, the Chapter on the Monarchy, the Chapter on Constitutional Amendment, the provisions on the qualifications and disqualifications of personnel in constitutional positions, and the provisions on the qualifications and disqualifications of courts and independent organisations; this second category of amendments requires Parliament to consider the approval of a proposal made by the Council of Ministers, Members of Parliament, or at least 50,000 citizens with the right to vote, and there must also be a referendum. The third category concerns amendments of other provisions and requires a parliamentary procedure that includes a majority vote by Parliament.

Thereafter, the Court stated that the use of legislative power by the Parliament in amending the Constitution is different from ordinary cases, due to the need to protect the supremacy and continuity of the Constitution. Accordingly, the power of Parliament to amend the Constitution is limited both substantively and procedurally.

Constitutional amendments must therefore be carried out under the conditions of the original Constitution, which in this case is Chapter 15 of the 2017 Constitution. Since the original Chapter 15 of the 2017 Constitution only allows for amendments on specific issues and not amendments to the whole Constitution, the preparation of a new constitution through the addition of Chapter 15/1 would result in the 2017 Constitution being repealed, and in the amendment of a fundamental principle that was intended to be protected by the drafters. Therefore, in order to prepare a whole constitution, a referendum must be held on the question of whether or not there should be a new constitution. After that, Parliament can prepare a draft of the new constitution before holding another referendum for the people to approve or disapprove of such draft. The draft constitution must then be signed by the King to come into force.

Case No. 5/2564: Constitutionality of the decision by the General Assembly of Judges of the Supreme Administrative Court in the Hopewell dispute

Facts

The State Railway Authority of Thailand (SRT) had a long-running dispute with Hopewell (Thailand) Co., Ltd. over a concession granted to Hopewell on 9 November 1990 to build an elevated road and train system. Hopewell had alleged that the termination of the concession by the SRT on 27 January 1998 was unlawful, and the company had been trying to claim compensation. Hopewell's initial attempt at arbitration on 24 November 2004 resulted in the arbitral tribunal holding SRT liable to pay compensation to Hopewell. However, the SRT had been trying to dispute the decision of the arbitral tribunal, and the arbitral award was challenged in the administrative courts. The Central Administrative Court annulled the arbitral award for the reason that, at the time Hopewell brought the issue to arbitration, Hopewell had already exceeded the deadline set by Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), which provides that a case must be filed within five years from the date that the cause of action is known or should have been known, but no later than ten years from the date of the cause of action.

Hopewell, however, appealed the Central Administrative Court's decision. The Supreme Administrative Court rendered its judgment on 21 March 2019, reversing the Central Administrative Court's annulment of the arbitral award. The Supreme Administrative Court found that since the concession contract was concluded on 9 November 1990, a date before the establishment of the Administrative Courts, the period of prescription for filing a case must have started on the date that the Administrative Courts came into operation, on 9 March 2001, and not before this. This led the Supreme Administrative Court to conclude that Hopewell had filed its case to

arbitration within the time limit as the case was filed on 24 November 2004, and the period of prescription had not commenced until 9 March 2001.

However, there was another turning point in this dispute. In coming to its finding that the period of prescription for filing cases concerning actions that occurred before the Administrative Courts' establishment started on the date of the Administrative Courts' establishment, the Supreme Administrative Court had relied on Decision No. 18/2545 by the General Assembly of Judges of the Supreme Administrative Court. Against this decision made by the General Assembly of Judges, the Ombudsman, on behalf of the SRT, brought this current constitution case to the Constitutional Court. The Ombudsman, on behalf of the SRT, then challenged this decision made by the General Assembly of Judges to the Constitutional Court. The Ombudsman alleged that Decision No. 18/2545 by the General Assembly of Judges was not sent to be examined by the House of Representatives in accordance with Section 6 Paragraph 1 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), and also that it was not published in the Royal Gazette in accordance with Section 5 of the same Act on Establishment. Therefore, the Ombudsman concluded that Decision No. 18/2454 by the General Assembly of Judges contradicted Section 3 Paragraph 2, Section 5 Paragraph 1, Section 25 Paragraph 3, Section 188, and Section 197 of the Constitution, and requested the Constitutional Court to revoke the General Assembly's decision.

Decision on the Merits

The Constitutional Court first considered whether the decision by the General Assembly of Judges of the Supreme Administrative Court No. 18/2545 constituted an issuance of a regulation under Section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999). The Constitutional Court found that Section 44 essentially allows the General Assembly of Judges of the Supreme Administrative Court to prescribe court rules and procedures in matters that were not already governed by its Act on Establishment as a way to fill in the gap in the law, so as to allow a smooth transfer of jurisdiction in administrative cases from the Court of Justice. However, Section 44 is to be contrasted with Section 68 of the same Act on Establishment, which allows the General Assembly of Judges of the Supreme Administrative Court to hold a plenary session to consider a particular case. In other words, Section 44 only concerns the issuance of rules and procedures of a general nature. In relation to Decision No. 18/2545, the Constitutional Court found that the General Assembly of Judges of the Supreme Administrative Court had decided to create a guideline for decisions, and not just provide an analysis of a specific decision. The Constitutional Court also found that during the discussion on the issuance of Decision No. 18/2545, the General Assembly did not refer to the facts of any specific case. Furthermore, the judgments of the Administrative Court that referred to Decision No. 18/2545 did not indicate that Decision No.18/2565 made an assessment of the facts of any specific judgment. Therefore, the Constitutional Court concluded that Decision No. 18/2545 was intended to be the provision of a standard

guideline, similar to the enactment of a transitional rule on the period of prescription for the jurisdiction of the Administrative Court, resulting in the issuance of Decision No. 18/2545 being deemed the issuance of a rule or procedure under Section 44.

Since Decision No. 18/2565 constituted a rule or procedure under Section 44 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), it must therefore comply with Sections 5 and 6 of the same Act. It was found that the Supreme Administrative Court did not have Decision No. 18/2545 published in the Royal Gazette, nor had it been reviewed by the House of Representatives prior to being issued. Therefore, the Supreme Administrative Court failed to comply with both Sections 5 and 6. Consequently, the issuance of Decision No. 18/2545 was the issuance of a regulation not in accordance with the procedures provided by law and was, therefore, contrary to Section 3 Paragraph 2 and Section 197 Paragraph 4 of the Constitution, without the necessity to consider other constitutional provisions.

Case No. 6/2564: No disqualification of Thammanat Prompao from MP and minister status despite foreign court sentence

Facts

Members of the Opposition attempted to have Thammanat Prompao, at the time a Member of Parliament of the governing Palang Pracharath Party and Deputy Minister of Agriculture and Cooperatives, disqualified by the Court from his parliamentary and governmental roles. The Opposition members alleged that Thammanat had previously been given a 6-year imprisonment sentence by the New South Wales Court of Appeal in Australia for a drug trafficking offence. Hence, according to the Applicants, Thammanat should be disqualified from his Member of Parliament status under Section 101(6) in conjunction with Section 98(10) of the Constitution as well as from his minister status under Section 170 paragraph 1(4) in conjunction with Section 160(6) and Section 98(10). In essence, Section 101(6) disqualifies persons with certain prohibited characteristics from holding the position of Member of Parliament under Section 98, while Section 160(6) disqualifies persons from holding the position of minister for the same reasons. One of the prohibited characteristics is having been convicted of one or several enumerated crimes by a final judgment. Among the listed crimes is drug trafficking, Section 98(10).

However, a copy of the New South Wales Court of Appeal's judgment could not be obtained, even with assistance from the Ministry of Foreign Affairs. The evidence submitted by the Applicants was only a copy of a request for a belated appeal. On the other side, Thammanat admitted that he had been charged at the New South Wales Court, but only with the offence of being aware of a drug import, not with the offence of drug trafficking. Thammanat also argued that the phrase "convicted by a final judgment" in Section 98(10) of the Thai Constitution only covered Thai criminal offences and judgments rendered by Thai Courts.

Decision on the Merits

The main issue considered by the Court was whether the phrase 'convicted by a final judgment' in Section 98(10) only referred to judgments by Thai Courts. The Court first interpreted Section 3 of the Constitution to point out that the exercise of judicial power is part of state sovereignty and must not be interfered with by other states without consent.

Hence, according to the Court, an enforcement or interpretation of foreign judgments that would result in the same legal effects as those that Thai judgments have is not in accordance with the principle of sovereignty. Moreover, under international law, judicial decisions are applicable only in the territory of the state within which the decision was rendered. Only on the basis of treaties and in compliance with the reciprocity principle could one state recognize and enforce another state's decisions. In line with these principles, constitutions of states have recognized the independence of the judiciary and the sacredness of judgments. Therefore, according to the Court, where constitutional provisions refer to judgments, only domestic judgments are referred to.

The Court then pointed out that criminal laws of different countries provide for different crimes, which means, according the Court, that an offence in one country may not be an offence in another. Thus, if the phrase 'convicted by a final judgment' in Section 98(10) of the Constitution were to be interpreted to cover foreign judgments, this would extend the recognition of foreign court decisions, and the Court would not be able to assess whether the principle of the rule of law as well as rules on the due process of foreign courts were complied with. This would also violate the principle of reciprocity and significantly affect Thai judicial sovereignty.

The Court then concluded that Thammanat did not have the prohibited characteristic of having been convicted by a final judgment under Section 98(10) of the Constitution, even if the New South Wales Court of Appeal had previously sentenced him. The Court did not disqualify Thammanat from his position as a Member of Parliament under Section 101(6) and Section 98(10) of the Constitution. The Court likewise did not disqualify him from his minister status under Section 170 paragraph 1(4) in conjunction with Section 160(6) and Section 98(10).

Case No. 10–13/2564: Constitutionality of the Public Assembly Act B.E. 2558 (2015)

Facts

In 2020, activists nationwide organised the "Run to Oust the Uncle" event, a campaign that invited the public to jog to show their disapproval of Prime Minister Prayuth

Chan-o-Cha.[7] Some of the organisers were then criminally charged under the Public Assembly Act B.E. 2558 (2015) (the "Act"). In their defence, four of these accused organisers, originating from different parts of the country, argued at the district court level that the provisions within the Act are unconstitutional. Sections 4 and 10, and Paragraphs 2, 14, and 28 of the Act were alleged to be contrary to Sections 26, 34, and 44 of the Constitution.

As for the content of the provisions in the Act, Section 4 provides the definition of public assembly; Section 10 provides that persons intending to organise a public assembly must notify relevant officers within 24 hours before the start of the assembly; Section 14 provides that a public assembly that proceeds in a manner contrary to certain provisions in the Act, including Section 10, is unlawful; Section 28 provides for a fine of 10,000 baht for non-compliance with Sections of the Act, including Section 10.

Due to the aforementioned questions, the district courts referred these constitutional considerations to the Constitutional Court according to Section 212 of the Constitution. During the trial stage at the Constitutional Court level, the Prime Minister, the Secretary of the Council of State, the National Police Commissioner, and the Secretary of the Senate offered their opinions to the Constitutional Court in support of the constitutionality of the provisions of the Act.

Decision on the Merits

The Constitutional Court first considered the content of the relevant constitutional provisions. Section 26 of the Constitution is a provision regarding the required content of laws which restrict individual rights, while Section 34 is a provision on freedom of expression and also provides the public interest exceptions that the State could use to justify its restriction of such freedom. In a similar manner, Section 44 guarantees the right to freedom of peaceful assembly, subject to public interest exceptions.

Regarding the Act, the Court found that the purpose of it was to regulate public assembly on the following points: to comply with the treaty on civil and political rights to which Thailand is a party; to maintain public peace and safety; and to ensure that the rights, freedoms, and dignity of the citizens are not affected.

Thereafter, the Court pointed out that freedom of assembly is a fundamental principle of democracy derived from freedom of speech, and is a method used by citizens to express their grievances to the government and society. Hence, freedom of assembly entails that individuals should be able to freely determine the purpose, date, time, place, and method of assembly. Still, this freedom has its boundaries, and its exercise must take into account the public interest. Section 44 provides for freedom of assembly subject to public interest exceptions in line with Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the Court

[7] Panu Wongcha-Um and Panarat Thepgumpanat, "'Oust Uncle': Thailand's Jog for Dissent Signals New Breed of Activists" *Reuters* (13 January 2020) <https://www.reuters.com/article/thailand-politics-idINKBN1ZC0YL>.

pointed out that the law limiting the right to freedom of assembly must comply with Section 26, namely that it must not be against the Rule of Law, must not place additional burden on individuals or restrict individual rights and freedoms, and must not affect human dignity.

The Court then moved on to consider the constitutionality of Section 4 of the Act as regards the definition of "public assembly." In the Court's view, the definition of "public assembly" acts as the criterion for determining which types of public assembly fall under the application of the Act; the definition does not impose conditions for the organisation of a public assembly. Moreover, even if the definition in Section 4 did not provide for a specific number of people required to constitute an assembly, the Court found that the term "public assembly" generally refers to a collection of people in public with a common goal of expressing their opinions. Therefore, the definition of "public assembly" in Section 4 of the Act is not contrary to Sections 26, 34 and 44 of the Constitution.

After Section 4 of the Act had been established as constitutional, Section 10 was considered. The Constitutional Court found that Section 10 Paragraph 1, with its requirement to notify of the intention to hold a public assembly at least 24 hours beforehand, was intended to protect the convenience and safety of both the public and the protestors. It was deemed by the Court that the system established in Section 10 of the Act was a notification system, not a system to request permission. Under Section 10, the relevant officer can only order the responsible parties to give notification of their intention within the time limit, or prohibit the public assembly if the assembly may conflict with the law. The 24-hour notification period is only intended to allow the relevant officers sufficient time to prepare for a reasonable and efficient oversight of the assembly, which reduces the risk of harm to public interest. The preparation is especially crucial to the advertisement of the venue of the assembly and to the suggestion of the least affected traffic route for the public. Hence, the legal measures in Section 10 were found by the Court to be proportionate, while also allowing for the right to freedom of peaceful assembly.

Likewise, the Court found to be constitutional the content of Section 10 Paragraph 2, which provides the definition of who would constitute "a person intending to organise a public assembly." To the Court, this paragraph intends to determine the person responsible for notifying the relevant officers to allow for the preparation of State oversight. If there was no one who explicitly designated himself/herself as the organiser, the relevant officers would not be able to find a person to coordinate with regarding the preparation. Hiding the venue of the public assembly may cause the public assembly to be unprotected by the Constitution. Moreover, the Court found that the legislature delegates the law-making power to the executive to issue secondary laws in Section 10 Paragraph 3, and this paragraph already provides a convenient procedure for notifying the relevant officers. For these reasons, the whole of Section 10 was found to be constitutional.

As for the constitutionality of Section 14 of the Act, the Court investigated the purpose behind Section 14, which declares public assemblies organised without 24-

hour prior notification in accordance with Section 10 to be unlawful. The Court found that Section 14 specifies the characteristics of unlawful public assemblies to allow relevant officials to prepare efficiently for the oversight of the assembly. Here, the Court applied the same reasoning as that which supports the constitutionality of Section 10 of the Act. Additionally, the Court admitted that although the part of Section 14 that concerns Section 10 may restrict freedom of expression and freedom of assembly to some degree, this restriction is in accordance with the Constitution and is not contrary to the rule of law, nor is it disproportionate, nor does it affect human dignity; and it is general in nature. Hence, Section 14 was also deemed constitutional.

Finally, the Court considered Section 28 of the Act, which specifies a fine of not more than 10,000 baht for contravention of Section 10 of the Act (i.e., failure to give the 24-hour prior notification). The Court found the fine to be reasonable for a non-serious offence. Moreover, the lack of a minimum punishment allows courts to use their discretion to determine a reasonable punishment level. Section 28 was thus determined to be constitutional.

As a result of its consideration, the Court concluded that Sections 10, 14, and 28 of the Public Assembly Act B.E. 2558 (2015) are not contrary to Sections 26, 34, and 44 of the Constitution.

Case No. 6/2565: Constitutionality of Emergency Decree provisions

Facts

"Toto," a Thai political activist, was charged with violating the emergency decree for organising anti-government protests.[8] Consequently, Toto argued at the district court level that Sections 9 and 11 of the Emergency Decree on Public Administration in an Emergency Situation, B.E. 2548 (2005), violate the principles of proportionality and the Rule of Law within Sections 3 and 26 of the Constitution, respectively.

Regarding the provisions of the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005), Section 9(2) of this Decree empowers the Prime Minister to issue, among others, regulations that "prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest" in case of the necessity to resolve an emergency. For more severe emergencies, Section 11 allows the Prime Minister to declare a "situation of severe emergency" and grants the Prime Minister a broader range of competencies during more severe emergencies as compared to the emergencies that trigger the application of Section 9.

Toto argued that Section 9(2) disproportionately restricts the freedom of peaceful assembly in Section 44 of the Constitution and that the scope of Section 11 is too broad, thereby allowing abuse of discretion.

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[8] Online Reporters, "18 Detained Protesters Deny Charges" *Bangkok Post* (7 March 2021) <https://www.bangkokpost.com/thailand/politics/2079675/18-detained-protesters-deny-charges>.

Since this question concerned a consideration of the constitutionality of laws, the case was therefore referred to the Constitutional Court under Section 212 Paragraph 1.

Decision on the Merits

The Constitutional Court first considered Section 26 and found that this section specifies four requirements for laws restricting individual rights: (1) the law must not be against the Rule of Law; (2) it must not be disproportionately restrictive; (3) it must not affect human dignity; and (4) it must provide reasons for the necessity to restrict such rights.

The Constitutional Court then considered the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005). According to the Court, the purpose of the emergency decree is to deal with national security issues that cannot be resolved by normal public administration. Thereafter, the Court found that the governance of modern states is carried out through the Constitution and the law, in line with either the principle of the Rule of Law or that of the Legal State. Thus, public authority must be empowered by law, the exercise of administrative discretion must be within the confines of the law, and the use of power must be checked by the judiciary. However, during extraordinary times of emergency or threats to public safety, such ordinary application of law may be too slow. Thus, according to the Court, the ordinary practice of applying the law strictly in accordance with the Legal State principle during emergency situations "will eventually lead to the destruction of the constitutional system, without achieving the aim of addressing threats to the State."

Accordingly, the Constitutional Court found that the need for an extraordinary law empowering the executive during wartime or comparable threats has been accepted internationally. The law with this purpose in Thailand is the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) of which Sections 9 and 11 intend to provide extraordinary measures, which are temporary, to promptly address emergencies and bring the everyday lives of citizens back to normal.

On the constitutionality of Section 9(2) of the decree, the Court found that Section 44 of the Constitution on the freedom of peaceful assembly contains the grounds that could justify the restriction of this freedom. Such grounds include the necessity for the use of authority under laws that protect national peace, security, morality and the rights of individuals. In the Court's view, such grounds lead to the Prime Minister having the power to issue regulations "to prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest," which is the use of executive power to promptly address emerging threats. Moreover, the Court pointed out that there is also a determination of the condition and time limit for the emergency decree within Section 9(2), which makes such measures proportionate. Therefore, the Court found Section 9(2) of the decree not to be contrary to Section 26 of the Constitution.

With regard to Section 11 of the decree, the Court admitted that the extensive power granted to the Prime Minister therein may be excessive. However, the Court

pointed out that the law cannot provide definite measures to address severe, complex, or unpredictable emergencies. Moreover, the granting of power to the executive to issue regulations or make orders is neither vague nor without limits since the use of such power must be approved by the cabinet, and is qualified by necessity to address emergencies that involve terrorism, the use of force, or severe threats to national security. Furthermore, Section 11 Paragraph 3 obliges the Prime Minister to promptly announce the end of a declared severe emergency situation once the severe emergency has ceased. Apart from that, the Court found that the use of the power of the Prime Minister must be in accordance with the intent of Section 11, which means the measures must be reasonable considering the facts of each particular situation. Individuals affected by the use of this executive power could have the measures judicially reviewed by the courts as well. For all the aforementioned reasons, Section 11 of the decree was found not to be in conflict with Section 26 of the Constitution.

As a result of its consideration, the Court concluded that Sections 9 and 11 of the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) are not contrary to Section 26 of the Constitution.

Case No. 10/2565: Constitutionality of the prohibition of online alcohol sales

Facts

In essence, Section 30(6) of the Alcohol Beverage Control Act B.E. 2551 (2008) allows the Prime Minister to issue an Announcement to prohibit "any other practice or manner" of the sale of alcoholic beverages. Using the authority under this Section, the Office of the Prime Minister made an Announcement prohibiting the direct sale of alcoholic beverages to consumers through online channels. Also prohibited were the related services thereto, which included online marketing of alcohol.[9]

This ban led to a case being brought to the administrative court against the Prime Minister by owners of alcohol businesses with online sales channels. The alcohol business owners alleged that Section 30(6) of the Alcohol Beverage Control Act is unconstitutional, on the grounds that it is outside the scope of the Prime Minister's competence, and that it is too restrictive. They also argued that it was disproportionate and violated their freedom of occupation and freedom of contract.

Since this case concerned a question of constitutionality, it was referred to the Constitutional Court under Section 212 Paragraph 1. The Constitutional Court thus had to consider whether Section 30(6) of the Alcohol Beverage Control Act B.E. 2551 (2008) violates Sections 26 (the requirements for laws intending to restrict rights),

[9] "ราชกิจจานุเบกษา เผยแพร่ประกาศ ห้ามขายเครื่องดื่มแอลกอฮอล์ออนไลน์", ไทยรัฐออนไลน์ (8 กันยายน 2563) ["Royal Gazette Publishes Announcement on Online Alcohol Sales Prohibition", *Thairath Online* (8 September 2020) <https://www.thairath.co.th/news/politic/1926273>.

Section 34 Paragraph 1 (freedom of expression), Section 37 Paragraph 2 (the right to property), and Section 40 Paragraph 2 (freedom of occupation) of the Constitution.

Decision on the Merits

In considering the text of the relevant constitutional provisions, the Court found that the Alcohol Beverage Control Act B.E. 2551 (2008) (the "Act") was legislated to address the problems that alcohol poses to society, such as health problems, family problems, accidents, and crimes. Hence, the Act provides for the regulation of alcoholic beverages and ways to rehabilitate those who are addicted to alcohol, while also trying to prevent minors from gaining easy access to alcohol.

The Court then gave its view that Section 30(6) of the Act is one of the regulatory measures on alcohol sales to prevent citizens from buying and consuming alcohol. This prohibition issued by the Prime Minister against "any other method or measure" under Section 30(6) is an instance where the legislative branch has delegated its power to allow the executive branch to issue additional measures on the prohibition of alcohol sales for effective enforcement of law. Due to the uncertainty and unpredictability of the ever-changing circumstances in society, it is necessary to delegate the power to legislate secondary legislations to the executive branch. Being more knowledgeable on the relevant issues due to its expertise as an enforcer of law, the executive branch can use the delegated power to issue secondary legislations, as a tool to promptly solve problems in accordance with the situation at hand. Still, the Constitutional Court noted that the issuance of secondary legislation must be in accordance with the intent of the primary legislation, and is subject to the Constitution and the control of the administrative courts.

After that, the Court stated that although Section 30(6) of the Act is a law delegating power to the executive branch to issue secondary legislation that restrict some individual rights, the restriction on individual rights is not absolute since other methods of alcohol sales are still allowed.

Thereafter, the Court dismissed the claim that Section 30(6) of the Act violates constitutional rights, although the Court did not provide a detailed analysis of this part. In essence, the Court merely stated that Section 30(6) serves the purpose of preserving national security, protecting the rights and freedoms of citizens along with public order and good morals, and protecting public health; hence, there existed justifications for the restriction of these rights and freedoms within the Constitution in Section 34 Paragraph 1 (freedom of expression), Section 37 Paragraph 2 (the right to property), and Section 40 Paragraph 2 (freedom of occupation). The Court additionally provided that the restriction was also compliant with Section 26 of the Constitution, since it was necessary; not in violation of the Rule of Law; not too restrictive; did not affect human dignity; and was general in nature; while providing grounds for the restriction of the relevant rights and freedoms.

As a result of its consideration, the Court concluded that the Alcohol Beverage Control Act B.E. 2551 (2008) is not contrary to Section 26, Section 34 Paragraph 1, Section 37 Paragraph 2, and Section 40 Paragraph 2 of the Constitution.