

## ***Explainer***

# The Thai Constitutional Court

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## I. INTRODUCTION

This Explainer briefly describes the organisation and structure of the Thai Constitutional Court and gives some details of its powers, duties, and procedure. The Constitution is the supreme law of Thailand; the provisions of any law, rule, regulation or any acts that are contrary to or inconsistent with the Constitution are unenforceable.<sup>1</sup> The Constitutional Court is the body that has the jurisdiction to decide the constitutionality of the laws, rules, regulations, and acts. In addition, the Constitutional Court decides questions concerning the proper scope of the powers and duties of other organs of the state, including the executive, the legislature, and independent organs as set out in the Constitution. Individuals may make petitions to the Constitutional Court in certain circumstances to enforce duties required to be performed by the state, and to protect themselves against violations of their constitutional freedoms and liberties by agents of the state. In addition, questions may be referred to the Constitutional Court by state organs or the courts.

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<sup>1</sup> Section 5 of the Constitution. This explainer refers to the Constitution of the Kingdom of Thailand enacted on 6 April 2017, published in the Government Gazette, Vol. 134, Part 40a, Page 1, dated 6 April 2017 (B.E. 2560) as amended by Constitutional Amendment (No. 1) 2021, on 7 November 2021. An unofficial English translation of the Constitution prior to the 2021 amendment made by the Council of State may be found at <[https://cdc.parliament.go.th/draftconstitution2/download/article/article\\_20180829093502.pdf](https://cdc.parliament.go.th/draftconstitution2/download/article/article_20180829093502.pdf)>.

## II. ORGANISATION AND STRUCTURE

The Constitutional Court is comprised of nine judges who are appointed by the King, following the selection and approval process described below.<sup>2</sup> The Constitution requires the judges to be selected from five different groups: the Supreme Court, the Supreme Administrative Court, academics from the field of law, academics from the field of political science, and government officials. The details are as follows:

- (i) three judges from the Supreme Court who have served in a rank at least as high as Presiding Justice of the Supreme Court for at least three years, elected by a plenary meeting of the court;
- (ii) two judges from the Supreme Administrative Court who have served for at least five years, elected by a plenary meeting of the court;
- (iii) one academic, selected from Professors of law in Thai universities who have held that post for at least five years, with current renowned academic work;
- (iv) one academic, selected from Professors in Thai universities of political science who have held that post for at least five years, with current renowned academic work; and
- (v) two qualified persons selected from those who have held a post at least as senior as Director-General, or a position equivalent to a head of a government agency or a position not lower than Deputy Attorney General, for at least five years.

In addition, judges of the Constitutional Court must be of Thai nationality by birth, be between the ages of 45 and 68, have at least a Bachelor's degree, be of evident integrity, and in sufficiently good health to carry out their duties.<sup>3</sup> There is a list of circumstances, both in the Constitution and in the relevant Organic Act on Procedures of the Constitutional Court ("Organic Act on Procedures"),<sup>4</sup> in which an individual may be prohibited from holding the position of judge of the Constitutional Court. These are designed to ensure the Court's integrity, such as disqualifications for those having convictions for serious crimes, and independence, such as those being or having been a judge of a different court, a position in independent organ, a member of the Senate or House of Representatives, or having been a member of a political party during the previous 10 years, for example.<sup>5</sup>

A Selection Committee selects Constitutional Court judges other than the appointees from the Supreme Court and the Supreme Administrative Court, who are elected by a plenary meeting.<sup>6</sup> The Selection Committee is chaired by the President of the Supreme Court, and its members include the President of the Supreme

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<sup>2</sup> Section 200 of the Constitution.

<sup>3</sup> Section 201 of the Constitution.

<sup>4</sup> Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). An unofficial English translation may be found at <[https://www.constitutionalcourt.or.th/occ\\_web/download/constitutionalcourt/lawrespon/statute/Organic%20Act%20on%20Procedures%20of%20CC\(2018\).pdf](https://www.constitutionalcourt.or.th/occ_web/download/constitutionalcourt/lawrespon/statute/Organic%20Act%20on%20Procedures%20of%20CC(2018).pdf)>.

<sup>5</sup> Section 202 of the Constitution. See also Sections 8 and 10 of the Organic Act that adds a number of other grounds for disqualification.

<sup>6</sup> The details of this election procedure are given in Section 12 of the Organic Act.

Administrative Court, the President of the House of Representatives, and the Leader of the Opposition in the House of Representatives, among others.<sup>7</sup> The rules, procedures and conditions for selection are prescribed in the Organic Act on Procedures.<sup>8</sup> The Organic Act specifies that the Selection Committee must deliberate with a view to selecting a person who has high responsibility, courage in performing his or her duties, and ethical behaviour to be a good role model in society. In addition, the Organic Act notes the requirement to take into account a diversity of experience on the panel; the selection process can include interviews or other suitable methods.<sup>9</sup>

Following selection by the Selection Committee, approval of the Senate is required for appointment, with a vote of at least half of the total number of members of the Senate. If the candidate is rejected, the Selection Committee must recommend a new candidate within 60 days.<sup>10</sup> The approved judges of the Constitutional Court elect one of their number to be the President and they must report this decision to the President of the Senate. The President of the Senate then reports to the King for appointment of the President and judges of the Constitutional Court, and countersigns the Royal Command.<sup>11</sup> Before appointment to the Constitutional Court, any prospective appointees who are judges or government officials, or who hold a position that is prohibited for a Constitutional Court judge, must resign from that post in order to take up their appointment.<sup>12</sup>

Judges of the Constitutional Court have a seven-year term of office.<sup>13</sup> Aside from retirement due to the expiry of their term, a judge may be removed in the specific circumstances set out in the Constitution and the Organic Act that, along with death, resignation, and retirement upon reaching the age of 75, includes a resolution of the Constitutional Court by votes of not less than three-quarters of the total number of existing judges on the grounds of violation of, or failure to comply with, the ethical standards of the Court,<sup>14</sup> and a decision of the Supreme Court following an investigation by the National Anti-Corruption Commission for offences connected with corruption and breaches of ethical standards.<sup>15</sup>

The Constitutional Court can continue to perform its functions provided that there are at least seven judges. If the number falls below seven, the President of the Supreme Court and the President of the Supreme Administrative Court have the power to temporarily appoint judges to allow the court to continue operating.<sup>16</sup>

On appointment, all judges of the Constitutional Court, similarly to judges of the other courts in the legal system, must take an oath that may be translated as follows:

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<sup>7</sup> Section 203 of the Constitution.

<sup>8</sup> See in particular Section 11 of the Organic Act on Procedures.

<sup>9</sup> Section 12 of the Organic Act on Procedures.

<sup>10</sup> Section 12 paragraphs 8 and 9 of the Organic Act on Procedures.

<sup>11</sup> Section 12 paragraphs 10 and 11 of the Organic Act on Procedures.

<sup>12</sup> Section 13 of the Organic Act on Procedures.

<sup>13</sup> Section 207 of the Constitution; Section 17 of the Organic Act on Procedures.

<sup>14</sup> Section 208 of the Constitution; Section 18 of the Organic Act on Procedures.

<sup>15</sup> Section 235 of the Constitution; Section 18 of the Organic Act on Procedures.

<sup>16</sup> Section 20 of the Organic Act on Procedures.

“I, [*name of the oath-taker*] do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the name of the King without any partiality in the interests of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”<sup>17</sup>

### III. POWERS AND DUTIES

The Constitutional Court has two primary powers and duties. First, it has the power to decide whether current and prospective legislation complies with the Constitution. Second, it has the responsibility to decide on questions concerning the duties and powers of the House of Representatives, the Senate, the National Assembly, the Council of Ministers, and the Independent Organs, which include the Election Commission, the Ombudsmen, the National Anti-Corruption Commission, the State Audit Commission, and the National Human Rights Commission.<sup>18</sup> In addition, the Court has other specific duties and powers as prescribed elsewhere in the Constitution and relevant Organic Acts.

The Court’s duties and powers can be divided into the following eight conceptual groups:

- (A) deciding on the constitutionality of bills and enacted laws;
- (B) deciding on the constitutionality of emergency decrees;
- (C) deciding issues concerning the powers and duties of the House of Representatives, the Senate, the National Assembly, the Council of Ministers, and the Independent Organs;
- (D) protecting the rights and freedoms of the people;
- (E) protecting the Constitution, the system of government and the security of the state;
- (F) deciding whether or not international treaties must be approved by the National Assembly;
- (G) deciding on the qualifications and disqualifications of persons holding political positions; and
- (H) deciding other types of cases that are placed within the Court’s jurisdiction by other laws.

These powers and duties are described in some further detail below.

#### A. Deciding on the Constitutionality of Bills and Enacted Laws

The Constitutional Court holds the authority to determine whether any bill or legislation is in violation of, or incompatible with, the Constitution. However, the

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<sup>17</sup> Section 16 of the Organic Act on Procedures.

<sup>18</sup> Section 210 of the Constitution.

conditions under which the Court will render a decision vary depending on the nature of the law or draft law in question.

### 1. Bills.

For the Constitutional Court to consider the constitutionality of ordinary bills, a request must be made by the President of the House of Representatives, the Senate or the National Assembly. This request must be made after the bill has been approved by the National Assembly but before it has been sent to the King for signature.<sup>19</sup>

If members of the House of Representatives or Senators (or both), who in total comprise at least 10% of the combined membership of both Houses, are of the opinion that the bill is contrary to or inconsistent with, or enacted contrary to, the Constitution, they may submit this opinion to the President of the House of Representatives, the Senate, or the National Assembly as applicable.<sup>20</sup>

The President who receives this opinion must refer it to the Constitutional Court for a decision, and inform the Prime Minister.<sup>21</sup> If the Prime Minister is of the opinion that the bill is unconstitutional, he or she must refer this opinion to the Constitutional Court and inform the Presidents of the House of Representatives and the Senate.<sup>22</sup> While the Constitutional Court is considering the matter, the bill will not be passed to the King for signature.<sup>23</sup>

If the Constitutional Court decides that essential provisions of the bill are inconsistent with or contrary to the Constitution, or that it is enacted contrary to the Constitution, the bill will lapse.<sup>24</sup> If, however, the offending provisions are not essential elements of the bill, such provisions will be struck out of the bill and it will pass, in amended form, to the King for signature.<sup>25</sup>

Under Section 149 of the Constitution, the same procedure is used for the Court's consideration of draft rules of procedure for the House of Representatives, Senate, and National Assembly before their publication in the Government Gazette.

Consideration by the Constitutional Court differs in the case of draft Organic Acts.<sup>26</sup> After approval by the National Assembly, these must be sent to the Supreme

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<sup>19</sup> Section 148 of the Constitution.

<sup>20</sup> Section 148 paragraph 1(1) of the Constitution. If the group is composed of members of the House of Representatives only, they will submit their opinion to the President of the House of Representatives; if it is composed of members of the Senate, they will submit their opinion to the President of the Senate; if the group is of mixed membership, they must submit their opinion to the President of the National Assembly.

<sup>21</sup> *ibid.*

<sup>22</sup> Section 148 paragraph 1(2) of the Constitution.

<sup>23</sup> Section 148 paragraph 2 of the Constitution.

<sup>24</sup> Section 148 paragraph 3 of the Constitution.

<sup>25</sup> Section 148 paragraph 4 and Section 81 of the Constitution.

<sup>26</sup> Section 130 of the Constitution sets out a list of 10 Organic Acts: Organic Act on the Election of Members of the House of Representatives; Organic Act on the Installation of Senators; Organic Act on the Election Commission; Organic Act on Political Parties; Organic Act on the Ombudsmen; Organic Act on the Prevention and Suppression of Corruption; Organic Act on State Audit; Organic Act on the

Court, the Constitutional Court, or the relevant Independent Organ for opinions. If the Supreme Court, the Constitutional Court or the relevant Independent Organ are of the opinion that the draft organic act is contrary to or inconsistent with the Constitution, the opinion is referred to the National Assembly for further consideration.<sup>27</sup> Thus, in the case of draft organic acts, the Constitutional Court has the responsibility of giving an opinion on their constitutionality before they become law.

There are two other situations in which the Constitutional Court may be requested to review draft legislation: bills similar to those that have been withheld by the senate and allegations of conflicts of interest in respect of appropriations bills.

Under Section 139 of the Constitution, in the event that a bill has been withheld by the Senate and sent back to the House of Representatives for further consideration, a bill may not be introduced in the House of Representatives that has the same or a similar principle as the bill that is being withheld. Reference may be made to the Constitutional Court to consider whether a new bill has the same or similar principles as a bill that is being withheld. The President of the House of Representatives and the President of the Senate each have the power to make a reference to the Constitutional Court in these circumstances.

Regarding appropriations bills, Section 144 of the Constitution prohibits the submission of a motion or the commission of any act that results in either the direct or indirect involvement of Members of the House of Representatives, Senators, or members of a committee personally in the use of appropriations.

If members of the House of Representatives or Senators (or both), who in total comprise at least 10% of the combined membership of both Houses, are of the opinion that this rule has been violated they must refer this opinion to the Constitutional Court for a decision. Where the Constitutional Court determines there has been a breach committed by a Member of the House of Representatives or a Senator, his or her membership of the House of Representatives or Senate will be terminated immediately, and he or she will not be able to stand for election in the future.<sup>28</sup>

If a breach has been committed or approved by the Council of Ministers, all the members must vacate office, and they will lose their rights to stand for election unless it can be proved that they were not present in the meeting in which the resolution was passed.<sup>29</sup>

State Officials who operate projects or allocate funds in the knowledge that this rule has been violated will be released from liability if they record their objection in writing and inform the National Anti-Corruption Commission.<sup>30</sup> Where the National Anti-Corruption Commission receives a report, they will conduct a secret investigation;

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Procedures of the Constitutional Court (n 5); Organic Act on the Criminal Procedure for Persons Holding Political Positions; and Organic Act on the Human Rights Commission.

<sup>27</sup> Section 132 of the Constitution.

<sup>28</sup> Section 144 paragraph 3 of the Constitution.

<sup>29</sup> *ibid.*

<sup>30</sup> Section 144 paragraph 4 of the Constitution.

if there is a *prima facie* case, they will refer the matter to the Constitutional Court for consideration.<sup>31</sup>

## 2. Enacted laws.

The Constitutional Court may be called upon to decide the constitutionality of an enacted law either by the courts or by the Ombudsmen. In any court case, if the court or either of the parties to the dispute claims that the relevant provision of law conflicts with the Constitution and there has not yet been a decision of the Constitutional Court on the constitutionality of that provision, the office of the relevant court must submit its opinion or the claim of the relevant party to the Constitutional Court for a decision.<sup>32</sup> This applies across all courts in the system: the Courts of Justice, the Administrative Courts and the Military Courts. The court case will proceed as normal, but the final ruling will be withheld until the decision of the Constitutional Court is made.

The Constitutional Court may form the opinion that the claim does not concern a matter that calls for a decision, in which case it may refuse to accept the case for consideration.<sup>33</sup> If the Court accepts the case and makes a determination on the constitutionality or otherwise of the provision of law, the judgment will apply to all existing cases, but it will not affect final court judgments—i.e., cases that have already been decided. The exception to this is where a person has been convicted of a crime by breaching a provision of law that the Constitutional Court later determines to be unconstitutional. In this situation, that person is considered to have not committed that criminal offence and, if still serving a prison sentence, will be released. However, he or she is not entitled to compensation.<sup>34</sup>

A “provision of law” for this purpose means a provision of a law enacted by an organisation that has legislative or parliamentary authority, or regulations made under an Act, including decrees that have been considered and approved by Parliament, etc.

In addition, reference to the Constitutional Court in relation to enacted laws may be made by Ombudsmen. Under Section 230 of the Constitution, Ombudsmen have the responsibility of overseeing state agencies. If the laws, regulations, rules or orders of those state agencies cause grievance, unfairness, or unnecessary burdens to the people, the Ombudsmen must recommend revisions to the relevant rules. If the Ombudsmen find that a provision of law raises a constitutional issue, the matter will be referred to the Constitutional Court.<sup>35</sup> In this situation, there is no need for there to be a case before a court for the matter to be referred.

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<sup>31</sup> Section 144 paragraph 6 of the Constitution.

<sup>32</sup> Section 212 of the Constitution.

<sup>33</sup> Section 212 paragraph 2 of the Constitution.

<sup>34</sup> Section 212 paragraph 3 of the Constitution.

<sup>35</sup> Section 231 of the Constitution.

## B. Deciding on the Constitutionality of Emergency Decrees

Section 172 of the Constitution provides the power to issue an emergency decree to maintain national or public safety, national economic security, or avert public calamity. The issuance of an emergency decree is dependent on the Council of Ministers forming the opinion that it is an emergency of necessity and urgency that is unavoidable. Emergency decrees have the force of Acts; they must receive approval of the National Assembly without delay, and if they are not approved, they will lapse.

However, before the House of Representatives or the Senate approves an emergency decree, it may be referred to the Constitutional Court to decide whether it is issued in accordance with the purposes specified in the Constitution.<sup>36</sup> A reference requires Members of the House of Representatives or the Senate comprising at least 20% of the total number of the existing members of each House to submit an opinion to the President of the relevant House, who must then refer the matter to the Constitutional Court. The Constitutional Court must make its decision within 60 days. If it decides that an emergency decree is unconstitutional, it will be considered legally void from when it was made.<sup>37</sup>

## C. Deciding Issues Concerning the Powers and Duties of the House of Representatives, the Senate, the National Assembly, the Cabinet and the Independent Organs

Section 210(2) of the Constitution provides that the Constitutional Court has the power to decide issues concerning the powers and duties of House of Representatives, the Senate, the National Assembly, the Cabinet, and the Independent Organs. Independent Organs, which are governed by Chapter 12 of the Constitution, are established for the independent performance of duties in accordance with the Constitution and the laws without any partiality in exercise of their discretion. Independent Organs include the Election Commission, the Ombudsmen, the National Anti-Corruption Commission, the State Audit Commission, and the National Human Rights Commission.

To qualify for determination by the Constitutional Court, the issue concerning powers and duties must be a problem that has already occurred, rather than a consultation regarding a proposed course of action. If a relevant issue arises within a government agency, that agency has the right to file a request to the Constitutional Court for consideration. If there is a dispute between different agencies, each of the agencies concerned has the right to refer the matter to the Court.<sup>38</sup>

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<sup>36</sup> Section 173 of the Constitution.

<sup>37</sup> *ibid.*

<sup>38</sup> Section 44 of the Organic Act on Procedure.



## D. Protecting the Rights and Freedoms of the People

There are two situations in which an individual may bring a case to the Constitutional Court in order to seek protection of his or her rights and freedoms. First, under Section 51 of the Constitution, an individual may bring a claim to enforce duties of the state. Second, under Section 213 of the Constitution, a claim may be brought on the basis that a person's rights or liberties guaranteed by the Constitution have been violated.

### 1. Enforcing state duties.

Chapter 5 of the Constitution sets out acts that are the duty of the state. Under Section 51, the people and the community have the right to compel the state to perform such duties, provided they are for the direct benefit of the people, by way of legal proceedings. The rules and procedures are set out in Section 45 of the Organic Act on Procedures. This option is open for individuals or communities who directly benefit from the duties of the state and who have suffered damage as a result of a failure of the state to perform the duties, or as a result of performance that is incorrect, incomplete, or unreasonably delayed.

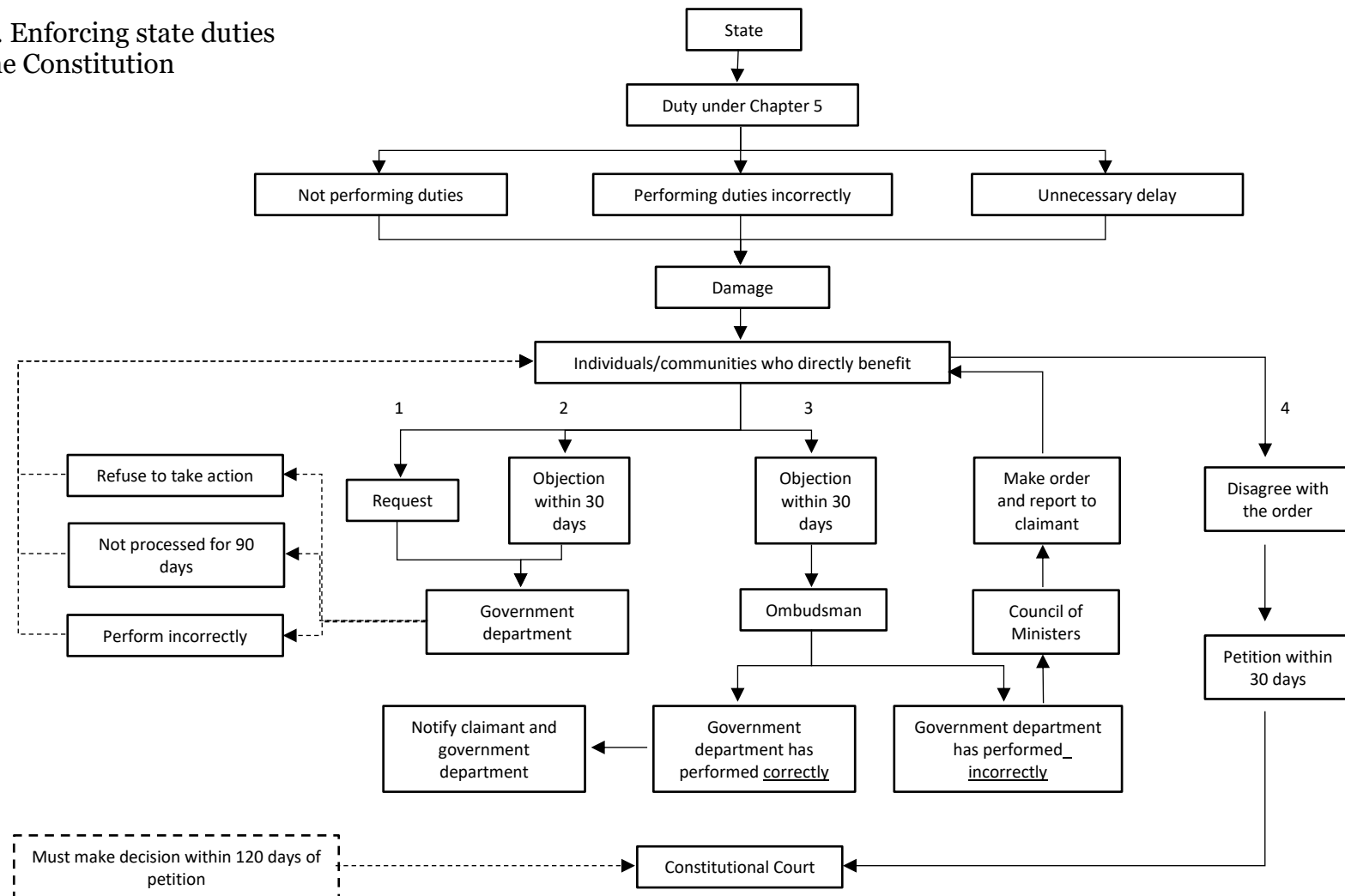
Before bringing a claim to the Constitutional Court, the individual or community must raise their demands with the relevant state agency, and then refer the complaint to the relevant Ombudsman, who in turn may refer the matter to the Council of Ministers who may make an order, all within time limits specified in Section 45 of the Organic Act. If, following exhaustion of this procedure, the individual or community is not satisfied that they state has performed its duties, a petition may be made to the Constitutional Court. The procedure for making a claim to enforce state duties is illustrated by Figure 1 on the following page.

### 2. Violation of rights or liberties guaranteed by the Constitution.

Under Section 213 of the Constitution, a person whose rights or liberties guaranteed by the Constitution have been violated may make a petition to the Constitutional Court for a decision. Section 47 of the Organic Act specifies that the relevant act that is the subject of the petition must be a violation of rights or liberties that results from the actions of state agencies, state officials, or agencies that use state power, and it must *not* be one of the following cases:

- (i) an "act of government's action";
- (ii) a situation in which the Constitution or an Organic Act specifies a particular process;
- (iii) a situation in which the law sets out a particular process and that process is not yet complete;
- (iv) matters currently under consideration by other courts or matters in which other courts have made a final judgment or final order;

Figure 1. Enforcing state duties under the Constitution



- (v) cases concerning determination of jurisdiction between the Court of Justice, the Administrative Court, and the Military Court; or
- (vi) acts relating to the administration of personnel of the Judicial Commission of the Courts of Justice, the Judicial Commission of the Administrative Courts or the Judicial Committee of the Military Courts, including military discipline.

To bring a claim, a person must have had their rights or liberties violated directly and have suffered damage or loss (or it must be a situation in which he or she will inevitably suffer damage or loss) as a result of the violation. Petitions should be made to the Ombudsmen in the first instance, and further petitions to the Constitutional Court may be made after being notified of the decision of the Ombudsmen.<sup>39</sup>

## E. Protecting the Constitution, the System of Government and the Security of the State

The duties and powers of the Constitutional Court also extend to protecting the Constitution and the democratic regime of government with the King as Head of State in three situations: first, where someone attempts to use their rights under the constitution to overthrow the democratic regime of government with the King as Head of State; second, where a prospective constitutional amendment would result in overthrowing this regime; and, third, where such amendment would, under the Constitution, require approval of the people by way of a referendum.

Under Section 49 of the Constitution, no person may use their rights or liberties to overthrow the democratic regime of government with the King as Head of State. If anyone becomes aware of such an act, they may request the Attorney-General to petition the Constitutional Court to issue an order to prevent or halt the act. If the Attorney-General refuses to make the request or fails to do so after 15 days, a petition may be submitted directly to the Constitutional Court. This procedure is separate from, and will not prejudice, any criminal proceedings.

Under Section 256(9), similarly to Acts of Parliament, draft amendments to the Constitution may be referred to the Constitutional Court after approval of the National Assembly but before the Prime Minister reports to the King for signature. If members of the House of Representatives or Senators (or both), who in total comprise at least 10% of the existing members of both Houses, are of the opinion that the bill amounts to changing the democratic regime of government with the King as Head of State or changing the form of the state (prohibited under Section 255), or that the bill is an amendment that must be approved by a referendum (under Section 256(8)),<sup>40</sup> they

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<sup>39</sup> Section 46 of the Organic Act on Procedures.

<sup>40</sup> “[I]n the case where the draft Constitution Amendment is an amendment to Chapter I General Provisions, Chapter II The King or Chapter XV Amendment to the Constitution, or a matter relating to qualifications and prohibitions of persons holding the positions under this Constitution, or a matter relating to duties or powers of the Court or an Independent Organ, or a matter that renders the Court

may submit the opinion to the President of the House of Representatives, the Senate or the National Assembly as relevant<sup>41</sup> who must refer the matter to the Constitutional Court. While the matter is under consideration by the Constitutional Court, the Prime Minister may not pass the bill to the King for signature.

Notably, there is a recent ruling of the Constitutional Court that Section 256 concerns only *alterations* to existing constitutional provisions; if the amendment comprises the deletion of a provision and the enactment of a new provision, the rules and procedure under Section 256 cannot be used.<sup>42</sup>

## F. Deciding Whether International Treaties Must be Approved by the National Assembly

The Constitutional Court has the power to decide whether treaties require approval of the National Assembly under the Constitution. Under Section 178, the King has a royal prerogative to conclude treaties with other countries or international organisations. Any treaty that provides for a change in Thai territories or external territories over which Thailand has sovereign right or jurisdiction, or requires an Act for implementation, or which may have wide-scale effects on the security of the economy, society, trade, or investment in the country must be approved by the National Assembly. The latter includes treaties relating to free trade, customs unions, and the use of natural resources.

If a question arises over whether a treaty falls into these categories and therefore should be approved by the National Assembly, the Council of Ministers may refer that question to the Constitutional Court.

## G. Deciding on Qualifications and Disqualifications of Persons Holding Political Positions

Under Section 82 of the Constitution, members of either the House of Representatives or the Senate, comprising at least 10% of the existing members of the relevant House, have the right to lodge a complaint with the President of the relevant House that the membership of any Member has terminated based on specific grounds that differ across the two Houses.

In the case of members of the House of Representatives, the grounds are as follows:<sup>43</sup> having resigned; not meeting the qualifications for election to the House of

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or an Independent Organ unable to act in accordance with its duties or powers, before proceeding in accordance with (7), a referendum shall be held in accordance with the law on referendum.”

<sup>41</sup> If the group is composed of members of the House of Representatives only, they will submit their opinion to the President of the House of Representatives; if it is composed of members of the Senate, they will submit their opinion to the President of the Senate; if the group is of mixed membership, they must submit their opinion to the President of the National Assembly.

<sup>42</sup> Constitutional Court Decision No. 4/2564.

<sup>43</sup> Sections 101 (3), (5), (6), (7), (8), (9), (10), and (12) of the Constitution.

Representatives;<sup>44</sup> being subject to a specific prohibition from standing for election;<sup>45</sup> it is less than 10 years since they have been released from prison after serving a sentence for a serious offence; having been dismissed from official service at a state agency or state enterprise for dishonesty; having been convicted of one of a number of specific offences that concern dishonesty; or being government official holding a permanent position other than a political official.

In the case of members of the Senate, the grounds are as follows:<sup>46</sup> having resigned; failing to have the qualifications required to be a Senator or falling under one of the specific prohibitions;<sup>47</sup> being absent for more than a quarter of the number of days in a session without permission of the President of the Senate; aligning with or yielding to the mandate of any political party;<sup>48</sup> or acting in a conflict of interests or interfering with the actions of government officials.<sup>49</sup>

If a petition is made to the Constitutional Court and it appears that there are reasonable grounds, the Constitutional Court will order the relevant member to cease the performance of his or her duties while it makes its decision. If the Constitutional Court decides that his or her membership is terminated, it will take effect from the time when they were ordered to cease the performance of his or her duties. However, this will not affect any acts of the member before they vacated office.<sup>50</sup> The Election Commission also has the power to refer to the Constitutional Court for a decision on whether membership should be terminated, on the same grounds.<sup>51</sup>

Similarly, under Section 170, the Constitutional Court has the power to decide on the termination of the ministership of individual ministers on the grounds of resignation, being disqualified under the grounds in Section 160, having conflicts of interest,<sup>52</sup> being a shareholder of a company or a partner in a partnership beyond the limits allowed by law,<sup>53</sup> or, in the case of the Prime Minister, the expiry of the eight year term of office,<sup>54</sup> which was the subject of a recent high-profile decision.<sup>55</sup>

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<sup>44</sup> Section 97 of the Constitution.

<sup>45</sup> Section 98 of the Constitution.

<sup>46</sup> Sections 111 (3), (4), (5) and (7) of the Constitution.

<sup>47</sup> Section 108 of the Constitution.

<sup>48</sup> Section 113 of the Constitution.

<sup>49</sup> Sections 184 and 185 of the Constitution.

<sup>50</sup> Section 82 paragraph 2 of the Constitution.

<sup>51</sup> Section 82 paragraph 4 of the Constitution.

<sup>52</sup> Section 186 of the Constitution.

<sup>53</sup> Section 187 of the Constitution.

<sup>54</sup> Section 158 paragraph 4 of the Constitution.

<sup>55</sup> Constitutional Court Decision No. 14/2565. For an English translation of the full decision, see Tyrell Haberkorn, "The Constitutional Court Ruling on Prayuth's Eight Years as Prime Minister" (this Issue). For a Commentary on the case, see Munin Pongsapan, "Open to Interpretation? Allowing the Prime Minister to Serve for More Than Eight Years" (this Issue).

## H. Deciding Other Types of Cases That Are Placed Within the Court's Jurisdiction by Other Laws

There are two laws that grant jurisdiction to the Constitutional Court over particular issues: the Organic Act on Political Parties BE 2560 (2017) ("Organic Act on Political Parties") and the National Strategic Planning Act BE 2560 (2017) ("National Strategic Planning Act").

1. Deciding on objections, resolutions, orders and announcements of the Election Commission and the dissolution of political parties under the Organic Act on Political Parties.

If the Political Parties Registrar rejects the registration of a political party, and the Election Commission upholds that rejection, the applicant may refer the matter to the Constitutional Court for consideration, within the relevant time limits.<sup>56</sup>

The Political Parties Registrar has the power to require amendment to the regulations of political parties if they have prohibited characteristics, as specified by the law. If amendments are not made within the relevant time period, the status of the political party may be removed by the Election Commission. This matter may be referred to the Constitutional Court by the leader of the relevant political party.<sup>57</sup>

If the Executive Committee of a political party does not take action when notified that the party's members are in violation of the law, the Election Commission may order the Executive Committee to be removed and its members will receive a 20-year ban. The Executive Committee has a right to refer the decision of the Election Commission to the Constitutional Court.<sup>58</sup>

There are a number of grounds on which political parties may be dissolved by the Election Commission; the decision may be referred to the Constitutional Court by the leader of the dissolved political party.<sup>59</sup> In addition, under Section 92 of the Organic Act on Political Parties, the Election Commission may request the Constitutional Court to conduct an inquiry into a political party for allegations of various types of conduct, including acting to overthrow the democratic regime of government with the King as Head of State or attempting to gain power by methods that are not in accordance with the Constitution. The Constitutional Court has the power to dissolve a political party in these circumstances.

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<sup>56</sup> Section 17 of the Organic Act on Political Parties.

<sup>57</sup> *ibid.*

<sup>58</sup> Section 22 of the Organic Act on Political Parties.

<sup>59</sup> Section 91 paragraph 3 of the Organic Act on Political Parties.

2. Deciding whether resolutions or proceedings of the Council of Ministers are in violation the National Strategic Planning Act.

According to Section 29 of the National Strategic Planning Act, if a government agency fails to comply with the National Strategic Plan due to a resolution or decision of the Council of Ministers, the National Strategy Board may bring the matter to the attention of the Senate. The Senate may then refer the issue to the Constitutional Court to determine if legal duties have been fulfilled.

## IV. PROCEDURE

The procedure for submission of a petition to the Constitutional Court, as well as the procedure for considering and adjudicating the case, making a decision, and the operation of the court are generally governed by the Organic Act on Procedures. However, the Constitution specifies that panels of the Constitutional Court must consist of at least seven judges who must make a decision by majority vote (although, in the case of a decision concerning the constitutionality of an Emergency Decree, a super-majority of two-thirds is required).<sup>60</sup> All the judges on the bench of the Constitutional Court must participate in the proceedings and rulings of each hearing,<sup>61</sup> and judges hearing the case may not abstain from voting.<sup>62</sup> Decisions of the Constitutional Court are binding on the National Assembly, the Council of Ministers, the Courts, Independent Organs and State Agencies.

Decisions must include a summary of the facts and the reason for the decision on each issue.<sup>63</sup> Each judge must form his or her own opinion before voting, which must be in writing and distributed to the public in accordance with the regulations of the Court.<sup>64</sup> The task of writing the judgment of the Court may be delegated to a member of the Court by a resolution. The decision of the Court is effective on the day that it is read out in court, and the judgment must be published in the Government Gazette within 30 days of the decision.<sup>65</sup>

The requirements for the form of the petition are specified by the Court as well as under the Organic Act on Procedures, and include the name and address of the petitioner, the facts that are relevant to the case, the section of the Constitution and the laws relevant to the case, and the action the petitioner is requesting the Court to take. Petitioners may conduct the case by themselves, or they may act by way of a lawyer or other capable representative.<sup>66</sup>

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<sup>60</sup> Section 211 of the Constitution.

<sup>61</sup> Section 52 of the Organic Act on Procedures.

<sup>62</sup> Section 72 of the Organic Act on Procedures.

<sup>63</sup> Section 73 of the Organic Act on Procedures.

<sup>64</sup> Section 75 of the Organic Act on Procedures.

<sup>65</sup> Section 76 of the Organic Act on Procedures.

<sup>66</sup> Section 42 of the Organic Act on Procedures.

In considering cases, the Constitutional Court uses the inquisitorial method and may give such orders and consider such evidence as it sees fit, unless such evidence is prohibited by law, regardless of errors in the legal procedure or specified time limits.<sup>67</sup> The Constitutional Court has the power to demand documents to be disclosed or statements to be given by any person or government agency.<sup>68</sup> Hearings of the Constitutional Court are made in open court unless the Court makes restrictions on who may attend to maintain order in the area or to protect the public interest.<sup>69</sup> The Court also has the power to make temporary orders while proceedings are ongoing.<sup>70</sup>

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<sup>67</sup> Sections 27, 62 and 63 of the Organic Act on Procedures.

<sup>68</sup> Section 27 paragraph 3 of the Organic Act on Procedures.

<sup>69</sup> Section 59 of the Organic Act on Procedures.

<sup>70</sup> Section 71 of the Organic Act on Procedures.