

Summary of Constitutional Court Ruling* No. 15-18/2556 (2013)

Dated 20th November B.E. 2556 (2013)*

**Re: Application for Constitutional Court ruling under section 68 of the
Constitution.**

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1. Summary of background and facts

General Somjed Boonthanom and others, first applicant, Mr. Wiratana Kalayasiri, second applicant, Mr. Sai Kangkawekin and others, third applicant, and Mr. Peerapan Saleeratwipak and others, fourth applicant, submitted a total of four applications to the Constitutional Court for a ruling that the President of the National Assembly, first respondent, Vice-President of the National Assembly, second respondent, Members of the House of Representatives and Senators, third to three hundred and twelfth respondents, had committed acts under section 68 of the Constitution. It was stated that the third to three hundred and twelfth respondents had acted together in submitting a petition to propose Draft Amendments to the Constitution of the Kingdom of Thailand (No. ...) B.E. (amendments to section 111, section 112, section 115, section 116 paragraph two, section 117, section 118, section 120 and section 241 paragraph one, and revocation of section 113 and section 114) to the first respondent, which resulted in a change in the democratic form of government with the King as Head of State and aimed at acquiring national government powers by unconstitutional means. The actions commenced from the proposal of the Draft Amendments to the Constitution to the National Assembly session which was a different version from the draft submitted to the Secretariat of the House of Representatives to the deliberations of the Draft Amendments to the Constitutional in the first reading to approve the principle. The first respondent, as the presiding chairman of the National Assembly session, exercised powers wrongfully by ordering a period for amendment proposal submission within 15 days as from the date of approval in principle by the National Assembly. The second respondent, acting as presiding chairman of the National Assembly session, denied the right of Members of the National Assembly to speak. Moreover, in the section-by-section deliberations process, Members of the National Assembly had displayed identification cards and casted votes on behalf of others. It was stated further that the contents of the Draft Amendment to the Constitution of the Kingdom of Thailand (No. ...) B.E. (amendments to section 111, section 112 and section 115, section 116 paragraph two, section 117, section 118, section 120 and section 241 paragraph one and revocation of section 113 and section 114) were in the

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essence inconsistent with the fundamental principles and intent of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which would result in a change in the democratic form of government with the King as Head of State with the purpose of acquiring national government powers by unconstitutional means pursuant to section 68 paragraph one of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 68 of the Constitution.

The Constitutional Court found as follows. Section 68 paragraph two was a provision which granted a person who became aware of an act committed by an individual or a political party under section 68 paragraph one a right to submit a motion for an investigation of such actions. Two channels were provided for filing a motion. Firstly, a petition could be submitted to the Attorney-General to conduct an investigation of facts. Secondly, a motion could be submitted to the Constitutional Court for an order to cease such actions. The applicant had the right to submit a direct application to the Constitutional Court. In addition, in this case, there were grounds for a preliminary finding that all respondents were involved in the submission of a motion to introduce Draft Amendment to the Constitution of the Kingdom of Thailand (No. ..) B.E. in relation to the source of Senators which could amount to a destruction of the checks and balances that constituted the balance between the House of Representatives and the Senate, as well as independent constitutional organs and other organs under the Constitution. For these reasons, it was found that there was probable cause of an act to acquire national government powers by unconstitutional means pursuant to section 68 paragraph one of the Constitution. The Constitutional Court therefore ordered the admittance of all four applications for a ruling under section 68 paragraph two of the Constitution and clause 17(2) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

3. The issues considered by the Constitutional Court

The first issue considered by the Constitutional Court was whether or not the deliberations process for the Draft Amendment to the Constitution of the Kingdom of Thailand (No. ..) B.E. constituted an act to acquire national government powers by unconstitutional means.

(1) Whether or not the Draft Amendment to the Constitution in relation to the source of Senators that was deliberated in the National Assembly session was the same document as the motion for amendment submitted to the Secretariat

The Constitutional Court found that the Draft Amendment to the Constitution of the Kingdom of Thailand (No. ..) B.E. submitted to the National Assembly for deliberations

in the first reading to give approval in principle was not the same document filed by Mr. Udomdej Ratanasatean at the Secretariat of the House of Representatives on 20th March B.E. 2556 (2013), and not the copies that had been distributed to Members of the National Assembly for consideration in the session. The Draft was, however, reprinted and contained provisions differing from the original Draft in many aspects, e.g. an addition to the principle to amend section 116 paragraph two and section 241 paragraph one. Actions were also taken with an intent to conceal the fact that the Draft had been reprinted from Members of the National Assembly. Thus, the deliberations of the new Draft Amendment to the Constitution amounted to a proposal of a Draft Amendment to the Constitution to the National Assembly that was inconsistent with section 291(1) paragraph one of the Constitution.

(2) Whether or not the determination of days for submitting a motion to amend the Draft Amendments to the Constitution of the Kingdom of Thailand (No. ..) B.E. was consistent with the Constitution.

The Constitutional Court found as follows. Even though the adjournment of debate was a discretionary power of the presiding chairman, and although the majority had the right to adopt a resolution to adjourn the debate, the exercise of discretion and majority vote shall not deny the right to exercise duties of Members of the National Assembly or ignore the opinions of the minority. The rushed adjournment of debate and adjournment of meeting to call for votes was therefore a wrongful exercise of powers and unfairly favoured the majority, inconsistent with the rule of law. In addition, the applicants claimed that the counting of days for amendment proposal by the first respondent was incorrect, since upon the approval in principle after the first reading on 4th April B.E. 2556 (2013), proposals had been made for 15 and 60 days for amendment proposal. Under the Rules of Procedures, the National Assembly session had to vote on the selection of the proposed periods. Prior to voting, there was a problem on the quorum that had not been constituted as provided by the Constitution. As a consequence, there was no voting. The first respondent determined a 15-day amendment proposal period commencing from the day of the National Assembly's approval in principle. However, as there were objections, the first respondent scheduled another session on 18th April B.E. 2556 (2013). In that session, the meeting voted for a 15-day amendment proposal period, but the first respondent concluded that such 15-day period would commence retrospectively from 4th April B.E. 2556 (2013). As a result, the period for amendment proposal was less than 15 days from the meeting day as there was only one day remaining for Members of the National Assembly to submit an amendment motion. The Constitutional Court found that an amendment motion was the right of a Member of the National Assembly to express opinions. Due time shall be given for amendment proposal and Members wishing to submit such amendment proposal shall be informed of the period for submission of the said proposal, which constituted a right in the performance of Members' duties. The determination of the amendment proposal period should therefore not be counted retrospectively, but should commence as from the date of resolution. The retrospective determination of period which resulted in only one day remaining for amendment proposal was a conduct that was inconsistent with the Rules of Procedures and not impartial.

The conduct was therefore inconsistent with section 125 paragraph one and paragraph two of the Constitution and also inconsistent with the rule of law under section 3 paragraph two of the Constitution.

(3) Whether or not the conduct of self-identification and casting of votes on motions to amend the Constitution in regard to the source of Senators was consistent with the Constitution.

The Constitutional Court found as follows. In this case the applicants presented eye witness to the events, namely Miss Rangsimma Rodrasami, Member of the House of Representatives from the Democrat Party. Other evidence was also presented, namely a video recording of the event at the time of self-identification and voting on behalf of others through the voting device during the deliberations of the Draft Amendment to the Constitution on provisions relating to the source of Senators. In addition, Mrs. Atchara Juyuenyong, the head of the Audiovisual Group, Secretariat of the House of Representatives, testified that normally only one electronic card used for verification and self-identification during quorum determination and voting would be issued to each Member of the National Assembly, with one spare card kept by an official for use by Members in the event that a Member had forgotten to bring his or her card. The sound and actions in the video were consistent with the sound in the video recording of the live transmission of the National Assembly session and records of the National Assembly session. The events occurred during the same time as the joint deliberations of the National Assembly on the Draft Amendment to the Constitution in regard to the source of Senators as specified in the applications. Such evidence was submitted by the Secretary-General of the National Assembly to the Constitutional Court. Furthermore, during the witness examination, the Secretary-General of the National Assembly watched and heard the video clip and testified that he remembered the sound as the voice of the Vice-President of the National Assembly, who acted as the presiding chairman at that time. It was discernable that the use of several electronic cards for self-identification and casting votes in the electronic system was unusual. Such a conduct not only violated the fundamental principle of being a Member of the National Assembly, as a representative of the Thai people who shall perform duties free from any mandate or domination and shall maintain integrity for the common interests of the Thai people free from any conflict of interests as provided under section 122 of the Constitution, but was also contrary to the Rules of Procedures of the National Assembly, contrary to the principles of integrity pursuant to the oath given by Members of the National Assembly pursuant to section 123 of the Constitution, and contrary to the principles of voting under section 126 paragraph three which granted each Member with only one vote. As a consequence, the votes of the National Assembly during such session was carried dishonestly and not in accordance with the true intent of the Thai people. Therefore, the foregoing conduct could not be regarded as a rightful resolution of the National Assembly.

The second issue was whether or not the amendments in the Draft Amendment to the Constitution of the Kingdom of Thailand (No. ...) B.E. constituted acts to acquire national government powers by unconstitutional means.

The Constitutional Court found as follows. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the National Assembly comprised 2 chambers, namely the Senate and the House of Representatives, in an established balance. The Senate exercised scrutiny over the functioning of the House of Representatives and balanced the powers of the House of Representatives. In this regard, the Senate had the power to investigate and remove Members of the House of Representatives pursuant to an allegation of unusual wealth showing signs of dishonest performance of duties, showing signs of an intentional exercise of functions contrary to the provisions of the Constitution or laws or a serious violation of or non-compliance with ethical standards pursuant to section 270 of the Constitution. The constitutional amendment in this application was therefore a destruction of the essential basis for maintaining two chambers thereby leading to a monopolization of state powers, a denial of participation by the people from several professions. The amendment would allow the participators on this occasion to have the opportunity to acquire governing powers by unconstitutional means.

Furthermore, the provisions in section 11 and section 11/1 of the Draft Amendment to the Constitution were inconsistent with Constitution in regard to the process for enactment of a new organic law on the election of Members of the House of Representatives and Senators. The provisions stipulated a summary procedure for promulgation of the organic law without compliance with section 141 of the Constitution, under which such a Bill had to be submitted to the Constitutional Court for constitutional review. This provision was inconsistent with the principle of checks and balances under the democratic form of government.

4. Ruling of the Constitutional Court

The Constitutional Court thus held by a majority of 6 to 3 votes that the conduct of deliberations and voting on the constitutional amendment of all respondents in this case were inconsistent with section 122, section 125 paragraph one and paragraph two, section 126 paragraph three, section 291(1), (2) and (4) and section 3 paragraph two of the Constitution. The Constitutional Court further held by a majority of 5 to 4 votes that the Draft Amendment to the Constitution contained provisions which were in the essence contrary to the fundamental principles and intents of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), constituting acts to enable all the respondents to acquire national government powers by means which were not provided under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and hence a violation of section 68 paragraph one of the Constitution.

As for the first applicant's petition for the dissolution of the relevant political parties and the revocation of election rights of such political party's executives, the Constitutional Court held that the prerequisites under section 68 paragraph three and paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had not yet been satisfied. This motion was therefore dismissed.
