

# Constitutional Court Order

No. 76/2563 (2020)

Dated 23<sup>rd</sup> December B.E. 2563 (2020)

Between	{	Mr. Warong Dechgitvigrom	Applicant
		President of the National Assembly, first Political Parties, second to nineteenth	Respondent

Re: Application for a Constitutional Court ruling under section 49 of the Constitution.

Mr. Warong Dechgitvigrom (applicant) claimed that opposition political parties (second to sixth respondents), government coalition political parties (seventh to nineteenth respondents) had submitted motions to amend the Constitution to the President of the National Assembly (first respondent) for submission to the joint sitting of the National Assembly. The Draft Amendment of the Constitution of the Kingdom of Thailand (No. ..) B.E. .... submitted by the second to sixth respondents and that submitted by the seventh to nineteenth respondents shared the same essential substances by amending the Constitution of the Kingdom of Thailand B.E. 2560 (2017) in two parts, namely (1) amend the provisions of section 256 of the Constitution to facilitate a constitutional amendment, and (2) add Chapter 15/1, Drafting of a New Constitution, to establish a Constitutional Drafting Assembly to prepare a new Draft Constitution. The first respondent ordered the inclusion of these motions to the agenda of the National Assembly sitting on 17<sup>th</sup> November B.E. 2563 (2020) and on 18<sup>th</sup> November B.E. 2563 (2020). The sitting adopted a resolution to give approval in principle. The applicant claimed that the actions of the second to nineteenth respondents in submitting motions to amend the Constitution constituted an exercise of right or liberty to overthrow the democratic form of government with the King as head of state, and the first respondent's inclusion of both motions to the agenda of the joint sitting of the National Assembly amounted to a joint commission of wrongdoing with the second to nineteenth respondents. The applicant petitioned to the Attorney-General to apply for a Constitutional Court order to cease such actions on 17<sup>th</sup> November B.E. 2563 (2020). The Attorney-General, however, did not take action within fifteen days of the application. The applicant therefore submitted a direct application to the Constitutional Court for a ruling under section 49 of the Constitution.

The preliminary issue considered by the Constitutional Court was whether or not the application was in accordance with section 49 of the Constitution that could be accepted for consideration by the Constitutional Court.

Section 49 paragraph one of the Constitution provided that “a person may not exercise a right or liberty to overthrow the democratic form of government with the King as head of state.” Paragraph two provided that “a person who has knowledge of an act under paragraph one has the right to petition to the Attorney-General to apply for a Constitutional Court order to cease such act.” Paragraph three provided that “in the case where the Attorney-General orders the dismissal of the petition or does not take action within fifteen days of receiving the petition, the applicant may submit a direct application to the Constitutional Court.”

After deliberations, the Constitutional Court found as follows. The facts under the application and supporting documents indicated that this was a case where the applicant exercised the right to petition to the Attorney-General on 17<sup>th</sup> November B.E. 2563 (2020), and the Attorney-General did not take action within fifteen days of receiving the petition, thus allowing the applicant to submit a direct application to the Constitutional Court under section 49 of the Constitution. However, the facts according to the documents attached to the application indicated that Members of the House of Representatives exercised rights as individual Members of the House of Representatives when entering their names in the motions to amend the Constitution to the National Assembly pursuant to section 256 of the Constitution. The motions to amend the Constitution were not submitted by the political parties. The applicant requested for a ruling on the actions of the second to nineteenth respondents, which were political parties, not being the persons committing the actions claimed in the application. Hence, the applicant was not entitled to submit such an application. As for the first respondent, he was only performing duties to include the motions in the agenda of the National Assembly as provided under the Constitution, which was not an exercise of right or liberty under section 49 of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court dismissed the application, and upon the dismissal of the application, all other requests also lapsed.

---