

Constitutional Court Ruling
No. 19/2564 (2021)

Dated 10th November B.E. 2564 (2021)

Between	Mr. Nattaporn Toprayoon	Applicant
	Mr. Arnon Nampa, 1 st	
	Mr. Panupong Jadnok, 2 nd	
	Miss Panusaya Sithijirawattanakul, 3 rd	
	Mr. Parit Chiwarak, 4 th	
	Miss Jutatip Sirikhan, 5 th	
	Miss Siripat Jungteerapanich, 6 th	
	Mr. Somyot Pruksakasemsuk, 7 th	
	Miss Arthitaya Pornprom, 8 th	Respondents

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

Mr. Nattaporn Toprayoon (applicant) submitted an application for a Constitutional Court ruling under section 49 of the Constitution. The facts under the application and supporting documents could be summarised as follows.

The applicant claimed that a group of persons consisting of a group of Thammasat University student's club together with the Student Federation of Thailand, Maharakam Student's University Democracy Front and Seri Toey Plus Group (Free Gender TH) used certain premises to organise assembly platforms constituting offences under section 6 of the Constitution, section 112 and section 116 of the Criminal Code and relevant laws. It was alleged that such actions violated the Monarchy revered by the Thai people, being acts to overthrow the democratic regime of government with the King as Head of State and caused dissimilarity, unrest or discontent amongst the people. In particular, 8 persons, who gave speeches relating to the Monarchy, namely Mr. Arnon Nampa (first respondent), Mr. Panupong Jadnok (second respondent), Miss Panusaya Sithijirawattanakul (third respondent), Mr. Parit Chiwarak (fourth respondent), Miss Jutatip Sirikhan (fifth respondent), Miss Siripat Jungteerapanich (sixth respondent), Mr. Somyot Pruksakasemsuk (seventh respondent) and Miss Arthitaya Pornprom (eighth respondent), acted as in conspiracy, adopted ideologies from the former Future Forward Party which had provided support in the background, displayed the symbol of three-finger salute and denied

the democratic regime of government with the King as Head of State, as well as gave the following speeches in public spaces.

On 3rd August B.E. 2563 (2020), at the Patronus Charm for Democracy Protection stage, Democracy Monument, and on 9th August B.E. 2563 (2020), at the Chiang Mai Will Not Endure Forum, Chiang Mai Province, the 1st respondent gave a speech which could be summarised as follows. Students and the public held assemblies pressing demands partly because of the need to ask questions to the Monarchy. At present, an important problem is the movement distancing the Monarchy from the democratic regime. In other words, the Constitution was designed to favor the expansion of the royal prerogative: section 15 paragraph two of the Constitution provided that the official organisation and personnel administration of His Majesty's Royal Office shall be at the King's pleasure, which was achieved intervention in the promulgation of the Constitution by the Monarchy, enacting several laws to expand the royal prerogative of the Monarchy, establishing agencies which reported directly to the King, reverting properties in the public domain to the King, transferring manpower and portions of the budget to the Royal Guards Command, as well as enacting a law relating to the national budget with regard to the Monarchy. It was proposed that the Constitution should be amended in relation to the Monarchy to stipulate the appointment of a Regent in the event of the King residing overseas, and the law on administration of crown property should be amended to revert properties which were in the public domain back to all the people.

On 10th August B.E. 2563 (2020), at the Thammasat Will Not Endure Rally, Thammasat University Rangsit Campus, Pathum Thani Province, the 1st respondent gave a speech which could be summarised as follows. We have gathered on this day to reaffirm that in addition to the three proposals mentioned at every rally, in actual fact there was a proposal between the lines which was most important of all, namely the rectification of problem concerning expansion of powers by the Monarchy. I do reaffirm once again that this is neither a mob to overthrow royalties nor a mob to offend. On the contrary, this mob exposes the truth relating to problems in society. Thammasat University was established by Professor Pridi; today, all of us have received the baton from Khana Ratsadon (the People's Party), passed on from our former ancestors to deal with all problems. All of us are descendants of Khana Ratsadon (the People's Party) who shall assume the duties on behalf of Khana Ratsadon (the People's Party). An important issue which I will speak today is our demand between the lines. A democratic regime of government with the King as Head of State meant that the King was above politics and was subject to the Constitution. Any royal duty which would involve the King in politics has to be

questioned loudly in public. We want to see the Monarchy adapting to the public, not for the public to adapt to the Monarchy. Being under the Constitution is of the essence for the administration we have in existence. However, problems arise when the Monarchy attempts to expand royal prerogatives through a coup d'état council in B.E. 2557 (2014). A King which remained a monarch under the democratic regime of government with the King as Head of State must not endorse the coup. If a coup occurred, the Monarchy must only stand beside democracy. The 2nd respondent gave a speech which could be summarised as follows. Today, the topic of this speech is the absolute monarchy which has not yet been extinguished. Absolute monarchy is the centralisation of lordship powers and official servants with the King. The King had absolute powers. This form of government which had been applied since King Rama V, King Rama VI, King Rama VII. However, as of 24th June B.E. 2475 (1932), Khana Ratsadon (the People's Party), led by Professor Pridi Banomyong and Phraya Phahonphonphayuhasena, led a revolution of Siam from a regime of absolute monarchy to a democratic regime and subjecting the King to the Constitution. At present, I think the application of an absolute monarchy regime has continued to the present reign since the King is above all three sovereign powers, namely the judicial power, executive power and legislative power. If one wishes to ask why this was so, did you ever know that Chapter II of the Constitution, section 6 paragraph two, mentioned that no person could press a claim against the King. As a consequence, the King was above sovereign powers which belonged to the people. The purpose of my speech on this occasion is to call for the monarchy to remain in an appropriate place and coexist with the Thai people. The statement saying that the King was above sovereign powers meant he was above the power of the people and untouchable. Since any challenge would be subject to action under section 112 of the Criminal Code. The most important issue was to ensure that the King was adaptable to the people and returned to reside in Thailand to provide refuge for the people. It is desired that His Majesty returned to Thailand to save taxpayers monies. The 3rd respondent read out the Declaration of the United Front of Thammasat and Demonstration, No. 1, which could be summarised as follows. All the people from the times when Khana Ratsadon instigated the revolutionary transformation for our country to be governed under a democratic regime of government with the King as Head of State truly above all politics. However, the state of affairs has not been as such. The monarch continued to retain the power to dominate politics. For instance, whenever there was a coup d'état to overthrow a government installed under a genuine democratic process, the King would give his royal signature to appoint the coup leader, being an endorsement of the legality of every such coup d'état. Moreover, His Majesty relocated forces as well as transferred a significant amount of

the public budget to his personal use. His Majesty also exercised royal prerogatives above the law to amend the Draft Constitution that had already been approved by referendum to allow travels to reside outside the Kingdom without having to appoint a Regent. The enabling cause for such amendment was because a dictatorial government had to seek refuge under the shadows of the Monarch and made false pretence of the Monarchy for personal gains. It was discernible that these persons had mutual benefits. Such a situation was detrimental to the principle of the democratic regime of government with the King as Head of State. No democratic country would exhibit such a characteristic. All citizens should be aware that our Monarch was not above politics, but had always been the root cause of political problems. In addition to neglect of duties as a Head who was a centre of faith for the people, His Majesty also travelled to reside overseas for pleasure expending the people's tax monies despite the people encountering hardship due to rising costs of living. Furthermore, His Majesty had a strong relationship with the insurgent group instigating the coup d'état to overthrow the democratic regime of government. It was apparent that in the absence of change to enable the Monarchy to coexist with the people institution, the people would truly lose faith in the Monarchy. For these reasons, the United Front of Thammasat and Demonstration demanded the problems concerning the Monarchy to be resolved as follows:

(1) Repeal section 6 of the Constitution which provided that no person shall expose the King to any sort of accusation or action and an add of provision to enable the House of Representatives to determine the King's wrongdoing in the same manner as the provision that was once provided in the Khana Ratsadon's Constitution.

(2) Repeal section 112 of the Criminal Code, including liberalisation of the people's freedom to express opinions on the Monarchy, and granting amnesty to all persons subject to legal proceedings for criticising the Monarchy.

(3) Repeal the Crown Properties Act, B.E. 2561 (2018) and clear separation of assets into crown property under the control of the Ministry of Finance and crown private property which were the King's personal assets.

(4) Reduce public budgetary appropriations to the Monarchy in line with national economic conditions.

(5) Dissolve the Royal Office, whereby agencies having clear functions such as the Royal Security Command would be transferred to other agencies, and redundant agencies such as the Privy Council should be repealed.

(6) Discontinue all donations and donation receipts at royal disposal to ensure that all finances of the Monarchy remain under scrutiny.

(7) Repeal the royal prerogative to express political opinions in public.

(8) Discontinue all excessive publicity and education dedicated exclusively to the promotion of the Monarchy.

(9) Investigate the truth relating to the killing of citizens who criticised or had any connection with the monarchy.

(10) Prohibit the grant of royal assent to endorse any coup d'état.

These demands were not proposals to abolish the monarchy. On the other hand, the proposals were derived from good intentions to ensure that the Monarchy remained an inspiration for the people under the democratic regime of government. The Monarch could maintain secure foundations in the current world, the Institution had no powers to relate to the politics. The Institution could be scrutinised and criticised, and not impose a burden on the people. Such a Monarchy would be regarded graceful as the universal democratic regime.

On 20th August B.E. 2563 (2020), at the “Khon Kaen Por Kan Tee” stage (That’s Enough for Khon Kaen stage), Khon Kaen Province, and on 21st August B.E. 2563 (2020), at the “Ayutthaya Mai Sin Prachatipatai” stage (Ayutthaya is Not Rid of Democracy stage), Ayutthaya Province, the 4th respondent delivered a speech which could be summarised as follows. A democratic regime of government with the King as Head of State meant that the Monarch was not involved in politics. The royal appointment of coup d'état council was an endorsement that a coup d'état was lawful. At present, the Monarchy placed itself above the Constitution, and the people therefore called for the urgent reforms of the Monarchy. Otherwise, the Monarchy, the people’s institution and the democratic institution could not co-exist.

On 30th August B.E. 2563 (2020), at the “Samut Prakan Deed New Lai Padetkarn” stage (Samut Prakan Deed Flicking Fingers against Dictatorship stage), Samut Prakan Province, the 5th respondent delivered a speech which could be summarised as follows. The Monarchy’s budget was a budget for His Majesty’s Royal office deliberated at the committee stage in the year B.E. 2563 (2020) in the amount of seven thousand six hundred and eighty-five million baht. In the year B.E. 2564 (2021), the Monarchy’s budget increased to eight thousand nine hundred and eighty million baht. There was no explanation given for the budget, and the budget was not subject to scrutiny. Also importantly, those funds were taxes of the people which could be used to improve the quality of lives of the people. The 6th respondent delivered a speech which could be summarised as follows. If anyone followed the news on twitter, there were hashtags on island closing in Phuket stating “what could we do; we could not choose our birth” and “closure of roads obstructed persons relying on daily incomes, taxies, hawkers who do not have any welfare. The workplaces of those people were roads, but Bangkok Metropolitan Administration claims that the road closures were for public order. What about those persons who

closed roads caused regular persons to not be able to walk, work, resulting in traffic congestion for hours; why are those persons not subject to organisation.” The 7th respondent delivered a speech which could be summarised as follows. We used to be a country ranked 3rd for inequality between the poor and the rich. The richest was the King. If the monies of the 50 most affluent families in Thailand were piled together there would be enough to support the 65 million Thai people for their entire lives. The 8th respondent delivered a speech which could be summarised as follows. The tax monies used for national administration had to benefit the people of the entire country. Why would they favour one person and group of nobilities? The 4th respondent delivered a speech which could be summarised as follows. The military’s seizure of powers constituted an offence of overthrowing the regime of government under section 113 of the Criminal Code. Without a Royal signature, the soldiers instigating such a coup would be liable to punishment. Therefore, section 6 of the Constitution should be repealed. A King, nobleman or commoner had to be subject to the same laws. Finally, the 2nd respondent delivered a speech which could be summarised as follows. We did not desire to overthrow anything. However, we only wished to build a paved road but there was a large tree obstructing the way. Would you cut down the tree or build a roundabout or relocate that tree? I think that the relocation of such tree to an appropriate place and building a durable road, we will have both the tree and complete road analogous to the furtherance of national development with the monarchy in an appropriate place. We have good intentions to co-exist with the Royal institution and to enjoy the auspices of the royal institution and royal benevolence. The people should be able to make criticisms. We pay taxes for His Majesty. Therefore those taxes should be reviewable.

The applicant was of the opinion that the speeches delivered at the times and places of such group of persons had contents which were misleading, intrusive, mocking and seriously causing lèse-majesté against the monarchy. The acts were committed with intent to overthrow the democratic regime of government with the King as Head of State pursuant to Constitutional Court Ruling No. 3/2562. The claims made by such group of persons showed disrespect and lack of faith in the democratic regime of government with the King as Head of State. The actions were also failures to comply with the Constitution. It was due to the fact that the exercise of fundamental rights and liberties under the democratic regime shall be consistent with section 25 of the Constitution. Additionally, section 34 of the Constitution relied on the liberty of a person to express an opinion without regard to the limitations of such liberty under international rules and the support of exercise of liberty without regard to limitations, constituted serious threats, being a promotion of exercise of liberties in an unlawful manner. Furthermore, upon examination of the

announcements or proposals, it was found that several proposals were contrary to or inconsistent with the fundamental principles of the Constitution on the protection of the Monarchy and Royal prerogatives under the Constitution, in line with universal principles ruled by a constitutional Monarch. Those principles have been continually enshrined since the Constitution of the Kingdom of Siam, B.E. 2475 (1932) to the present time. They could not be amended as any amendment would be contrary to the principle of constitutional amendments. It could be construed that a proposal to amend section 6 of the Constitution would destroy a fundamental constitutional principle which was connected to the prohibition under section 255 of the Constitution.

The applicant submitted a petition to the Attorney-General on 18th August B.E. 2563 (2020) requesting the Attorney-General to apply to the Constitutional Court for an injunction to restrain such actions. However, the applicant was of the opinion that the Attorney-General failed to proceed within 15 days as from the date of receiving the petition under section 49 paragraph three of the Constitution. The applicant therefore submitted an application to the Constitutional Court to request for a Constitutional Court ruling and injunction to restrain the actions of such group of persons pursuant to section 49 of the Constitution.

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept the application for a ruling under section 49 of the Constitution. The Constitutional Court found as follows. The applicant applied for a Constitutional Court ruling that the actions of various groups of persons in holding a total of 6 rallies constituted exercises of rights or liberties to overthrow the democratic regime of government with the King as Head of State and to issue an injunction to restrain the actions of such persons pursuant to section 49 of the Constitution. However, it was found on the facts from the application that on 18th August B.E. 2563 (2020), the applicant submitted a petition to the Attorney-General to request for a Constitutional Court ruling under section 49 paragraph two of the Constitution in relation to the rallies of such group on 10th August B.E. 2563 (2020) at Thammasat University Rangsit Campus, Pathum Thani Province. According to the application, it was specified that the rally held on such date had 3 speakers who committed acts claimed by the applicant, namely, the 1st, 2nd and 3rd respondents. The case was in accordance with section 49 paragraph three of the Constitution. Thus, the applicant could submit a direct application to the Constitutional Court. As for the application which claimed that there were other rallies, it did not appear that the applicant had submitted a petition to the Attorney-General pursuant to section 49 paragraph two of the Constitution. The Constitutional Court therefore ordered the acceptance of application only with respect to the

rallies of the 1st, 2nd and 3rd respondents on 10th August B.E. 2563 (2020) for consideration. The 1st, 2nd and 3rd respondents were instructed to submit a reply to the allegations. Also, in the interest of justice, the Attorney-General was instructed to report the outcome of proceedings and submit relevant documents and evidence.

The Attorney-General reported the outcome of proceedings, which could be summarised as follows. The Office of the Attorney-General issued an order to establish a working group to consider this matter, which was pending collection of additional facts and evidence for submission to the Attorney-General for consideration under section 49 of the Constitution. Relevant documents were also submitted, which could be summarised as follows. The applicant witnessed or knew of the actions through social media networks. The applicant was of the opinion that the rallies held by such group which proposed the repeal of expression of political opinions, repeal of reverence for the monarchy, repeal of section 112 of the Criminal Code and section 6 of the Constitution, were intended to destroy, overthrow and eradicate the continued existence of the Monarchy, and was hostile to the Monarchy. The actions were aimed at eroding and destructing to cause deterioration and decline. These actions were also contrary to the fundamental principle of the democratic regime of government with the King as Head of State.

The 1st, 2nd and 3rd respondents submitted replies to the allegation and supporting documents, which could be summarised as follows.

1. The application and allegations were inconsistent with section 49 of the Constitution, ambiguous and unclear since it was not apparent from the allegation how the 1st, 2nd and 3rd respondents exercised the rights or liberties to overthrow the regime. The facts in the application were vague allegations; they did not indicate that the 1st, 2nd and 3rd respondents exercised which right or liberty or acted in any way to overthrow the democratic regime of government with the King as Head of State. It was not possible to understand the state of actions that were alleged. Also, there was no description on the elements of section 49 of the Constitution since such a provision provided competence to the Constitutional Court to issue an injunction to restrain an action that was “an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State.” The object of proceedings was the exercise of right or liberty of a person, whereby a determination had to be made as to whether such person exercised a right or liberty with intent to overthrow the democratic regime of government with the King as Head of State. However, the application did not allege how the 1st, 2nd and 3rd respondents of “overthrowing” the regime. The applicant merely claimed that the actions of the 1st, 2nd and 3rd respondents were inconsistent with section 6, section 25, section 34 and section 50 of the Constitution, as well as objecting to the reasons in the 10-point

proposal for reform of the Monarchy. The application's wording exceeded the elements and presented allegations which were not within the spirit of section 49 of the Constitution. The issue was distinguishable from the determination of whether or not the exercise of liberty to assemble and liberty of expression of opinion by the 1st, 2nd and 3rd respondents were constitutional. As for the claim that the 1st, 2nd and 3rd respondents committed offences under section 112 and section 116 of the Criminal Code, the determination of whether an act constituted a security offence under the Criminal Code was a question of law, which was a different matter from the exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State. As a consequence, the Constitutional Court did not have the competence to accept the application by the applicant for a ruling under section 49 of the Constitution.

2. The Constitutional Court did not have the competence to order the 1st, 2nd and 3rd respondents to cease or to restrain an action since the actions of the 1st, 2nd and 3rd respondents had already ceased, and the actions were too remote. According to section 49 of the Constitution, it was required the facts that there was an action constituting an exercise of a right or liberty to overthrow the democratic regime of government with the King as Head of State. Such actions were still continuing pursuant to the precedent laid down by the Constitutional Court in Ruling No. 1/2563. The exercise of liberty by the 1st, 2nd and 3rd respondents to express opinions relating to the Monarchy, or to assemble peacefully without arms were all actions which had no relationship between the exercise of liberty and the overthrow of the democratic regime of government with the King as Head of State. Each assembly and expression of opinion, as well as the 10-point proposal for reform of the Monarchy, could not be seen by a reasonable person as having a purpose or intent to overthrow the democratic regime of government with the King as Head of State. On the other hand, such actions were intended to promote the democratic regime of government with the King as Head of State. Furthermore, the application did not clearly state sufficient facts on the purpose and possibilities for the exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State, since the content of the expression of opinion or assembly to make political demands were based on the lack of confidence in the administration of the government and proposals for reform of the Monarchy, being expression of opinions and assemblies recognised and protected by the Constitution. The 1st, 2nd and 3rd respondents did not have the purpose of overthrowing the democratic regime of government with the King as Head of State. Moreover, the facts in the application and supporting documents were merely claims based on information obtained from websites, printed materials and the internet without specifying the possibility on the

means by which the 1st, 2nd and 3rd respondents could have overthrown the democratic regime of government with the King as Head of State. The 1st, 2nd and 3rd respondents had expressed opinions in good faith and honestly wished for the development of the democratic regime of government with the King as Head of State and the country's political system.

3. The assemblies of the 1st, 2nd and 3rd respondents were legitimate exercises of liberties to assemble or liberties to express opinions under section 34 and section 44 of the Constitution. The cause for these activities was derived from the lack of confidence in the administration of the government and the constitutional structure which was inconsistent with the democratic regime of government with the King as Head of State. The actions of the 1st, 2nd and 3rd respondents were merely political demands for the government to dissolve parliament and amend the Constitution. Pursuant to Constitutional Court Orders No. 59/2556, No. 61/2556 and No. 63/2556, decisions were made that actions of such description were not deemed as acts to overthrow the democratic regime of government with the King as Head of State. Moreover, the proposals for reform of the Monarchy did not contain any words which were derogatory or insulting to the democratic regime of government with the King as Head of State. The exercise of rights or liberties that was prohibited under section 49 of the Constitution had to be an act to "overthrow" the democratic regime of government with the King as Head of State. The term "overthrow" was explained by the Constitutional Court in Ruling No. 3/2562 as an act with intent to annihilate. In other words, there must be an intent or purpose to destroy the fundamental constitutional principle and fundamental principle of democratic rule, e.g. a change from democratic rule to autocratic rule. The exercise of liberties of the 1st, 2nd and 3rd respondents did not have any intent to overthrow the democratic regime of government with the King as Head of State. In any event, an interpretation of constitutional provisions had to take regard of reasons as well as constitutional intent. Section 49 of the Constitution was linked to the concept of the right to protect the Constitution and the exercise of right to repel a power seizure or coup. Therefore, an act which constituted an exercise of a right or liberty to overthrow the democratic regime of government with the King as Head of State under section 49 of the Constitution should reflect the intent to prevent any exercise of right or liberty under the Constitution with the aim of instigating a revolution or coup d'état only. The exercise of right to assemble and liberty to express an opinion on the monarchy in public on 3rd August B.E. 2563 (2020) and on 10th August B.E. 2563 (2020) was incongruous with the rationale and intent of section 49 of the Constitution since the 1st, 2nd and 3rd respondent did not wish for a revolution or coup d'état or desired for the eradication of any element of the democratic regime of government with the

King as Head of State. Furthermore, the exercise of right or liberty to express an opinion in an assembly or the presentation of 10-point proposal for the reform of the Monarchy was consistent with Constitutional Court Ruling No. 6/2543, which explained the principle of upholding the King's role as "a Protector, not a Ruler". Such constitutional principle for a parliamentary democracy was the same as to other civilized nations having a King as Head of State. Such expression of opinion was made with due respect to the Monarchy with a desire to witness a political reform, constitutional amendment and reform of the Monarchy to secure co-existence with the democratic regime of government as was the case of other civilised nations. There was no wish to cause a revolution or coup d'état, or a wish to eradicate any element of the democratic regime of government with the King as Head of State.

4. The three political demands and 10-point proposal for the reform of the Monarchy did not constitute an overthrow of the democratic regime with the King as Head of State. On the other hand, they were suggested to promote the democratic regime of government with the King as Head of State, and were compatible to the means provided by the Constitution. The three political demands were dissolution of parliament, amendment of the Constitution and cessation of abuses of the people, all of which could be implemented legitimately under the Constitution and laws. In other words, parliamentary dissolution was a political tool of the executive employed to balance the power of the legislature in the parliamentary political system. A constitutional amendment was done under Chapter XV of the Constitution. Finally, the cessation of abuses of the people, such as cessation of criminal proceedings against a person who exercised the right to assemble peacefully and without arms, was permissible under the law. A State official could exercise discretion proportionately and not perform an act which unnecessarily violated the fundamental rights of the people. Also, the 10-point proposal for the reform of the Monarchy could all be implemented constitutionally. The proposals did not seek to overthrow the democratic regime of government with the King as Head of State because of the following reasons:

Reason 1. The constitutional amendment was consistent with and in accordance with the spirit of the democratic regime of government with the King as Head of State. A Monarch who committed a criminal wrongdoing should be subject to parliamentary scrutiny, in accordance with the principle that no person was above the law. This principle was recognised and existed in democratic regimes in a number of civilized nations.

Reason 2. The liberty of expression was an important factor for the development of society and political system. In principle, in a democratic regime of government, a political person or Head of State should be subject to criticism. Even

though in some countries there were special protections for the reputation of a Head of State who was a Monarch by providing a criminal offence, such law did not disproportionately punish a person as provided by section 112 of the Criminal Code, which was a penalty disproportionately creating a burden or restricted the right to express an opinion under the Constitution.

Reason 3. The rule was consistent with the standard of civilized nations ruled under the democratic regime of government with the King as Head of State in order to clearly divide the responsibilities for the properties, and to avoid ambiguities as regards public property and private crown property.

Reason 4. The proposal ensured that State funds obtained from the people's taxes could be used effectively for public administration.

Reason 5. The proposal was directed at organisation of State agencies and various sectors of the State.

Reason 6. The proposal prevented any person from making false misrepresentations to receive donations for granting to the King and to prevent the exploitation of the Monarchy as a tool for acquiring illegitimate benefits.

Reason 7. The Monarchy, as a constitutional organ, had to preserve political impartiality, and therefore could not give a royal speech without a person countersigning the royal command, which could affect political impartiality.

Reason 8. If the Monarchy was publicised from only one perspective, the Monarchy could be drawn as a political tool. Such proposal was a measure to prevent the illegitimate exploitation of benefits from the Monarchy.

Reason 9. The proposal prevented the Monarchy from any discredit.

Reason 10. Since a coup d'état was an action which sought to overthrow the democratic regime of government with the King as Head of State, it was prohibited under section 49 of the Constitution. In principle, the King under the democratic regime of government with the King as Head of State, being a constitutional organ, had the duty of protecting the democratic regime of government with the King as Head of State. Therefore, prohibition from giving royal assent to a coup d'état was in the interest of promoting the democratic regime of government with the King as Head of State and consistent with all principles under the Constitution.

For the foregoing reasons, the respondents were of the opinion that the application submitted by the applicant was inconsistent with section 49 of the Constitution. The Constitutional Court could not give a ruling to order to restrain or cease actions since they were too remote and there were insufficient facts to indicate a purpose and approach that was a possible exercise of rights or liberties to overthrow the democratic regime of government with the King as Head of State. Furthermore, the exercise of rights or liberties by the 1st, 2nd and 3rd respondents had

already terminated and it had not been ongoing. Also, the actions of the 1st, 2nd and 3rd respondents were not actions constituting an exercising a rights or liberties to overthrow the democratic regime of government with the King as Head of State. It was therefore requested that the Constitutional Court dismissed the application.

The Constitutional Court conducted the trial by directing the applicant and the 1st, 2nd and 3rd respondents to show reasons for the allegations and reply to the allegations, as well as to present supporting evidence, so as to hear submissions from both parties. The Constitutional Court then made the following findings. Section 27 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018), provided that a trial would be conducted under inquisitorial procedures thereby granting the court to find facts which could be beneficial or detrimental to either party. When determining a question of fact, the Court would hear all types of evidence. Moreover, this case was a case relating to State security and public safety, which was in accordance with the Constitution, laws and the rule of law. Hence, in the interest of the proceedings, by virtue of section 27 paragraph three of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018), the Constitutional Court issued letters directing the Superintendent of Khlong Luang Provincial Police Station, Pathum Thani, the Commissioner-General of the Royal Thai Police, Secretary-General of the National Security Council and the Director of the National Intelligence Agency to submit all relevant information and evidence, and to the Rector of Thammasat University to submit a copy of the files pertaining to the fact-finding investigation on the case of organising a rally to present the 10-point demands on the Monarchy on 10th August B.E. 2563 (2020) at Thammasat University Rangsit Campus, Pathum Thani Province, to the court.

The Superintendent of Khlong Luang Provincial Police Station, Pathum Thani, submitted a document entitled “Flash Phenomenon, 10th August, 10 Demands on the Monarchy”. The document consisted of the speeches stating the 10-point demand on the Monarchy on 10th August B.E. 2563 (2020) at Thammasat University Rangsit Campus, Pathum Thani Province, delivered by the 1st, 2nd, 3rd and 4th respondents and the Declaration of the United Front of Thammasat and Demonstration, No. 1.

The Secretary-General of the National Security Council submitted relevant information and evidence which could be summarised as follows. The United Front of Thammasat and Demonstration organised the event “Thammasat Will Not Endure” at Phayanak Lawn, Thammasat University Rangsit Campus, Pathum Thani Province, where the 1st respondent and leaders delivered speeches demanding constitutional amendments.

The Director of the National Intelligence Agency submitted relevant information and evidence which could be summarised as follows. On 10th August B.E. 2563 (2020), the Thammasat University Student Union and Thammasat and Assemblies Group organised the event “Thammasat Will Not Endure” at Phayanak Lawn, Thammasat University Rangsit Campus, Pathum Thani Province, under the concept “we do not wish for reform, but we wish for revolution.” The 1st, 2nd and 3rd respondents gave direct speeches on the Monarchy, i.e. the amendment to the royal prerogative, the impact of the regime of absolute monarchy, and expenditure of State budget. It was proposed that the issues involving the Monarchy could be commented in public without being harassment. In addition, the 3rd respondent read the Declaration of United Front of Thammasat and Demonstration, No. 1, containing 10 points of proposals. Subsequently, such proposals were still present in online social media. The contents thereof were used in other political rallies held in many areas throughout the country and was repeated in formal submissions. For instance, the Thammasat and Assemblies submitted a 10-point proposal to the Committee on Political Development, Mass Communications and Public Participation, House of Representatives, on 26th August B.E. 2563 (2020), and submitted a proposal to the President of the Privy Council through the Police Lieutenant General Pakapong Pongpetra, Metropolitan Police Commissioner, on 20th September B.E. 2563 (2020).

The Rector of Thammasat University submitted a copy of fact-finding investigation case files which was able to be summarised as follows. The student who was group responsible for organising the event on 10th August B.E. 2563 (2020) applied for permission to use Thammasat University premises for holding an event in order to submit 3 proposals, namely dissolution of parliament, drafting of a new Constitution and a halt to harassment of the public. Thammasat University granted permission to the students to carry out the event in accordance with their wishes. The student group did not notify the executive officers and responsible staff of the university on their other demands, which included demands relating to the King. Also, it did not appear that the executive officers and university staff, police officers and security officers had acknowledged in advance of the 3 demands stated in the application for permission.

The Commissioner General of the Royal Thai Police submitted relevant information and evidence which could be summarised as follows. On 10th August B.E. 2563 (2020), the United Front of Thammasat and Demonstration held a rally at Thammasat University Rangsit Campus, Pathum Thani Province. The 1st, 2nd and 3rd respondents gave speeches on reform of the Monarchy, making serious attacks on the Monarchy. Also, the 3rd respondent read the Declaration and Statement of the United Front of Thammasat and Demonstration, No. 1, stating 10 demands.

The applicant submitted a motion to submit additional evidence and documents, as well as a schedule of documentary evidence, which could be summarised as follows. On 10th December B.E. 2563 (2020), the 3rd respondent delivered a speech in the vicinity of the 14 October 73 Memorial (the 14th October 1973 Memorial Monument) stressing the need to repeal section 112 of the Criminal Code. The 3rd respondent stated that to say that if we claimed that our country was under democratic regime was probably incorrect. Otherwise, all person should be able to freely express their opinions. Many people would not have sought refuge and been deprived of their freedom as a result of imprisonment. Therefore, section 112 should not remain. The same laws applicable to the people should be applied instead. The mass of people shouted “down with feudalism, long live the people.” On 12th December B.E. 2563 (2020), the Khana Ratsadon 2563 Network (the network of the People’s Party of 2020’s group) - an association of several mass groups, such as the United Front of Thammasat and Demonstration, Free People and Free YOUTH, and Bad Student Group, continually carried out movements in rallies. On 14th January B.E. 2564 (2021), the 1st, 2nd and 3rd respondents made symbolic expressions by raising a red flag with the number 112 written in yellow on the flag pole of Khlong Luang Provincial Police Station. On 9th February B.E. 2564 (2021), the 3rd respondent, Khana Ratsadon 2563 Group (the People’s Party) announced an appointment of gathering in the Pathumwan Skywalk area as a display of power to repeal section 112 of the Criminal Code and to pressure the provisional release of persons accused of committing criminal offences under section 112 and section 116. On 10th February B.E. 2564 (2021), the assembly of Khana Ratsadon 2563 Group (the People’s Party) moved from the front lawn of Bangkok Art and Cultural Gallery, Pathumwan Intersection, to Pathumwan Metropolitan Police Station. The 2nd respondent presented a condition to the police officer that, if the detained assembly participants were not released they would breach into Pathumwan Metropolitan Police Station. On 13th February B.E. 2564 (2021), the 2nd respondent, one of the leaders of Khana Ratsadon 2563 Group (the People’s Party), organised the event “Counting One to One Million to Return Powers to the People” in the vicinity of Democracy Monument. There was campaign for the repeal of section 112 and 3 demands were made, namely, General Prayut Chan-o-cha, the Prime Minister, and the Council of Ministers must resign, the National Assembly must convene an extraordinary session immediately to accept the Draft Constitutional Amendment and Reform of the Monarchy. During the assembly, flares and fireworks were ignited. Explosions could be heard from the frontline and water bottles were thrown. On 20th February B.E. 2564 (2021), there was a rally in front of the National Assembly, Kiak Kai Intersection. The 3rd respondent along with a mass of people assembled in front of the entrance

holding signs and raising the three finger symbol. Thereafter, Khana Ratsadon 2563 Group (the People's Party) read a Declaration of the United Front of Thammasat and Demonstration entitled "Milestone for Our Next Fight". The substance of the declaration could be summarised as follows. At that moment, it was crystal clear that we could not rely on politics under the parliamentary system. These were indications of a link between the feudal system and interest groups. As a consequence, we remained committed to the 3 demands. Various masses of people of various groups continued to carry out movements and activities, such as the erasure of blue stripe from the Thai national flag, the destruction of fence surrounding the Criminal Court, burning various items including a His Majesty's picture and attacked official premises. The Constitutional Court served the 1st, 2nd and 3rd respondents with copies of motion to submit additional documentary evidence and schedule of witnesses, but the 1st, 2nd and 3rd respondents did not file a statement or objection.

The Constitutional Court considered the application, a supplemental motion, a statement of reply, evidence of relevant agencies and supporting documents and made the following findings. The case raised both questions of fact and questions of law. As regards the question of fact, there was sufficient evidence to make a finding. As for the question of law, the Constitutional Court could make a determination without requiring a witness opinion. The inquiry proceedings were therefore ceased pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018). It was determined that the issue which required ruling was whether or not the actions of the 1st, 2nd and 3rd respondents constituted an exercise of a right or liberty to overthrow the democratic regime of government with the King as Head of State under section 49 paragraph one of the Constitution.

The facts under the application, replies, evidence, including audio recordings of speeches made by the 1st, 2nd and 3rd respondents were conclusive of a finding that the 1st, 2nd and 3rd respondents continually gave speeches in public spaces on several occasions and at several places from 3rd August B.E. 2563 (2020). Demands were made for changes to the Monarchy. In the rally at Thammasat University Rangsit Campus, Pathum Thani Province, on 10th August B.E. 2563 (2020), the 1st, 2nd and 3rd respondents gave speeches demanding changes to the Monarchy pursuant to a 10-point demand, namely:

(1) Repeal section 6 of the Constitution which provided that no person shall expose the King to any sort of accusation or action and an add of provision to enable the House of Representatives to determine the King's wrongdoing in the

same manner as the provision that was once provided in the Khana Ratsadon's Constitution.

(2) Repeal of section 112 of the Criminal Code, including giving the people the liberty to comment on the Monarchy, and to grant an amnesty to all persons subjected to legal proceedings for criticising the Monarchy.

(3) Repeal the Crown Properties Act, B.E. 2561 (2018) and clear separation of assets into crown property under the control of the Ministry of Finance and crown private property which were the King's personal assets.

(4) Reduce public budgetary appropriations to the Monarchy in line with national economic conditions.

(5) Repeal the Royal Office. Agencies with clear functions, such as the Royal Guard would be transferred to other agencies, and redundant agencies such as the Privy Council should be dissolved.

(6) End all donations and donation receipts for royal disposal to ensure oversight on all funds of the Monarchy.

(7) Abolish of the royal prerogative to express political opinions in public.

(8) Cancel all one-sided publicity and education to promote the Monarchy which went beyond grace.

(9) Investigate facts relating to the murder of citizens who criticised or became involved with the Monarchy.

(10) Ban on giving royal assent to endorse any future coup d'état.

On the objection which required a preliminary ruling on whether or not the application was vague and did not satisfy the elements under section 49 of the Constitution, the Constitutional Court found as follows. The application and documents supporting the application stated a case where the applicant claimed that the speeches given by the 1st, 2nd and 3rd respondents on 10th August B.E. 2563, during the Thammasat Will Not Endure Rally, at Thammasat University Rangsit Campus, Pathum Thani Province, contained substance which distorted, insulted, mocked and defamed the dignity of the Monarchy, being acts intended to overthrow the democratic regime of government with the King as Head of State under section 49 of the Constitution. Various documents were relied upon, including transcriptions of audio recordings which illustrated the actions of the 1st, 2nd and 3rd respondents and others annexed to the application and deemed as part of the application. As such, the application was therefore sufficiently clear to enable the 1st, 2nd and 3rd respondents to comprehend the nature of actions under the allegations and to be able to defend the case. Hence, the objections of the 1st, 2nd and 3rd respondents were not sustained.

The issue which required ruling was whether or not the actions of the 1st, 2nd and 3rd respondents constituted an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State under section 49 paragraph one of the Constitution.

After deliberations, it was found that constitutional principles laid down the foundations of the democratic regime of government with the King as Head of State, constitutional values which formed the core of the democratic regime of government with the King as Head of State, consisting of a key value, namely the protection of rights and liberties of the Thai people. The protection of rights and liberties of the people was first provided in the Constitution of the Kingdom of Siam (promulgated on 10th December B.E. 2475 (1932), Chapter II “Rights and Duties of the Siamese People”. It was subsequently provided in all Constitutions till the present day. Section 25 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) provided that “as regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons.” Such provision stated guarantees relating to rights and liberties of the people, which could be divided into two parts, i.e. the part provided specifically by the Constitution and the part where the Constitution or provisions of other law did not prohibit. The Thai people had such rights and liberties, and enjoyed protection under the Constitution. Therefore, the Constitution granted protection for the right or liberty in all cases, whether specifically provided or not prohibited or restricted by the Constitution or provision of other law, subject to the condition that the exercise of such right or liberty protected by the Constitution did not prejudice or posed a threat to State security, order and good morals of the public and did not violate the right or liberty of another person.

Upon having rights and liberties, a person also had consequential duties and responsibilities. A person’s duties relating to a political right or liberty was apparent in Chapter IV “Duties of the Thai People of the Constitution”, section 50(1), (3) and (6), which provided that a person had the duty to protect and uphold the nation, religion, the King and the democratic regime of government with the King as Head of State. A person also had the duty to strictly comply with the law, respect and not violate the rights and liberties of other persons, and not commit any act which could cause a division or hatred in society.

Section 49 paragraph one of the Constitution provided that “no person shall exercise the rights or liberties to overthrow the democratic regime of government with the King as Head of State.” Paragraph two provided that “any person who has knowledge of an act under paragraph one shall have the right to petition to the Attorney-General to submit a motion to the Constitutional Court for an order to cease such act.” Paragraph three provided that “in the case where the Attorney-General order a refusal to proceed as petitioned or fails to proceed fifteen days as of the date of receiving the petition, the person making the petition may submit the petition directly to the Constitutional Court”. Paragraph four provided that “the action under this section shall not prejudice the criminal prosecution against the person committing an act under paragraph one”. The spirit of such provisions were to protect the country’s regime as a democratic regime of government with the King as Head of State, and also to provide that a person who became aware of an act constituting an exercise of rights or liberties to overthrow the democratic regime of government with the King as Head of State should have the right to file an application to the Attorney-General, and in the case where the Attorney-General dismissed the application, or failed to proceed within fifteen days of receiving the application, the applicant had to right to file a direct application to the Constitutional Court. In addition, actions under such section does not prejudice criminal proceedings against a person acting to overthrow the democratic regime of government with the King as Head of State. Therefore, section 49 of the Constitution was intended for all Thai people to participate in the protecting and safeguarding the democratic regime of government with the King as Head of State, and provided for the Constitutional Court to be the organ with the competence to perform the duties of reviewing and ruling to restrain acts to overthrow the democratic regime of government with the King as Head of State. The principle in section 49 paragraph one was first provided in the section 35 of the Constitution of the Kingdom of Siam, B.E. 2475 (1932), as amended by Amendment, B.E. 2495 (1952), and was similarly provided in all subsequent Constitutions. The provision laid down the principle to protect the democratic regime of government with the King as Head of State from threats resulting from acts which were exercises of rights or liberties under the Constitution in a way which intended to prevent the abolition or decline of the constitutional principles and values that recognised the existence of the democratic regime of government with the King as Head of State. The principle under section 49 paragraph two of the Constitution was first provided in section 63 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and was similarly provided in section 68 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The provision’s intent was to provide that when a person was aware of an act to overthrow the

democratic regime of government with the King as Head of State, such person had the right to petition to the Attorney-General to request for a Constitutional Court order to restrain such act. The Constitution of the Kingdom of Thailand B.E. 2560 (2017) contained additional provisions for further clarification that in such a case if the Attorney-General ordered the dismissal of such petition, or did not take action within fifteen days of receiving the application, the applicant could submit a direct application to the Constitutional Court. Such provision recognised the citizen's right to protect the Constitution from the actions of a person or group of persons who exercised a right or liberty under the Constitution in a way which could result in the overthrow of the democratic regime of government with the King as Head of State. Therefore, the exercise of right to protect the Constitution was deemed as a mechanism in the constitutional justice process. A person who exercised the right to protect the Constitution had to file a petition with the Attorney-General to review the facts in the application prior to submission of the matter to the Constitutional Court for an order to restrain such acts. Even if the Attorney-General dismissed the petition or did not take action within fifteen days of receiving the petition, the Constitution recognised the right of the petitioner to submit a direct application to the Constitutional Court. Such recognition of the petitioner's right created a guarantee for safeguarding the principle which was of the essence in the democratic regime of government with the King as Head of State. Whenever there appeared to be an act which fell within the scope of an exercise of a right or liberty to overthrow the democratic regime of government with the King as Head of State, such act could be raised as an allegation in a case in the Constitutional Court.

The facts in the application, supplemental motion, replies to allegation, supporting documents and various evidence submitted by the Attorney-General, Superintendent of the Khlong Luang Provincial Police Station, Pathum Thani Province, Secretary-General of the National Security Council, Director of the National Intelligence Agency, Rector of Thammasat University and Commissioner-General of the Royal Thai Police could be summarised as follows. On 10th August B.E. 2563 (2020), the 1st, 2nd and 3rd respondents gave rally speeches in the Thammasat Will Not Endure Rally at Thammasat University Rangsit Campus, Pathum Thani Province. The 1st respondent's speech mentioned the Monarchy, the essence of which could be summarised as follows "We have gathered today to reaffirm that apart from the three proposals, which we have spoken in all events: in actual fact there were proposals between the lines which were the most significant proposals, that is, the solution to problems on the expansion of the royal prerogative of the Monarchy. I would like to reiterate that this is not a mob to overthrow the Monarchy. This is not a mob to throw insults. On the contrary, this mob speaks the truth relating to public

affairs. The important issue which I would like to address today are our between the line demands. The democratic regime of government with the King as Head of State meant a King who was above politics and under the Constitution. Any royal duty which results in the Monarchy's involvement with politics should be questioned openly in public. We want to see a Monarchy that adapts to the people, not the people adapting to the Monarchy. Living under the Constitution was of the essence of our governing regime. Problems, however, arise when the Monarchy attempts to expand royal prerogatives via a coup d'état. In the year B.E. 2557 (2014), if the King had remained within the democratic regime of government with the King as Head of State, he should have not signed a recognition of the coup d'état. If there was a coup d'état, the Monarchy should stand with the democratic side." The 2nd respondent mentioned the Monarchy, the essence of which could be summarised as follows "Ever since the revolution carried out by Khana Ratsadon (the People's Party), led by Pridi Banomyong and Phraya Phahonphonphayuhasena, transforming Siam from absolute monarchy to a democratic regime, and subjecting the Monarch to the Constitution; at present I find that the absolute monarchy regime still continually lasted to the present reign. This is because the Monarch was above all 3 sovereign powers, namely the judicial, executive and legislative powers. If the question was raised why I had to say that, you ever knew that Chapter II of the Constitution, section 6 paragraph two, stated that no person may file an action against the King? It illustrated that the King is above the sovereign powers which belong to the people. The intent of my speech on this occasion is for the King to be in an appropriate place and to be able to coexist with the Thai people. Also, when it is said that the King is above sovereign powers, it means being above powers of the people, i.e. the King is untouchable by the people since any person who violates this would be subject to section 112." The 3rd respondent read the Declaration of the United Front of Thammasat and Demonstration, No. 1, the essence of which could be summarised as follows. Ever since Khana Ratsadon (the People's Party) instigated the revolution which changed the governing regime under the hope of the country adopting the democratic regime of government with the King as Head who was truly above politics. However, such vision was not realised since the Monarch continued to retain powers to interfere with politics. When there was a coup d'état, the Monarch granted royal assent for the appointment of the coup leader. The King transferred troops, as well as transferred State budget to private assets. The King exercised royal prerogatives outside of the law to amend the Draft Constitution that had been approved by a referendum to enable Him to reside outside the Kingdom without having to appoint a Regent. An autocratic government hid under the shadow of the Monarch and falsely claimed connections with the Monarchy for gains. It is

apparent that these people colluded with one another and were detrimental to the democratic regime of government with the King as Head of State. All citizens should be aware that the Monarch of our nation is not above politics, but has always been the root cause of political problems. Apart from overlooking the duties of a Head of State to serve as a psychological anchor for the people, He travelled for his own pleasure to reside in a foreign country by using the people's taxes despite hardship faced by the people. Furthermore, He had closed relations with the band of traitors who instigated the coup d'état to overthrow the democratic regime of government. The United Front of Thammasat and Demonstration therefore demanded changes to resolve problems relating to the Monarchy in 10 points.

The Constitutions of the Kingdom of Thailand stipulating prescription on the prohibition against the exercise of rights or liberties to overthrow the democratic regime of government with the King as Head of State appeared in provisions under section 63 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 68 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017). In addition, Constitutional Court Ruling No. 18-22/2555 and Constitutional Court Ruling No. 3/2562 laid down the basis for the term "overthrow" which constituted a serious threat to the Constitution and the regime of government under the Constitution that could not be possibly restored. Furthermore, the act must be done with intent to destroy or eradicate all remnants from existence or continued existence.

Exercising of rights or liberties to call for a constitutional amendment on the royal status of the King under the Constitution and above political accountability pursuant to the constitutional law principle that the King can do no wrong, and the repeal of law prohibiting any person from violating, defaming or insulting the royal standing of the Monarchy, such an amendment of the Constitution and law would result in the Monarchy being stripped off its reverential status, causing unrest and defiance amongst the people. There were the exercises of rights or liberties which exceeded reasonable proportions causing an impact or threat to national security, peace and order or good morals of the people, and would ultimately lead to a destruction of the democratic regime of government with the King as Head of State. The reason for this was because the King and Thai nation co-existed in harmony from the past till present, and would continue to co-exist in the future. Even though Thailand had adopted the democratic regime of government, the Thai people remained in agreement to respectfully engage the King to sit as the Head of State, as a principal institution alongside the Thai nation, and show reverence and respect, and that no person could violate such status so as to preserve the Thai nation. Accordingly, this was illustrated in section 1 of the Act on Temporary Charter for

Public Administration of Siam, B.E. 2475 (1932) which provided that “the supreme power of the nation belongs to all the people.” Section 2 provided that “there shall be a person or group of persons stated thereafter to exercise powers on behalf of the people as provided in the Charter, namely, 1. the King, 2. the House of Representatives, 3. the People’s Council, 4. the Courts.” Section 3 provided that “the King is Head of State.” Any Act, court judgment and other actions specified by provisions of law had to be done in the name of the King. Subsequently, the Constitution of the Kingdom of Siam was promulgated on 10th December B.E. 2475 (1932). The general provisions in section 2 provided that sovereign powers were derived from the people of Siam. The King, as Head of State, exercised those powers only by virtue of provisions of this Constitution. Chapter I, The King, section 3 provided that “the King holds a revered status which could not be violated by any person.” Section 5 provided that “the King holds the position of Head of the Siam Armed Forces.” Section 6 provided that “the King exercises legislative powers by the advice and consent of the House of Representatives.” Section 7 provided that “the King exercises executive powers through the Council of Ministers.” Section 8 provided that “the King exercises judicial powers through the courts established by law.” According to the provisions of the Act on Temporary Charter for Public Administration of Siam, B.E. 2475 (1932) and Constitution of the Kingdom of Siam (promulgated on 10th December B.E. 2475 (1932), it could be seen that the history since the era of Sukhothai, Ayutthaya, and Rattanakosin had showed that the government regime of Thailand, the power had belonged to the King. The King had an essential royal function of preserving the survival of the nation and the people. In the past, the King held the position of Head of the Thai Armed Forces to constantly lead the army to defend and expand the Kingdom in the ancient time. In addition, He had adhered to rule in accordance with dharma principles of Buddhism, i.e. the ten principles of monarchical rule as the principles for governing the country. As a consequence, the Thai King has been respected and revered as a spiritual anchor and the harmony amongst the Thai people over a period of hundreds of years. Therefore, even though there was a change in the Thai regime of government in the year B.E. 2475 (1932) to confer governing powers on all the people or to be derived from the people of Siam, Khana Ratsadon (the People’s Party), the instigators of change, and the Thai people were still in agreement to respectfully engage the King to preside over the principle institution which remained alongside the democratic regime and to exercise such sovereign powers pursuant to the provisions of the Constitution. This form of government was called the democratic regime of government with the King as Head of State, and the Kingdom of Thailand had continually retained this regime of government similarly with other countries which

proceeded the background of the nation and the sovereignty differently. One commonality, however, was that national identity or symbol, including national treasures, would be governed by a law which prohibited any act that would cause discredit leading to deterioration or damage. The demands for repeal of section 6 of the Constitution, being the provision recognising the royal status of the King as Head of State who could not be charged or violated by any person, therefore such an act amounted to a precise intent to overthrow the Monarchy. The actions of the 1st, 2nd and 3rd respondents eroded and destroyed the democratic regime of government with the King as Head of State. The harsh demands made in public claiming to be an exercise of constitutional rights and liberties, apart from being a wrongful means using rude words, also violated the right or liberty of other persons who held differing views. Those demands would set an example to be followed by other persons. Moreover, the actions of the 1st, 2nd and 3rd respondents were carried out in conspiracy to achieve the objectives and aims. Despite the fact that the speeches of the 1st, 2nd and 3rd respondents on 10th August B.E. 2563 (2020) at the Thammasat Will Not Endure Rally, Thammasat University Rangsit Campus, Pathum Thani Province, had already ended. After the submission of application by the applicant to the Constitutional Court, it still appeared that the 1st, 2nd and 3rd respondents continued to assemble with various groups by employing strategic changes in forms of assembly, means of assembly and changes to speakers. The strategy used did not show a clear leader, but was constituted by continual actions by a group of person sharing the same ideology. The movements of the 1st, 2nd and 3rd respondents and related network acted in conspiracy sharing the same intent from the beginning. The 1st, 2nd and 3rd respondents showed repeated conduct and continual actions which had the characters of incitement and using false information to cause unrest and violence in society.

The democratic regime of government is based on 3 principles, namely, liberty, meaning every person had the right to think, speak and perform any act which is not prohibited by law; equality, meaning every person were equal; and fraternity, meaning all persons were congruous, assisting one another as siblings and were harmonious.

Under the democratic regime of government with the King as Head of State of the Kingdom of Thailand, the Thai people have bound to the Monarchy for hundreds of years. The King, as Head of State, therefore enjoyed the consent of the Thai people to exercise sovereign powers under the Constitution through the National Assembly, the Council of Ministers and the Courts. The Thai Monarchy was a key pillar which could not be excluded in a democratic regime of government with the King as Head of State. Hence, any act with an intent to destroy or eliminate the

Monarchy, whether by way of speech, writing or any act to cause the obliteration, devaluation or weakening thereof, was indicative of an intent to overthrow the Monarchy.

The exercise of right or liberty of the 1st, 2nd and 3rd respondents were not in accordance with the principles of democracy. The actions of the 1st, 2nd and 3rd respondent amounted only to a reliance of right or liberty without regard for the principle of equality and fraternity. The 1st, 2nd and 3rd respondents exercised the liberty to express opinions without hearing the opinions of others. The respondents refused to accept the difference in opinion held by others to the point of violating the personal rights of other persons having different opinions by insulting, disturbing personal space, instigating unrest by facts which were distortions of the truth. Facts were clearly shown that the actions of the 1st, 2nd and 3rd respondents established groups in the form of network organisations continually using violence. In some events, the 1st, 2nd and 3rd respondents played a role in inciting violence in public through provocative speeches. These actions caused divisions of people in the nation, destroying the principle of equality and fraternity. The consequences of the actions of the 1st, 2nd and 3rd respondents ultimately led to the overthrow of the democratic regime. Moreover, it was also found further on the facts that several rallies carried out the destruction of the royal photograph of His Majesty the King, expression by deletion of the blue stripe, symbolizing the Monarch, from the Thai national flag. The 10-point demand of the 1st, 2nd and 3rd respondents, e.g. repeal of section 6 of the Constitution, abolition of donations and receipt of donations for royal disposal, and repeal of the royal prerogative to express a political opinion in public were demands to cause the status of the Monarchy to deviate from the constitutional conventions under the Thai democratic regime which had been upheld all along. Both the circumstances and events consequential to the actions of the 1st, 2nd and 3rd respondents revealed the motives for the 1st, 2nd and 3rd respondents to exercise the right or liberty of the 1st, 2nd and 3rd respondents, who had the hidden intent to overthrow the democratic regime of government with the King as Head of State, not to reform.

The exercises of rights and liberties by the 1st, 2nd and 3rd respondents were dishonest expressions of opinions, violations of the law, carried out with motive to overthrow the democratic regime of government with the King as Head of State pursuant to section 49 paragraph one of the Constitution. Even though the events in the application had already elapsed, if the 1st, 2nd and 3rd respondents continued to assemble as a network organisation to carry on such acts, the possibility of resulting in the overthrow of the democratic regime of government with the King as Head of State under section 49 paragraph two of the Constitution was not too remote. The

Constitutional Court has the competence to order the restraint of such actions from occurring in the future.

By virtue of the aforesaid reasons, the Constitutional Court held that the acts of the 1st, 2nd and 3rd respondents were exercises of a right or liberty to overthrow the democratic regime of government with the King as Head of State under section 49 paragraph one of the Constitution, and order the 1st, 2nd and 3rd respondents as well as network organisations to cease from committing such acts in the future pursuant to section 49 paragraph two of the Constitution.
