

## Channels for Exercising Constitutional Rights

Nantapol Khaimuk

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It is stated in section 6 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) that, “the Constitution is the supreme law of the State; the provisions of any law, rule or regulation, which are contrary to or inconsistent with this constitution, shall be unenforceable.” The Constitutional Court, as a judicial organ, is empowered by law to safeguard the constitutionality of these laws and its rulings are binding on the National Assembly, the Council of Ministers, the Courts, Constitutional organs, and State agencies.

Although the general public perceives that the Constitutional Court’s duties are merely politically, it should be clarified that another important responsibility is to recognize and protect the people’s rights and liberties. If the general public views that any law infringes their rights and liberties and therefore challenges the constitution, the general public can also exercise their constitutional rights by filing an action. There are 4 possible channels for filing an application.

In the first channel, a constitutionality review of provisions of law to be applied by the Court to a case under section 211 must involve a case which had already arisen in the courts. These courts include the Courts of Justice, Administrative Courts or Military Court or any other court and regardless of the level which the case is pending trial. However, if the court or a party in the case raises an objection that a provision of law to be applied by the court to the case is contrary to or is inconsistent with the Constitution and there has not yet been a decision of the Constitutional Court relating to such provision, a party may file an application in such court requesting for the opinion from the Constitutional Court. In this case, the court may proceed with the trial but shall temporarily withhold a ruling until the Constitutional Court gives a decision.

There are numerous cases that claim challenges to constitutionality to be reviewed by the Constitutional Court. However, there are only a few cases that are indeed unconstitutional such as the case related to selling food after midnight. Recently, on a street in Saraburi province, a rice soup vendor was

detained and accused of selling food and beverages past midnight by the police. The police cited Issue number 45 of the Announcement of the Revolutionary Council dated 17 January 1972 and its revision through Issue number 252 dated 16 November 1972. The announcement stated that no restaurant owners or operators shall be allowed to sell food and beverages between 0100 to 0500 hours. The vendor objected and claimed that the announcement is a violation of Article 43 of the 2007 Constitution that states “A person shall enjoy the liberties to engage in an enterprise or an occupation and undertake fair and free competition. The opinion of the Constitutional Court through Ruling number 12/2552 referred that the announcement during the coup d’Etat in 1972 is outdated and was originally be aimed to maintain a safe environment despite the state of martial law. However, in today’s peaceful environment, the announcement is no longer applicable and infringes on the freedom and liberty of the vendor.

The second channel is to submit a case through the Ombudsman as the applicant to the Constitutional Court for ruling under section 245 of the Constitution. An example is a case pertaining to the Office of The Women Lawyers Association of Thailand’s submission of an application to the Ombudsman regarding the Revenue Department’s method of calculating income tax under Revenue Code section 57. This personal income tax law considers the income of a wife under section 40 (2) (3) (4) (5) (6) (7) and (8) to be calculated as income of the husband and as a base for tax calculation causing a couple under this section to pay higher taxes than a couple under section 40 (1). The Constitutional Court’s ruling 17/2555 concluded that Revenue Code section 57 was in violation of clause 29 and 30 of the Constitution.

The third channel is to submit a case through the National Human Rights Commission (NHRC). Under section 257 of the Constitution, the NHRC has the power and duty to submit a matter together with an opinion to the Constitutional Court where it concurs with a complainant that a provision of law affects human rights and contains problems on constitutionality. A example case submitted through this channel pertains to complainants protesting that Royal Decree section 6 of the National Park, Wildlife, and Plan Conservation Department violated human rights and sections 66 and 67 of the Constitution. In this case,

the Constitutional Court's ruling 33/2554 resolved that the Royal Decree did not violate the Constitution.

The fourth channel is the direct submission of an application to the Constitutional Court under the power of section 212 of the Constitution. It states that "a person whose rights and liberties recognized by this Constitution are violated, has the right to submit a complaint to the Constitution Court for its decision as to whether provisions of the law are contrary to or inconsistent with the Constitution." It should be noted that the requirements under this channel states that "the exercise of rights under paragraph one must be a case of an inability to exercise the right by other means as provided in the Organic Act on Constitutional Court Procedures." The effect of this provision is to enable the people to exercise the right to file an action directly to the Constitutional Court. There has been only one case that matched the requirements and taken into consideration. A complainant by the name of Mr. Chalerm Pinsakul submitted an application claiming that Royal Decree B.E. 2542 Clause 52 (3) of the Cooperative Promotion Department violated section 39 of the Constitution. The Constitutional Court's ruling 47/2554 concluded that the Royal Decree did not violate the Constitution.

There are many cases in which complainants in various courts claim that laws violate the constitution and are submitted to the Constitutional Court. In many instances, the Constitutional Court will not take these cases into consideration because of the lack of relevant context. The latest example is the Criminal Court's case relating to the Computer Crime Act B.E. 2550 section 14 (2). It claims that the Act causes damage to national security, creates panic to the society, and violates section 40 (3) of the Constitution. Upon reviewing the context of the case, the Constitutional Court declined to accept the case into consideration.