



study project



Thai Constitutional Court and the Protection of the Rights and Liberties of the People



The 6th Congress of the Association of Asian
Constitutional Courts and Equivalent Institutions (AACC)
17-21 September 2024



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Preface

The Constitutional Court of Thailand was established under the Constitution of the Kingdom of Thailand B.E. 2540 (1997). It has been responsible for protecting the supreme law of the constitution amidst various changes for 26 years. Its main duty in protecting the constitution, especially the duty to protect the rights and liberties of the people that the constitution protects and guarantees through the rulings of the Constitutional Court. This book aims to present perspectives on the role of the Constitutional Court in various aspects in the past, focusing on the role of the Constitutional Court of Thailand in protecting the rights and liberties of the Thai people. It is divided into three dimensions of the role, which are as follows:

(1) The role of the Constitutional Court in protecting human rights and liberties includes the protection of human dignity, the protection of rights and liberties under the rule of law, the protection of rights to equality, the protection of rights and liberties in life and body, the protection of rights in the justice process, and the protection of liberty of travel and choice of residence.

(2) The role of the Constitutional Court in protecting political and administrative rights and liberties includes the protection of the right to protect the constitution, the protection of liberty to form political parties, and the protection of individuals from deportation, bans from entering the Kingdom, and the revocation of nationality.

(3) The role of the Constitutional Court in protecting economic and social rights and liberties in many important areas, including property rights and liberty to engage in an occupation.

In each of the above roles, the development of the Constitutional Court's rulings will be analyzed along with related academic theoretical concepts.

If we consider the past period, the Thai Constitutional Court has faced changes that have driven the Constitutional Court to perform its duties by always adapting to such changes. In the future, the Constitutional Court will inevitably face new challenges in line with globalization, whether they are external or domestic challenges.

Amidst all these challenges, the Constitutional Court will continue to adhere to its legal principles and its motto “Uphold the rule of law, uphold democracy, and care for the rights and liberties of the people.”

Office of The Constitutional Court
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Chapter 1: Before Becoming the Constitutional Court of Today

Although the “Constitutional Court” as a judicial body with power in constitutional cases first appeared under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), in reality, the establishment of the Constitutional Court has had a long and continuous development that can be traced back to the first constitutional case in Thailand that led to the establishment of a constitutional judicial body called the “Constitutional Tribunal”.

The first constitutional case occurred after World War II in 1946. The parliament at that time enacted the War Criminals Act B.E. 2488 (1945), which was announced in the Royal Gazette on October 11, 1945. The main content was to stipulate that any action by a person as a perpetrator or supporter, including advertising and persuading others to agree to join the war with the invading side, including violating customary laws in warfare and violating human rights, regardless of whether the action was committed before or after the date the said Act came into force, would be considered an offence punishable by death. The Supreme Court was required to adjudicate cases with allegations under this law, and the verdict was final. After that, cases were brought against people in the government before and during World War II before the Supreme Court, which acted as the War Criminals Court under the said Act.

However, when the first case filed under the Act was adjudicated in the Judgment of War Criminals No. 1/2489 dated March 23, B.E. 2489 (1946), the Supreme Court raised the constitutional issue for consideration, starting with the principle that when the Constitution does not specify any other adjudicating body, it is the power of the Court of Justice, which is responsible for enforcing the law, to decide whether the law is applicable to the case or not, including the power to decide whether any law is contrary to or in conflict with the Constitution. The Supreme

Court's reasoning is similar to the judgment of the Supreme Court of the United States in *Marbury v. Madison*. For the reasons stated above, the Supreme Court ruled that the War Criminals Act B.E. 2488 (1945), specifically section 3¹, which punishes acts prior to the date of enforcement of the Act, is contrary to section 14 of the Constitution of the Kingdom of Thailand B.E. 2475 (1932) and is void under section 61. When the provisions of the law that are the basis of the offence are contrary to or in conflict with the Constitution and are unenforceable, all defendants are dismissed.

The House of Representatives at that time, although disagreed, accepted the Supreme Court's verdict above. However, a committee was set up to study the issue of the power to interpret the Constitution. The study results were of the opinion that the power to interpret the Constitution, including cases of whether any law conflicts with or contradicts the Constitution, should be the power of the House of Representatives.² After that, in the amendment of the Constitution of the Kingdom of Thailand B.E. 2489 (1946), the drafters of the constitution still maintained the basic principle that the parliament had the absolute right to interpret the constitution, except for the establishment of an organisation to specifically decide on the issue of whether the provisions of the law that the court would apply to the case were contrary to or in conflict with the constitution according to the court's opinion or not, called the "Constitutional Tribunal", which is considered the origin of the establishment of the organisation to decide on the issue of examining the constitutionality of the law.³

¹ The War Crimes Act B.E. 2488 (1945), section 3 states that "Any act committed by a person, whether as a principal or an accomplice, as prescribed hereinafter, shall be considered a war crime and the perpetrator is a war criminal, regardless of whether the act was committed before or after the date of enforcement of this Act..." This Act was announced in the Government Gazette on 11 October 1945.

² Pairote Chainam. 1976. **The Constitution, Legal Provisions and Important Political Documents of Thailand**. Bangkok: Thammasat University, Page 63-70.

³ Banjerd Singkaneti. 2001. **General Knowledge about the Constitutional Court**. Bangkok: Winyuchon., Page 127.

At first, the Constitutional Tribunal was designed as a “quasi-political committee” consisting of a qualified person appointed by the Parliament as the President and fourteen other judges. The Constitutional Tribunal had to be re-appointed every time there was an election of members of the House of Representatives because the House of Representatives expired or was dissolved. The Constitutional Tribunal under the Constitution B.E. 2489 (1946) and subsequent versions could not exceed the term of the House of Representatives that appointed the Tribunal. Later, the Constitution of the Kingdom of Thailand B.E. 2492 (1949) began to stipulate the existence of “ex-officio Constitutional Judges” by considering the President of the Senate, the Speaker of the House of Representatives, the President of the Supreme Court, the Chief Justice of the Court of Appeal, and the Attorney-General as ex-officio constitutional judges, and there were four other judges appointed by the Parliament from legal experts, and the President of the Senate was designated as the President of the Constitutional Tribunal. After that, the structure of most Constitutional Tribunals under almost every subsequent constitution stipulated that there would be two groups of constitutional judges: ex-officio constitutional judges and constitutional judges from qualified persons appointed by the Parliament. Except for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand B.E. 2517 (1974), which stipulates that the legislative branch is the Parliament, the executive branch is the Cabinet, and the judicial branch is the Supreme Court, electing three Constitutional Judges from among qualified persons, with no ex-officio Constitutional Judges.

The political reform, which is the main intention of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), has elevated the Thai constitutional judiciary by establishing it as an organisation exercising judicial power called the “Court”, which is the starting point of being a full-fledged “Constitutional Court” by having judges who hold positions as judges from selection only one type with a clear term and having the

same trial method as the Court. After that, Thailand has continuously used this Constitutional Court format until the present. In addition, there was a brief return to using the organisation called the “Constitutional Tribunal” during the enforcement of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) after the coup on September 19, 2006, but it is different from the Constitutional Tribunal in the pre - B.E.2540 (1997) era in terms of structure and duties as mentioned above because it was established temporarily and therefore has no connection or development with the previous Constitutional Tribunal.

Currently, the Constitution of the Kingdom of Thailand B.E. 2560 (2017) stipulates that the “Constitutional Court” is a judicial organisation in chapter 11, in addition to other courts, namely the Court of Justice, the Administrative Court, and the Military Court, which are included in chapter 10. The Constitutional Court in this Constitution consists of 9 judges, who are a mix of those with academic and professional experience, including those who have experience as judges and judges in the Court of Justice and the Administrative Court in both Supreme Court systems, and those with experience as high-ranking civil servants at the head of government agencies or equivalent, who are representatives of those with practical experience, legal and political science scholars with professor-level expertise and academic achievements that are clearly visible⁴, who are representatives of those with expertise in principles, theories, or philosophy.

⁴ Under section 200 of the Constitution, the King appoints judges of the Constitutional Court from (1) judges of the Supreme Court who have held a position not lower than Chief Justice of the Supreme Court for not less than three years and who are selected by the general meeting of the Supreme Court, totaling three persons; (2) judges of the Supreme Administrative Court who have held a position not lower than Judge of the Supreme Administrative Court for not less than five years and who are selected by the general meeting of the judges of the Supreme Administrative Court, totaling two persons; (3) one qualified person in the field of law who was selected from among those who held or had held the position of Professor of a university in Thailand for not less than five years and still had proven academic achievements; (4) one qualified person in the

The duties and powers of the Constitutional Court are generally stipulated in section 210, namely, to consider and decide on the constitutionality of laws or draft legislation, to consider and decide on issues concerning the duties and powers of the House of Representatives, the Senate, the Parliament, the Cabinet, or independent organisations, including other duties and powers as stipulated in the Constitution, which will appear in various sections related to the Parliament, the Cabinet, and constitutional organisations. In addition, there are organic laws and other acts that stipulate additional duties and powers of the Constitutional Court, totaling 8 groups as follows:

- (1) Consideration of the constitutionality of draft laws and laws
- (2) Consideration of the constitutionality of conditions for enacting Royal Decrees
- (3) Consideration of the issue of duties and powers of the House of Representatives, Senate, Parliament, Cabinet or independent organisations
- (4) Protection of the rights and liberties of the people
- (5) Protection of the constitution, the regime and national security
- (6) Consideration of the consideration of whether international treaties require prior approval from Parliament
- (7) Consideration of the qualifications and disqualifications of political office holders
- (8) Consideration of other cases that the organic law or other laws specify to be under the jurisdiction of the Constitutional Court

The main duty and power of the Thai Constitutional Court in protecting the rights or liberties of the people is to examine the

field of political science or public administration who was selected from among those who held or had held the position of Professor of a university in Thailand for not less than five years and still had proven academic achievements; and (5) two qualified persons who were selected from among those who held or had held the position of not lower than Director-General or equivalent head of a government agency or a position not lower than Deputy Attorney-General for not less than five years.

constitutionality of the provisions of the law that the court will apply to the case as requested by the parties in the court of justice, administrative court or military court or as the court sees it itself. The current constitution stipulates in section 212, which is a duty and power that has been passed down since the first Constitutional Tribunal, and it is also a channel that the general public can access to request protection of their rights or liberties under the constitution that they are actually affected by while arguing in court. This is a concrete control examination of the constitutionality of the law. In addition, a person whose rights or liberties protected by the constitution have been violated has the right to file a petition with the Constitutional Court for a ruling that the action This includes the provisions of the law that are in conflict with or contradictory to the Constitution under section 213 of the Constitution, in accordance with the criteria, methods, and conditions stipulated in the Organic Act on the Procedures of the Constitutional Court B.E. 2561 (2018) by submitting a petition to the Ombudsman for initial consideration of whether to submit the petition to the Constitutional Court or not, including in considering a complaint under the duties and powers of the Ombudsman himself, if it is found that any provisions of law have a problem with constitutionality, he has the authority to submit a petition to the Constitutional Court under section 231 (1) as well.

The most interesting development in terms of the functions and powers of the Constitutional Court is the channel that gives the people the right to petition the Constitutional Court to demand that the state perform its duties under Article 51, which is a result of the current constitution stipulating that every government that will continue to govern the country under this constitution must have a “duty” to serve the people. It stipulates that there is a section 5, “State Duties”, which not only sets the guidelines for the state to act in the same way as “State Policies”, but also creates the right for the people to expedite and follow up until suing the “state” in court according to Article 51 of

the constitution. The Organic Act on the Procedures of the Constitutional Court B.E. 2561 (2018) stipulates the details, conditions and methods for people or communities to sue state agencies in the Constitutional Court in order to receive benefits under the constitution in cases where they have been damaged by the state's failure to perform its duties or the performance of duties incorrectly, incompletely or unreasonably delayed in Article 45, stipulating the conditions that those who have the right to file a lawsuit to request that the state perform its duties correctly must be "persons" or "communities" who directly benefit from the state's performance of duties under the constitution in the section on state duties and have been damaged by the state's failure to perform its duties or the state's performance of duties incorrectly, incompletely or unreasonably delayed. However, filing a petition in this type of case involves multiple steps before the right to file a petition with the court can be exercised. Nevertheless, at the end of 2022, there was a case where the Constitutional Court accepted a petition that was an exercise of rights under Section 51 of the Constitution for consideration, which was the ruling No. 1/ 2566. Although the Constitutional Court ultimately ruled that the state did not neglect its duties or perform its duties improperly according to the Constitution by allowing the private sector to participate in electricity production, which resulted in electricity charges that were an excessive burden on the public, the Constitutional Court therefore recommended at the end of the ruling that the state must set a framework or ceiling for the proportion of electricity production by the private sector in the country's electricity production system and set the amount of reserve electricity related to the proportion of electricity production by the private sector to be consistent and close to reality, which is a factor affecting the electricity charges collected from the public, which shows an important progress in the exercise of the people's constitutional rights.

One of the most interesting developments in the Constitutional Court's adjudication since 2007 is the attempt to link Thailand's constitutional values to international constitutional values and human rights and liberties. In other words, in adjudicating whether a problematic provision of law is in conflict with or contradicts the Constitution, the provision that the Constitutional Court must use as the main basis for examining its constitutionality is the Constitution of the Kingdom of Thailand in force at that time. This is in accordance with the Thai legal system, which adheres to the theory of dualism, in which international law has no direct status or force on domestic law. However, it appears that in many rulings, the Thai Constitutional Court has cited "international agreements or regulations" as a comparison with the Constitution to provide reasons to assist in its adjudication as secondary or supporting reasons. The Constitutional Court will adjudicate in order how the problematic provision of law is in conflict with or contradicts the Thai Constitution in force at that time. In addition, the principles of the Constitution in the same matter are comparable to the principles of international agreements or regulations to which Thailand is a member. The universal principles themselves are part of the indications that the principles protected by the Constitution are universal principles at the level of the rule of law, which the Constitution B.E. 2550 (2007) onwards has recognized as principles of constitutional value. An example of this ruling is in the Constitutional Court ruling No. 15/2555 regarding the provisions that allow the use of discretion to limit the rights of disabled persons to apply for judicial service. In addition to being contrary to or in conflict with the Constitution, it also conflicts with the rights of disabled persons to work on an equal basis with others according to the United Nations Convention on the Rights of Persons with Disabilities. And in the Constitutional Court ruling No. 4/2556 regarding the International Cooperation in Criminal Matters Act B.E. 2535 (1992), the part that stipulates that all evidence and documents obtained under this Act shall be considered evidence

and documents admissible under the law, is inconsistent with the International Covenant on Civil and Political Rights (ICCPR).

This connection to universal constitutional values is consistent with the Thai Constitutional Court's involvement with constitutional courts and constitutional judicial bodies at the international level. The Thai Constitutional Court was accepted as the 59th alphabetical member of the World Association of Constitutional Courts in cooperation with the European Commission for Democracy through Law or Venice Commission, and co-drew the Statute of the World Association of Constitutional Courts and adopted the Statute of Cooperation establishing the World Association of Constitutional Courts. It was also one of the seven countries that signed the Jakarta Declaration in 2010, establishing the Asian Association of Constitutional Courts and Equivalent Institutions (AACC), an organisation with the objective of being the constitutional justice organisation of the Asian region for the protection of human rights, ensuring democracy, the rule of law, and the independence of the judiciary through the exchange of knowledge, information and experiences on constitutional justice issues among member countries. The Asian Association of Constitutional Courts and Equivalent Institutions currently has 21 member countries and three permanent secretariats: Jakarta, Indonesia; Seoul, Korea; and Ankara, Republic of Turkey. In 2024, the Constitutional Court of Thailand was assigned to serve as the President of the Asian Association of Constitutional Courts and Equivalent Institutions (AACC) from 2023 to 2025 and to host the 6th Congress be held in 2024.

However, since the “Constitution” is the highest provision that determines the status, relationship, and determines the procedures, steps, and conditions for the exercise of power of various organisations specified in the Constitution, including organisations that are political institutions, the duties and powers of the Constitutional Court must partly be in the consideration of constitutional problems or disputes in

such matters, which also include the consideration of the qualifications or prohibited characteristics of individuals to hold positions in constitutional organisations or institutions. Furthermore, if we consider the historical political context, the period in which the Thai Constitutional Court developed its own norms coincided with two decades of political conflict in Thailand, where many times the Constitutional Court's rulings affected political changes, or even in some cases where the ruling on the constitutionality of a draft law could become a "political case" if the draft law being examined by the Constitutional Court is a draft law related to or a tool for implementing the government's political policies as promised by political parties to the people.

Considering the statistics of the cases, we will find that when considering the aspect of the petition, most of the cases of the Constitutional Court are petitions to request the Constitutional Court to consider protecting rights or liberties through various channels, accounting for 67.71 percent of all petitions, which is the largest proportion. Of the total 1,874 petitions filed with the Constitutional Court, only petitions or opinions submitted by the parties or the court to request the Constitutional Court to consider and rule on the provisions of law that the court will apply to the case, totaling 653 petitions, petitions submitted through the Ombudsman, totaling 31 petitions, and petitions in which citizens exercised their right to submit petitions directly to the Constitutional Court to protect rights and liberties, totaling 585 petitions. The number and ratio include both cases in which the Constitutional Court accepted and did not accept petitions for consideration and ruling. When considering the 814 rulings of the Constitutional Court, it appears that the rulings of the Constitutional Court are rulings in cases where provisions of law conflict or contradict or have problems with constitutionality through various channels. The largest proportion, 474 rulings, or 58.23 percent, are divided into: Rulings of the Constitutional Court in cases where the parties or the court request the Constitutional Court to

consider and rule on the provisions of the law that the court will apply to the case, 446 rulings; rulings in cases where the Ombudsman submits a petition to the Constitutional Court, 22 rulings; and rulings in cases where citizens exercise their right to submit a petition directly to the Constitutional Court to protect their rights and liberties, 6 rulings (data as of 20 May 2024⁵).

Although constitutional cases of this type may be a minority compared to other types of cases mentioned above, they are a group of cases that receive more attention from society. The duties and powers of the Constitutional Court in this manner, no matter what the verdict is, will affect changes that give political benefits or disadvantages to one side or the other. The rulings of the Constitutional Court in this type of case, even though they are a small proportion, are of interest to the public. Therefore, it is difficult to avoid making the public understand that the Constitutional Court is a “political court”. Including the constant questioning of how the Constitutional Court, consisting of only 9 judges, has the legitimacy to decide politically right or wrong, approve or limit the power of the government or parliament, which are political officeholders who have been directly or indirectly elected by millions of people through the election process and parliamentary mechanisms.

The above question is not an unfounded argument or accusation because the issue has been questioned and discussed academically since the beginning when countries in the world accepted, either directly or implicitly, the system of “constitutional justice” in the 50s. However, this problem can be explained by looking back at the basic principles of Thai politics and governance, which is that Thailand has chosen to hold the principle of the supremacy of the constitution (Supremacy of the Constitution mean) since the first Thai constitution, which had a provision announcing or guaranteeing the supremacy (The Supremacy

⁵ Case Statistics. Office of the Constitutional Court. Retrieved on 20 May 2024, from https://www.constitutionalcourt.or.th/th/occ_web/sub.php?nid=773

Clause) of the constitution in the same manner as the constitutions of many countries that adhere to the principle that “The constitution is the supreme law of the country. Any provision of a law, rule or regulation or any action that conflicts with or contradicts the constitution, such provision or action is unenforceable.” The above statement is stipulated in every constitution. In the current constitution, it is stipulated in section 5 paragraph one.

Adherence to such principles results in the existence or exercise of state power at any constitutional level, which must begin with the fact that it must be constitutional first. Then, legitimacy in other ways will be considered. For example, if the constitution stipulates that those who can apply to be elected as members of the Thai House of Representatives must have Thai nationality by birth, be at least 25 years old, not be addicted to narcotics, or have never been convicted by a court of a final judgment that they have committed a property crime committed through corruption, etc., which are examples of the “qualifications” and “prohibited characteristics” of those who will have the right to propose themselves for the people to decide to elect them as representatives to exercise their power in the House of Representatives.

This is, on the other hand, anyone who is not a Thai citizen by birth, is under 25 years old, or has a history of being sentenced to imprisonment for theft or fraud, is not eligible to run for election as a representative of the people from the beginning. If the lack of qualifications or disqualifications may not have appeared at the time of application or were not initially discovered but were later investigated after the person was elected or appointed with the approval of the House of Representatives, it is within the power of the court, which is a judicial organisation, to consider and decide to remove him from office regardless of how many votes the people elected him. This is because the lack of qualifications and disqualifications prevented him from offering himself to the people to “choose” him from the beginning. Therefore, political legitimacy through elections cannot erase the unconstitutionality.

This consideration of qualifications and prohibited characteristics is a legal judgment only on the issue of whether the qualifications or suspicious characteristics of that person are considered to be consistent with or prohibited by the Constitution. It is not a judgment on whether that person is suitable, trustworthy, or has the knowledge and ability to be a representative of the people, a member of parliament, a minister, or a prime minister. The latter is a political legitimacy issue that can be decided by voting or by receiving approval by a majority vote in the House of Representatives or the Parliament, which comes directly or indirectly from the people. However, the consideration of the legal issue of whether any matter is constitutional or legal is a matter that must rely on legal principles and academic principles that are not related to political legitimacy as mentioned above. For this reason, despite the long-standing academic debate in many countries around the world, it still appears that in all civilized countries, there must still be a constitutional judicial system in one form or another, which may be a court of justice, a special constitutional adjudication committee, or a constitutional court, which is the most widely accepted form.

The origins, roles, duties and powers of the Constitutional Court, including the debates about the duties, powers, status and appropriateness of the “Constitutional Court” in the Thai constitution and legal system, have always occurred in politics and academics, and the Constitutional Court itself is considered a judicial organisation established by the constitution. The continued existence or development of reforms in the structure, duties and powers, or even the review of the appropriateness of the Thai Constitutional Court, can be done through the process of drafting or amending the constitution, which the constitution has consistently recognized in its rulings since 2012 that such power belongs to the Thai people as the owners of the power to establish the constitution. However, any criticism or proposal should begin with a correct and thorough understanding of the Thai judicial organisation called the

“Constitutional Court.” However, it cannot be denied that the Thai Constitutional Court itself needs to develop and change its role according to the changing legal, political and social contexts, just like other organisations.

Therefore, this book aims to present perspectives on the role of the Constitutional Court in the past in various aspects, focusing on the role of the Thai Constitutional Court in protecting the rights and liberties of the Thai people. It is divided into three dimensions of roles: the first is the dimension or role of the Thai Constitutional Court in protecting human rights and the dimension of rights in relation to the state, namely the role of the Thai Constitutional Court in protecting rights and liberties; the second is the political and governance dimension; and the last is the dimension or role of the Constitutional Court in protecting economic and social rights and liberties. In each matter, the development of the Constitutional Court’s ruling will be analyzed along with related academic theories.

Chapter 2: The Role of the Constitutional Court in Protecting Various Rights and Liberties

When considering the provisions of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) in Chapter 3 Rights and Liberties of the Thai People, together with the role of the Constitutional Court in related parts, the role of the Constitutional Court in protecting various rights and liberties can be divided into 3 areas: human rights, politics and governance, and economics and society.

2.1 Human Rights

The Thai Constitutional Court plays a role in protecting human rights in many aspects, including the protection of human dignity, the protection of rights and liberties under the rule of law, the protection of the right to equality, the protection of rights and liberties in life and body, the protection of rights in the justice process, and the protection of liberty of travel and the liberty of choosing his or her residence, as detailed below.

2.1.1 The Role of the Thai Constitutional Court in Protecting Human Dignity

“Human dignity” means a unique value and a value that is intrinsic to being human, which every human being receives regardless of their gender, race, religion, age or other characteristics. The term “dignity” means certain characteristics that make up the unique value of human beings, which are essential in determining their own responsibilities and are essential for each human being to be human.⁶

⁶ Klausstern, Das Staatsrecht der Bundesrepublik Deutschland, Band/2, Allgemeine Lehrender Grundrechte, S. 1113. Retrieved From Banjerd Singkaneti. 2021. **Principles of Public Law, Principles of the Rule of Law/Rule of Law as a “Criteria” Limiting State Power.** 3rd ed. Bangkok: Winyuchon, Page 114.

The Constitution, first, stipulated the term “human dignity” in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the recognition and protection of human dignity in subsequent constitutions up until the Constitution of the Kingdom of Thailand B.E. 2560 (2017) in section 4 paragraph one⁷ and section 26 paragraph one.⁸

The said provisions are intended to set conditions for enacting laws that limit the rights and liberties of individuals in order to guarantee the rights and liberties of all Thai people, prevent the legislature from enacting laws that limit the rights and liberties of the people excessively and affect the essence of the rights and liberties by setting conditions for enacting laws that have the effect of limiting the rights and liberties of the people, divided into 2 cases: cases where the limitation of rights and liberties is specifically specified by the constitution, the enactment of laws limiting such rights and liberties must be in accordance with the conditions specified by the constitution, and cases where the constitution does not specifically specify the conditions, the enactment of laws limiting rights and liberties in this case must comply with 4 conditions:

(1) It does not conflict with the rule of law.

(2) It does not increase the burden or limit the rights or liberties of individuals beyond reasonable limits.

(3) It does not affect the human dignity of individuals.

(4) The reasons for the necessity of limiting rights and liberties must be stated.

⁷ Section 4 paragraph one, states: “Human dignity, rights, liberties and equality of persons shall be protected.”

⁸ Section 26 paragraph one, states that “The enactment of a law that has the effect of limiting the rights or liberties of individuals must be in accordance with the conditions stipulated in the Constitution. In cases where the Constitution does not stipulate such conditions, such law must not be contrary to the rule of law, must not increase the burden or limit the rights or liberties of individuals beyond what is reasonable, and must not affect the dignity of individuals. It must also state the reasons for the necessity of limiting rights and liberties.”

The Constitutional Court has made important rulings on “human dignity”, for example, the Constitutional Court ruled that the announcement of the Council for Democratic Reform under the Constitutional Monarchy, which stipulates that “a person alleged to have committed a criminal wrongdoing is under a duty to provide a fingerprint, handprint or footprint pursuant to the order of a state attorney, prosecutor or an inquiry officer; any violator shall be held to have committed the offence of wrongdoing relating to justice and liable to a term of imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both.” is a restriction on the rights and liberties of a person’s life and body that is more than necessary and is not proportionate to the public benefits or collective benefits that will be received when compared to the rights and liberties that the people will lose. In addition, the way of life of the people and the need to maintain peace and order in the country have changed from the past. Such provision is a restriction on the rights and liberties of individuals guaranteed by the Constitution beyond necessity, affecting human dignity and violating the rule of law (Ruling No. 2/2562). Or in the case where the Constitutional Court ruled that The Criminal Code, section 301, is a provision to protect the life of a fetus in a mother’s womb by punishing women who cause their own miscarriage or allow others to cause their miscarriage, and imposing the punishment on women only. It aims to protect the rights of the fetus alone without protecting the rights of pregnant women. This results in women being deprived of their rights to their bodies, which are natural rights that are fundamental rights of human dignity, where individuals have the right and liberty to do or not do anything to their own lives and bodies as long as their actions do not interfere with or infringe on the rights or liberties of others. It also affects the right of pregnant women to determine their own will, which includes the right of women to decide whether to terminate their pregnancy or continue the pregnancy (Ruling No. 4/2563).

However, even though the Constitutional Court has never defined or ruled on the scope of human dignity in its ruling, the Constitutional Court judges have considered the issue of human dignity in line with international and academic approaches, as stated in the personal opinion of Mr. Bunjongsak Wongprachaya, a Constitutional Court judge, in Ruling No. 20/2564, that *“Sexual diversity or sexual orientation and gender identity are characteristics of individuals that occur naturally. Therefore, they are something that humans are born with, and are unique values that come from being human, and are values that are tied to being human, which are important for determining a person’s identity. In order for a person to have their own identity, that person must have the power or ability to determine themselves, or what is known as “human dignity,” which is the value of being human that exists in every person, with unique characteristics tied to being human, regardless of race, religion, or other characteristics, especially gender. Regardless of whether the person is male, female, or a person of diverse genders, everyone is human and has equal human dignity, which is a natural right as a human being. Human dignity is therefore the foundation of human rights based on sexual orientation and gender identity, which includes the right to life and body and the right to equality, and not be unfairly discriminated against.”*

It can be concluded that in the past, the Constitutional Court’s rulings that ruled that it was a violation of human dignity were cases where the provisions of the law affected the rights and liberties of life and body of individuals and were discrimination against individuals in a way that violated the principle of equality.

2.1.2 The Role of the Thai Constitutional Court in Protecting Rights and Liberties Under the Rule of Law

The “rule of law” was first enshrined in the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which stipulated that the performance of the duties of the Parliament must be in accordance with

the rule of law. In the Constitution of the Kingdom of Thailand B.E. 2560 (2017), the “rule of law” was enshrined in section 3 paragraph two,⁹ and section 26 paragraph one.¹⁰

The Constitution of the Kingdom of Thailand B.E. 2560 (2017) does not clearly define the term “rule of law”. It only contains the purpose and explanations of each section of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), which state that the rule of law is similar to *État de droit* in two respects: if there is no law providing power, the state or the government has no power to act at all; and when the scope is specified, the state or the government must strictly enforce the law within the scope of that power and cannot use power beyond what the law stipulates. However, the meaning of the term “rule of law” is explained in the book “Intention of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)”¹¹ and the draft constitution of the Kingdom of Thailand B.E.... version of the Constitution Drafting Committee (Professor Borwornsak Uwanno, Chairman of the Constitution Drafting Committee) version submitted to the National Reform Council has determined that the *“rule of law” has important basic principles, namely, the supremacy of the constitution and the law is above the arbitrariness of individuals, respect for the constitution and the law by both the*

⁹ Section 3 paragraph two, states: “The Parliament, the Cabinet, the courts, independent organisations and state agencies must perform their duties in accordance with the Constitution, laws and the rule of law for the benefit of the nation and the well-being of the people as a whole.”

¹⁰ Section 26 paragraph one, states that “The enactment of a law that has the effect of limiting the rights or liberties of individuals must be in accordance with the conditions stipulated in the Constitution. In cases where the Constitution does not stipulate such conditions, such law must not be contrary to the rule of law, must not increase the burden or limit the rights or liberties of individuals beyond what is reasonable, and must not affect the dignity of individuals, and must also state the reasons for the necessity of limiting rights and liberties.”

¹¹ It appears in The Intention of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in the section of the Constitution’s Explanatory Notes, section 3 paragraph two.

state and the people, protection of human dignity, rights and equality, separation of powers, checks on the exercise of power and prevention of conflicts between personal and public interests, due process of law and independence of the courts and the integrity and fairness of the justice process."¹²

Therefore, the rule of law is principle of limiting the power of the government agencies, state organisations to do anything that affects the rights and liberties of the people or restricts the exercise of rights or liberties of the people only when there is a law giving them the power and only to the extent that the law gives them the power and there is a check on the legality of the actions of state organisations that affect the rights and liberties of individuals and a check on the constitutionality of laws that limit or grant powers to state organisations, restrict the rights and liberties of individuals by the judicial body. The Constitutional Court has applied the rule of law to consider and decide on important cases, such as deciding that the provision of the law that presumes that the managing director, manager or any person responsible for the operation of a juristic person must be punished criminally together with the offence of the juristic person without showing any action or intention related to the offence of the juristic person is a legal presumption that has the effect of assuming the guilt of the defendant without the plaintiff having to prove the action or intention of any person responsible for the operation of that juristic person that is involved in the offence of the juristic person in any way. It is a shift of the burden of proving innocence to the managing director, manager and persons responsible for the operation of that juristic person. It is a presumption of guilty of the suspect and defendant in a criminal case based on the status of the person and is contrary to the rule of law that the plaintiff in a criminal case must have

¹² Panya Udchachon. 2021. **Principles of the Rule of Law, Decisions of the Constitutional Court, Thailand–Germany.** Bangkok: Winyuchon, Page 58.

the burden of proving the defendant's guilt to complete the elements of the offence. This appears in the ruling No. 12/2555, the ruling No. 5/2556, the ruling No. 10/2556, the ruling No. 11/2556, the ruling No. 19-20/2556 and the ruling No. 3/2559.

In addition, there is the ruling No. 4/2556 ruling that the law that restricts the rights and liberties of individuals and affects the essence of the rights in the justice process is contrary to the rule of law. The Constitutional Court ruled that the International Cooperation in Criminal Matters Act B.E. 2535 (1992), which stipulates that all evidences and documents obtained under this act shall be considered evidences and documents admissible under the law, is not in line with the International Covenant on Civil and Political Rights (ICCPR). This is because the enactment of such a law is in conflict with the right in the criminal justice, in which the defendant must be openly tried, informed of the facts, and sufficiently examined in order to present his/her facts, arguments, and evidences in his/her defense adequately. Therefore, it is a legal provision that affects the essence of the constitutional rights in the criminal justice of individuals and is not in line with the rule of law.

Furthermore, the ruling No. 6-7/2561 also ruled that the Narcotics Act (No. 6) B.E. 2560 (2017) amended the principle of absolute presumption to be merely a presumption to allow the suspect or defendant to have the opportunity to present evidence to prove the truth to the court. The fact that the Narcotics Act (No. 6) B.E. 2560 (2017), section 8 paragraph one, only in the part that prohibits the application of the amended part to cases where the court of first instance has already made a judgment before the effective date of this act and to apply the law in force on the day before the effective date of this act to the case until the case is final is a provision that is contrary to or contradictory to the defendant's right to defend the case, contrary to the rule of law and treats the defendant as if he had committed an offence without the court having made a final judgment.

In addition, the imposition of retroactive criminal penalties on individuals does not comply with the rule of law that “there is no crime without law.” The Constitutional Court, in its ruling no. 30/2563, ruled that the National Council for Peace and Order’s Announcement No. 29/2557 on requiring individuals to report themselves as ordered by the National Council for Peace and Order and the National Council for Peace and Order’s Announcement No. 41/2557 on determining that violating or failing to comply with an order summoning individuals to report themselves is an offence and prescribing criminal penalties where such action does not constitute an act with serious consequences or affecting the peace and order of the country to the extent of requiring criminal penalties, do not comply with the principle of proportionality, limit the rights and liberties of individuals unreasonably, and violate the rule of law. Furthermore, the National Council for Peace and Order’s order for individuals to report themselves, where such order did not prescribe criminal penalties for failure to report themselves, but later on the same day, an announcement was issued stipulating that individuals who fail to report themselves within the specified date and time are guilty and liable to punishment. Therefore, the imposition of retroactive criminal penalties on individuals who fail to report themselves as ordered by the National Council for Peace and Order, which occurred before, does not comply with the rule of law that “there is no crime no punishment without law”.

However, considering the Constitutional Court’s rulings as examples above, although the Constitutional Court mentioned the rule of law in many rulings, it did not define or define the scope of the “rule of law” to what extent it meant or what its components were, until the Constitutional Court explained the meaning of the rule of law in Ruling No. 6/2565, which stated that *“the current principle of state governance is a constitutional and legal regime under the rule of law or the rule of law according to the legal system of each country, which has the*

same principle, namely, the constitution stipulates that the organisations exercising state power must exercise their power as prescribed by law, i.e., the exercise of power must be in accordance with the law, the exercise of discretion must be lawful, and the judicial review of the exercise of such power must be in accordance with the principle of review and limitation of the exercise of power to protect the rights or liberties of the people from the arbitrary exercise of state power.” However, it should be noted that the court often applies the rule of law to cases involving the justice process, laws that force the suspect to testify against themselves, which is contrary to the due process of law¹³, such as the presumption of guilty of the defendant without the plaintiff having to prove that the actions or intentions of the representative of the juristic person were involved in the juristic person’s wrongdoing, legal provisions that limit the rights and liberties of individuals and affect the essence of the rights in the justice process, the defendant’s right to defend himself, or the imposition of criminal penalties retroactively on individuals, etc.

2.1.3 The Role of the Constitutional Court in Protecting the Right to Equality

The Constitution of the Kingdom of Thailand B.E. 2560 (2017) guarantees the principle of equality in section 27¹⁴, which guarantees

¹³ Winfried Brugger. (1993). *Ein fuehrung in das oeffentliche Recht des USA*. Muenchen, p.96. Retrieved From Banjerd Singkaneti. (2021). *Principles of Public Law, Principles of the Rule of Law/Rule of Law as a “Criteria” Limiting State Power*. 3rd ed. Bangkok: Winyuchon, Page 46., and Attapol Yaisawang. (Jan.-Feb. 2014). Nititham. Chulaniti. Page 41-42.

¹⁴ Section 27 paragraph one, states that “People are equal before the law, have rights and liberties, and are protected by law equally. Men and women have equal rights.” Paragraph two states that “Unfair discrimination against people, regardless of differences in origin, race, language, gender, age, disability, physical or health condition, personal status, economic or social status, religious beliefs, education, or political opinions that do not violate the provisions of the Constitution, or any other reason, shall not be permitted.” Paragraph three states that “Measures established by the state to eliminate obstacles or promote the ability of individuals to exercise their rights or liberties in the same way as other individuals, or to protect or facilitate children, women, the elderly, the

the principle of equality before the law, gender equality and the principle of non-discrimination. The Thai Constitutional Court has ruled on important cases related to the protection of the right to equality in the judgment. The judgments can be grouped according to the types of equality as follows:

(1) Gender Equality

Protection of the Right to Use the Surname of Married Women

Originally, the law required women who were legally married to men to change their surname to their husbands because section 12 of the Personal Name Act B.E. 2505 (1962) stipulated that “A woman with a husband must use her husband’s surname.” This case led to a complaint filed with the Ombudsman of the Parliament that the provision was unconstitutional because it discriminated against women unfairly and was not in line with the constitution that guarantees women equal rights to men according to section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)¹⁵, which was in force at that time. Therefore, the Ombudsman of the Parliament was requested to submit the matter to the Constitutional Court for consideration.

Later, the Constitutional Court issued a ruling No. 21/2546 dated June 5, 2003, ruling that section 12 of the Personal Name Act B.E. 2505 (1962) was a provision requiring married women to use only their husbands’ surnames, which was a violation of the right to use the surnames of married women, resulting in unequal rights for men and women, and legal inequality due to differences in gender and status of individuals. The use of surnames was a right of individuals to express their race and lineage, a right that everyone had equally without distinction as to

disabled, or the disadvantaged, shall not be considered unfair discrimination under paragraph three.” Paragraph four states that “People who are soldiers, police officers, civil servants, other state officials, and employees or employees of state organisations shall have the same rights and liberties as ordinary people, except where limited by law specifically in respect of politics, competence, discipline, or ethics.”

¹⁵ Currently, it is the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 27.

whether they were male or female. Furthermore, it was unfair discrimination because it forced married women to use only their husbands' surnames. Section 12 of the Personal Name Act B.E. 2505 (1962) therefore had a problem with its constitutionality and was therefore unenforceable because it violated the principle of equality as guaranteed by the Constitution.

It can be seen that the Constitutional Court's ruling on this matter created equality between men and women and eliminated discrimination based on a person's gender. After the Constitutional Court made a ruling on this matter, many laws promoting equality between men and women were enacted later, such as the Personal Name Act B.E. 2548 (2005), which gave spouses the right to use either spouse's last name or both spouses could use their original last name or use both last names together. The Female Title Act B.E. 2551 (2008) was also enacted as an optional law for women who registered their marriage to use either Mrs. or Miss according to their preference. Women who were married and later the marriage ended could use Mrs. or Miss.

Protecting the Rights of LGBTQ People to Marry

As the world society and Thai society today consist of males and females who have diverse expressions of love and have different preferences in sexual behavior, the enactment of laws must show equality to guarantee the legitimate rights. In many countries, laws have been enacted to guarantee the basic rights of couples who are persons of diverse genders to live together in order to create equality and to respond to the needs of people in all forms of love by enacting laws. For Thailand, at present, there are no legal provisions that guarantee or grant the right to marry persons of diverse genders.¹⁶

¹⁶ On June 18, 2024, the Senate resolved to approve the draft bill to amend the Civil and Commercial Code (No. ...) B.E. (Marriage Equality), which will come into effect 120 days after the law is published in the Government Gazette.

In 2020, an attempt was made to file a petition using the mechanism under section 212 of the Constitution by requesting the Central Juvenile and Family Court to forward a petition to the Constitutional Court to rule on whether section 1448 of the Civil and Commercial Code, which recognizes marriage between only men and women, conflicts with or contradicts the Constitution. The Constitutional Court issued a ruling No. 20/2564 dated November 17, 2021, ruling that section 1448 of the Civil and Commercial Code is a provision that is consistent with the natural conditions and long-standing traditions by stipulating two conditions for marriage: it must be a marriage between a “man and a woman” and must be seventeen years of age, except in cases where there is a proper reason. The fact that section 1448 of the Civil and Commercial Code stipulates that only men and women have the right to marry under the law, even though it seems to limit the rights and liberties of individuals, However, it is a law that has contents that are in line with nature and in accordance with the customs and traditions of Thai society and is enacted based on the principles of reason. Therefore, the Civil and Commercial Code, section 1448, does not conflict with or contradict the Constitution, section 25, section 26, and section 27 paragraphs one, two, and three. At the end of the ruling, the Constitutional Court had *an obiter dictum* which recommended that the Parliament, the Cabinet, and relevant government agencies should consider enacting laws to appropriately recognize the rights and duties of LGBTQ individuals.

It can be seen that when the Constitutional Court considered that section 1448 of the Civil and Commercial Code, which stipulates on the marriage of a man and a woman according to the original custom, does not have a problem of the constitutionality of the law, the duty of the Constitutional Court, which is the representative of the minority, to check and balance to prevent any law from affecting the rights or liberties protected by the Constitution, is over. Normally, such law can continue

to be enforced without the Constitutional Court having to determine any other important points in deciding the legal issue. However, in this case, the Constitutional Court ruled by still taking into account the rights of persons with diverse sexualities. Due to the problem that the current law only recognizes the marriage rights of men and women, but lacks recognition of the marriage rights of LGBTQ individuals, Thailand has subsequently pushed for a law for family life of same-sex or LGBTQ individuals, which will allow LGBTQ individuals in Thailand to receive the same rights as heterosexual couples or as legal spouses, which is an action that is consistent with the ruling of the Constitutional Court, which has made an obiter dictum taking into account the rights of such individuals.

(2) Equality of Opportunity in Accessing Careers

According to the principle of equality, regardless of whether a person is disabled in any way, they should be treated equally as a human being. Most importantly, the government should promote the development of the quality of life and the development of the capabilities of disabled people according to their rights. In 2002, even though the Constitutional Court ruled 16/2545 that the consideration for the selection examination to be appointed as a judicial officer and appointed as an assistant judge, in addition to considering knowledge and abilities, must also consider physical and mental health to be complete and able to perform duties. The performance of a judge's duty is not only considering and judging cases in the courtroom. Sometimes, they have to travel outside the court to perform their duties. The ruling was that the Act on the Regulations of the Judicial Officers of the Courts of Justice B.E. 2543 (2000) section 26 (10) which states that "having a body or mind unsuitable to be a judicial officer" is in accordance with the necessity and appropriateness of the judiciary of the Court of Justice, and is not unfair discrimination according to the Constitution, Section 30. This ruling was made under the framework of the Constitution of the Kingdom of

Thailand B.E. 2540 (1997) section 30¹⁷, which did not yet stipulate that disability is a characteristic that prohibits discrimination.

Later, when the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated, section 30 stipulated the same principles as Section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), but added the wording “disability”¹⁸ which was not provided in the previous Constitution. Therefore, there was a problem as to whether the newly added wording would result in the wording “having a body or mind unsuitable to be a judicial officer” to have a problem with the constitutionality or not. Therefore, the issue was brought to the Constitutional Court for consideration and adjudication again. The Constitutional Court made a ruling No. 15/2555 by applying the Convention on the Rights of Persons with Disabilities (CRPD) to the case.

It is considered that the said text stipulated in the Act on the Regulations of the Judiciary, B.E. 2543 (2000), section 26 (10) falls within the framework of the term “Person with Disability” according to the Convention on the Rights of Persons with Disabilities, where the said provision is a provision that allows for the exercise of discretion to be used more widely than necessary, which may lead to the exercise of discretion leading to unfair discrimination against disabled persons. Although the law stipulates that it is at the discretion of the Judicial Commission, this is a disqualification of disabled persons from the recruitment process without giving disabled persons an opportunity to

¹⁷ Section 30 paragraph three, states: “Unfair discrimination against a person on the grounds of differences in origin, race, language, sex, age, physical or health condition, personal status, economic or social status, religious beliefs, education, or political opinions that do not conflict with the provisions of the Constitution shall not be permitted.”

¹⁸ Section 30 paragraph three, states: “Unfair discrimination against a person on the grounds of differences in place of birth, race, language, sex, age, **disability**, physical or health condition, personal status, economic or social status, religious beliefs, education, or political opinions that do not conflict with the provisions of the Constitution shall not be permitted.”

take the selection exam equally with the general public and without giving them an opportunity to truly demonstrate their knowledge and abilities related to that position. In addition, the main mission under the authority of judges in the courts of justice is that disability is not an obstacle to the performance of duties of those who will be judicial officers that will affect the provision of justice to litigants or those involved. Therefore, the fact that section 26 paragraph one (10) of the Judicial Officers Act B.E. 2543 (2000) stipulates that applicants for selection exams to be judicial officers must have qualifications and not have prohibited characteristics such as “having a body or mind that is not suitable to be a judicial officer” violates the rights of disabled persons to work on an equal basis with the general public according to the Convention on the Rights of Persons with Disabilities and is unfair discrimination against individuals due to differences in disability according to the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 30 paragraph three.

It can be seen that from the Constitutional Court’s ruling on this matter, there is a development in protecting the rights of disabled people in accordance with the intention of the Constitution that has been enacted and certified and eliminating the provisions of the law that discriminate against disabled people. Even though they may not have a perfect body, but with the intellectual potential to be able to work using knowledge and academic abilities that are beneficial to society.

From the Constitutional Court’s ruling on the principle of equality as mentioned above, it can be seen that the Constitutional Court has applied the concept of the principle of equality in foreign legal systems, the principle of equality and the prohibition of discrimination, which are the basic principles of human rights law, in harmony with the provisions of the Constitution of the Kingdom of Thailand, taking into account the equality of the people, public or collective interests, the state of the country, as well as the customs, traditions and culture of the nation into consideration. In addition, if there is any matter that does

not clearly conflict with the Constitution, the Constitutional Court has made observations or obiter dicta for relevant government organisations or government agencies to amend the provisions of the law in order to recognize and protect the rights of the people according to the principle of equality, in accordance with and in line with the dynamics of society at the same time.¹⁹

2.1.4 The Role of the Constitutional Court in Protecting the Rights and Liberties of Life and Body

The rights and liberties in life and body of individuals are stipulated, guaranteed and protected in the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 28.²⁰ This is considered a basic principle of the Constitution that is generally accepted to guarantee and protect the exercise of such rights or liberties completely because life and body are things that are innate. However, the exercise of rights and liberties in life and body of individuals may be restricted for various reasons, such as section 25 paragraph one, which sets the framework for the exercise of rights and liberties as not affecting or endangering the security of the state, peace and order, or good morals of the people, and not violating the rights or liberties of other persons. Therefore, arrest, detention, search of a person or any action that will affect the right or liberty of life or body shall not be carried out except in cases as

¹⁹ Romprang, Suamprakam. **Study and Analysis of the Protection of the Principle of Equality (Principle of Equality) from the Verdict of the Constitutional Court.** Work documents for evaluation to be appointed to the position of a qualified person in the field of cases. Office of the Constitutional Court, Page 270.

²⁰ Section 28 paragraph one, states that “A person shall have the right and liberty in life and body.” Paragraph two states that “Arrest and detention of a person shall not be carried out, except by order or warrant of the court or other grounds as prescribed by law.” Paragraph three states that “Searching a person or any action affecting the right or liberty in life or body shall not be carried out, except by grounds as prescribed by law.” Paragraph four states that “Torture, cruelty or punishment by cruel or inhumane means shall not be carried out.”

prescribed by law.²¹ This principle is in line with Article 5 of the **Universal Declaration of Human Rights**, which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²² In this regard, “punishment by cruel and inhumane means” includes enforced disappearance committed or condoned by state officials, in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).²³

The guarantee of the life and liberty to life is also provided for in Article 9 of the 1966 International Covenant on Civil and Political Rights (ICCPR)²⁴, which provides for the principle that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established

²¹ This principle was first stated in the Constitution of the Kingdom of Thailand B.E. 2489 (1946), section 14, and later in the Constitution of the Kingdom of Thailand B.E. 2492 (1949), section 31. The conditions of arrest, detention, and search of persons were added to the Constitution and were similarly stated in every constitution, which is the same as the Constitution of the Kingdom of Thailand B.E. 2550 (2017), section 32. Although the original principle was maintained in the Constitution of the Kingdom of Thailand B.E. 2540 (2007), section 31, the word “death penalty” was removed because it was seen that it should not be stated in the Constitution. The legal punishment was to be in accordance with the Criminal Code, which was first stated in the Constitution of the Kingdom of Siam B.E. 2475 (1932). Please see details in the Constitution Drafting Committee. (2019). **The Purpose and Explanation of Each Section of the Constitution of the Kingdom of Thailand B.E. 2560**. Bangkok: Printing Office, Office of the Secretary of the House of Representatives, Page 43. Retrieved From https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1042&filename=index

²² Ministry of Foreign Affairs. **Universal Declaration of Human Rights, Article 5 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”** Retrieved on October 1, 2023, from <https://humanrights.mfa.go.th/upload/pdf/udhr-th-en.pdf>.

²³ Minutes of the Constitution Drafting Assembly. (2007). **Intention of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)**. Committee Office 3, Office of the Secretariat of the House of Representatives, Page 25.

²⁴ Ministry of Foreign Affairs. **International Covenant on Civil and Political Rights, Article 9**. Retrieved on October 1, 2023, from <https://humanrights.mfa.go.th/upload/pdf/iccprt.pdf>.

by law. In the event of arrest, any person arrested shall be informed of the reasons for his arrest and shall be promptly informed of the charges against him, and when any person is arrested or detained on a criminal charge, he shall be promptly brought before a court or other authority authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time, or released. It shall not be a general rule that persons awaiting trial shall be detained, but release may be provided with a guarantee that he will appear at the trial at other stages of the proceedings and will appear for the execution of the judgment when the time comes. Where any person deprived of his liberty by arrest or detention has the right to bring the case before the court for a ruling without delay on the lawfulness of his detention, and if the detention is unlawful, the court shall order his release. Hence, any person who is unlawfully arrested or detained is entitled to compensation.

In cases of cruel punishment²⁵ Currently, Thailand has enacted the Prevention and Suppression of Torture and Enforced Disappearances Act B.E. 2565 (2022), which will come into effect after one hundred and twenty days from the date of its publication in the Government Gazette, i.e. February 22, 2023. This law was enacted to protect all persons from torture²⁶ and enforced disappearances caused by the actions of state

²⁵ In cases of cruel punishment, which includes enforced disappearances by the actions or connivance of state officials, it can be divided into 2 forms: cruel punishment by nature, such as physical punishment, such as amputation of certain organs, burning alive, as well as punishment intended to cause the person to suffer all kinds of pain or torture, or punishment that has a severe impact on the mental state, such as being locked in a dark room, etc., and inhuman punishment by nature, such as humiliation, forced hard work, etc. Please see details in Manit Jumpa. (2012). **Explanation of the Constitution of the Kingdom of Thailand (2007) Volume 1: General Provisions, the King, Rights and Liberties of the Thai People, Duties of the Thai People, Basic State Policies, and the Parliament.** Bangkok: V. Print (1991) Co., Ltd., Page 196-197.

²⁶ Torture According to the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), section 5 defines an act that is considered a crime of torture as “an act that causes another person to suffer severe pain or suffering, physically or mentally, for any purpose...”

officials. including the protection of human rights of Thailand to comply with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the resolution of the 61st United Nations General Assembly (UNGA) which endorsed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

However, after the enactment of the Act, it was found that the executive branch, which was required to complement in accordance with the law, was unable to promptly prepare for the measures stipulated by the law due to problems and obstacles regarding budget readiness, procurement of tools and equipment, and procedures for enforcing the Act. The legislative branch therefore issued an emergency decree amending the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), B.E. 2566 (2023) to postpone the effective date of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), sections 22, 23, 24, and 25, from February 22, 2023, to October 1, 2023.

The enactment of the Royal Decree to postpone the effective date of the said Act by the legislature resulted in the case being brought to the Constitutional Court, and the Constitutional Court issued its ruling No. 7/2566 on the conditions for enacting the said Royal Decree under section 172 paragraph one of the Constitution. The Court ruled that sections 22, 23, 24, and 25 of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022) are provisions that aim to protect the human rights of individuals from torture and enforced disappearances, and to control the performance of duties of state agencies and officials to ensure transparency and accountability in order to prevent torture and enforced disappearances during arrest and detention. The enactment of the Royal Decree amending the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022), B.E. 2566 (2023) to postpone the effective date of the said

provisions by reasoning of the unpreparedness of officials and budget for purchasing equipment for use in the work, without any facts showing that it is a crisis or a danger that affects national security or public safety. In the case that the enactment of the said Royal Decree is for the benefit of government officials or government agencies alone, it is not for the benefit of maintaining national security, public security, economic security of the country or preventing public disasters according to the conditions of section 172 paragraph one of the Constitution. Therefore, it is not effective from the beginning according to section 173 paragraph three of the Constitution, which results in the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022) coming into force from 22 February 2023 onwards, in which government officials or government agencies must comply or take action in accordance with the said law.

The Constitutional Court's ruling shows the protection of the rights and liberties of the people from the exercise of power by state officials resulting from the actions of the executive branch using its power to issue a royal decree to postpone the effective date of the provisions of the law that require police officers or state officials who are responsible for arresting people, which is considered an action in the upstream justice process, to act in order to protect the rights and liberties regarding the safety of life and body of the arrested person in a lawful manner. However, the executive branch and the legislative branch instead enacted the law to postpone the effective date, citing only the unpreparedness of the officials and the budget. This shows that the royal decree issued by the executive branch is in a manner that refuses to protect the rights or liberties of individuals and instead provides more protection to state officials than to the persons that the Act intends to protect. The fact that the responsible officials do not have to act in accordance with the provisions significantly reduces the effectiveness of preventing wrongdoing and protecting the rights and liberties of the people from the exercise of

power by state officials under this Act. This results in measures to prevent and suppress torture and enforced disappearances resulting from the exercise of power by state officials against the people being ineffective, not achieving the intent of the law, and not being in line with international obligations, as well as affecting the guarantee of the rights and liberties of the people. and has an adverse effect on the welfare and safety of the people that the Constitution guarantees and protects, causing the enactment of the said Royal Decree to be contrary to or in conflict with the Constitution.

In addition to the above rulings, the Constitutional Court has also valued to the protection of rights and liberties in life and body in several important rulings. This can be seen from the Constitutional Court ruling No. 4/2563 in the case of the offence of causing an abortion under the Criminal Code, section 301 and section 305, which is a case in which a doctor was arrested and charged with a woman who received services to terminate a pregnancy that was not intended under the Criminal Code, section 301, which is related to the rights to the body of a woman, which is a natural right that is a fundamental right of human dignity and the right to determine the will of a pregnant woman with the protection of the rights of the fetus that must be balanced, which may be necessary to use the pregnancy period as a criterion for consideration. The fact that section 301 of the Criminal Code denies women's rights without setting appropriate conditions or time frames is an unnecessary restriction on women's rights or liberties. In addition, the state has a duty to set measures to encourage individuals to exercise their rights and liberties by providing safe and legal termination measures that do not affect women's rights. It must also provide care and protection for the life of the fetus so that its right to life is not affected. The provisions of the Criminal Code, section 301, therefore, affect the rights and liberties of women's lives and bodies beyond necessity, are not in accordance with the principle of proportionality, and are a restriction of the rights

and liberties under section 28 of the Constitution. In this case, the Constitutional Court has issued an order that the provisions of the said law will be ineffective after three hundred and sixty days from the date of the Court's ruling in order for the relevant agencies to revise the law to comply with the Constitutional Court's ruling. Currently, the legislature has revised the Criminal Code, sections 301 and 305, in accordance with the Criminal Code Amendment Act (No. 28) B.E. 2564 (2021)²⁷, effective from February 7, 2021 onwards.

In addition, the Constitutional Court has protected the rights of the suspect in the criminal justice regarding the protection of rights and liberties of the body, as stated in the Constitutional Court's ruling No. 2/2562, which ruled that the criminal justice under the Announcement of the Council for Democratic Reform under the Constitutional Monarchy No. 25 dated 29 September 2006, which stipulates punitive measures for a person alleged to have committed a criminal wrongdoing is under a duty to provide a fingerprint, handprint or footprint pursuant to the order of a state attorney, prosecutor or an inquiry officer.; any violator shall be held to have committed the offence of wrongdoing relating to justice and liable to a term of imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both. In this case, the Constitutional Court ruled that the announcement, although necessary while the country was undergoing a coup to keep the people peaceful and not cause chaos, did not benefit the current national security. Acts that violate or fail to comply with the announcement were not serious acts or acted in a manner that affected the peace of the country to the extent that they should be designated as criminal offences punishable by up to six months' imprisonment, according to the principle of harm. In addition, there are other legal measures that empower officials in the criminal justice to enforce the intent of the law, namely section 368

²⁷ Government Gazette, Volume 138, Part 10, dated 6 February 2021, pages 1-3.

paragraph one of the Criminal Code, which is a punitive measure for those who violate official orders without reasonable cause or excuse. The announcement is, therefore, an unreasonable restriction of the rights and liberties in life and body of individuals or a restriction of the rights and liberties in life and body of individuals to the extent that they must comply with them, which is in violation of Section 28 paragraph one of the Constitution.

The ruling is consistent with the Constitutional Court's ruling No. 2/2565 on the offence of disobeying an official's order under section 368 paragraph one of the Criminal Code, which stipulates that a person who is aware of an official's order issued under the authority granted by law and fails to comply with such order without reasonable cause or excuse shall be liable to imprisonment not exceeding ten days or a fine not exceeding five thousand baht, or both. This is a general order, including an order to take fingerprints as a suspect in a criminal case. The taking of fingerprints is for the purpose of confirming the identity of the suspect and to check the criminal record, which is a check on the history of wrongdoing. It is a general law to determine the offence and punishment for those who violate the order of an official without reasonable cause or excuse that will enable the enforcement of the law to achieve its objectives. The penalty is only the highest penalty rate. The court can use its discretion to order a punishment that is consistent with and appropriate to the circumstances of the case. Therefore, it is a provision restricting the rights and liberties of life and body that does not conflict with or contradict the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 28 paragraph one, or the ruling of the Constitutional Court regarding the determination of conditions for issuing a detention warrant and an order not to grant temporary release based on reasons other than to prevent escape, according to the Constitutional Court Ruling No. 24/2565, in the case of the Criminal Procedure Code, section 71 paragraph one, which stipulates that when the suspect or defendant has

been apprehended, at any stage during the investigation, examination of the grounds for the charge, or consideration, the court may issue a detention warrant for the suspect or defendant in accordance with section 87 or section 88, and the provisions of section 66 shall be applied *mutatis mutandis*, and section 108/1 paragraph one (2), (3), (4), and (5) in the part that specifies the grounds for controlling or detaining the suspect or defendant. In this case, the Constitutional Court ruled that the said provision is a provision that determines measures, methods, or circumstances to treat suspects or defendants when they are detained or imprisoned under the authority of the state. It differs from the conditions for bringing suspects or defendants under the authority of the state by issuing a detention warrant and ordering a temporary release according to the Constitution, section 28 paragraph two, and section 29 paragraph five, which the Constitution does not specify specific conditions. Therefore, the legislative branch has the power to determine conditions for issuing a detention warrant and ordering a temporary release for reasons other than to prevent escape. Although the Criminal Procedure Code, section 71 paragraph one, in conjunction with section 66, paragraph one (1) and (2), and section 108/1 paragraph one (2), (3), (4), and (5) are provisions that limit the rights and liberties of individuals to some extent, the purpose of such provisions is to ensure that the suspect or defendant must be brought before the court for consideration. Such limitation of rights and liberties is proportional between the protection of the rights and liberties of the suspect or defendant in a criminal case and the benefits of conducting the criminal justice, protecting the injured party, and maintaining peace and order in society. Therefore, it does not conflict with or contradict section 28 paragraph one of the Constitution.

Therefore, the rights and liberties in life and body of an individual, although they are fundamental rights and liberties under the Constitution that are guaranteed and protected as absolute rights, the exercise of rights and liberties in life and body of an individual in some

cases may be restricted in order not to affect or harm the security of the state, peace and order or good morals of the people, and not to violate the rights or liberties of others, as the Constitution gives the legislative power to enact laws to limit those rights and liberties in accordance with the spirit or principles of the Constitution.

2.1.5 The Role of the Constitutional Court in Protecting Rights in the Justice Process

The rights and liberties of individuals in the criminal justice are stipulated, guaranteed and protected in Section 29 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017)²⁸, and are considered fundamental rights of individuals.²⁹ The provisions of the current Constitution have laid down four main principles regarding the rights and liberties of individuals in the criminal justice: Part 1: The principle of no

²⁸ Section 29 paragraph one, states that “A person shall not be subject to criminal punishment unless he has committed an act which the law in force at the time of the act stipulates as an offence and prescribes a penalty, and the penalty to be imposed on that person shall not be more severe than the penalty prescribed by the law in force at the time of the offence.” Paragraph two states that “In a criminal case, it shall be presumed that the suspect or defendant is not guilty, and before a final judgment is passed declaring that a person has committed an offence, that person shall not be treated as having committed the offence.” Paragraph three states that “The control or detention of a suspect or defendant shall be carried out only to the extent necessary to prevent them from fleeing.” Paragraph four states that “In a criminal case, a person shall not be forced to testify against himself.” Paragraph five states that “A request for bail for a suspect or defendant in a criminal case shall be considered, and bail shall not be requested to be excessive in accordance with the circumstances. The refusal of bail shall be in accordance with the provisions of the law.”

²⁹ The rights and liberties of individuals in the criminal justice were first stipulated in the Constitution of the Kingdom of Thailand, B.E. 2492 (1949), section 29. Later, the Constitution of the Kingdom of Thailand, B.E. 2517 (1974), section 35, added the privilege of not being a victim of criminal charges, and similar provisions have been made in every constitution. Please see details in the Constitution Drafting Committee. (2019). **The Purpose and Explanation of Each Section of the Constitution of the Kingdom of Thailand B.E. 2560**. Bangkok: Printing Office, Office of the Secretary of the House of Representatives, Page 44.

law, no crime, no punishment (Nullum crimen nulla poena sine lege or Principle of Legality) according to Section 29 paragraph one, Part 2. The principle of the presumption of criminal liability or the presumption that the suspect or defendant in a criminal case is innocent (Presumption of Innocence) according to section 29 paragraph two, part 3, the control or detention of the suspect and the request for bail for the suspect or defendant in a criminal case according to section 29 paragraphs three and five, and part 4, the compulsion of a person to give testimony in a criminal case against himself according to section 29 paragraph four.

(1) The Constitutional Court’s ruling upholds the principle of no law, no crime, no punishment. (Nullum crimen nulla poena sine lege or Principle of Legality)

Criminal punishment is considered to have an impact on the lives, bodies, liberties and property of the people. Therefore, every previous constitution has provided for the basic rights of such persons in order to protect the rights and liberties of persons in the criminal justice, as stated in section 29 paragraph one of the current constitution³⁰, which is the principle regarding the criminal punishment of persons only when the law applicable at the time of the act stipulates that it is an offence and prescribes a penalty, and the penalty shall not be more severe than the penalty prescribed in the law applicable at the time of the offence. This principle is the same as section 2 paragraph one of the Criminal Code³¹, which is based on the principle that “There is no law, no crime,

³⁰ Section 29 paragraph one, states that “A person shall not be subject to criminal punishment unless he has committed an act which the law in force at the time of the act stipulates as an offence and prescribes a penalty, and the penalty to be imposed on that person shall not be more severe than the penalty prescribed by the law in force at the time of the offence.”

³¹ Section 2 paragraph one, states that “A person shall be criminally punished only when he has committed an act which the law in force at that time declares to be an offence and prescribes a penalty, and the penalty to be imposed on the offender shall be the penalty prescribed by law.”

no punishment” (Nullum crimen, nulla poena sine lege or Principle of Legality) or the principle that the law has no retroactive effect, which can be summarized as follows:³² The perpetrator is not criminally liable if the act was not prescribed by law at the time of the offence and there was no penalty specified. The state cannot enact a law that has a criminal penalty that has a retroactive and negative effect on the person. Furthermore, if at the time of the offence there was a law that prescribed it as an offence and there was a penalty specified, then later a retroactive law must not be enacted to increase the penalty for the act.

The case that the Constitutional Court’s rulings considered to be the enactment of laws with retroactive criminal penalties that adversely affect individuals include the Constitutional Court’s ruling No. 30/2563 regarding the National Council for Peace and Order’s Announcement No. 29/2557 on requiring individuals to report themselves as ordered by the National Council for Peace and Order, and the subsequent issuance of the National Council for Peace and Order’s Announcement No. 41/2557 on determining that violating or failing to comply with an order summoning individuals to report themselves is an offence punishable by imprisonment not exceeding two years or a fine not exceeding forty thousand baht, or both. This is an order summoning individual to report themselves first, and then an announcement specifying the penalty for such actions. This is considered a case of imposing retroactive criminal penalties on individuals who do not report themselves as ordered by the National Council for Peace and Order, which occurs first. Therefore, it is contrary to the aforementioned rule of law and violates section 29 paragraph one of the Constitution, which is similar to the past cases according to the Supreme Court’s

³² Kiatkhajorn Wajanasawat. (2006). **Explanation of Criminal Law, Part 1.** 9th ed. Bangkok: Thammasat University, Page 16-20. and Tweekiat Menakanist. (2022). *Criminal Code Annotated.* 46th ed. Bangkok: Winyuchon, Page 48.

ruling No. 1/2489³³ regarding the War Crimes Act B.E. 2489 (1946), section 3, which stipulates that any action that an individual has done, whether as a perpetrator or an accomplice shall be considered a crime and the perpetrator is a war criminal, regardless of whether the act was committed before or after the enforcement of this Act. In this case, the Supreme Court ruled that it was a retroactive law to punish an individual, and therefore void and unenforceable. In addition, the Constitutional Court also has a guideline for ruling on the case where the legislature amends the Narcotics Act in order to prevent the provisions of the law that are beneficial to the defendant from being applied to cases under consideration by the Court of Appeal or the Supreme Court under Section 8 paragraph one of the Narcotics Act (No. 6) B.E. 2560 (2017), even though the basic principle of good and fair criminal justice administration in Thailand is to apply the law that is beneficial to the defendant in a criminal case until there is no final judgment. Therefore, it is a provision of law that conflicts with or contradicts the Constitution, as shown in the Constitutional Court's ruling No. 6-7/2561.

From the ruling of the Constitutional Court of the Kingdom of Thailand on the principle of non-retroactive law, it can be concluded that when a law is enacted that a person commits an offence, there must be a law enacted at the time of the offence and a penalty prescribed at the time of the offence. In the case of a law with a criminal penalty, the law cannot be enacted retroactively to the detriment of a person. However, if the law has a beneficial effect, the law can be enacted retroactively. However, if the law is merely a civil measure or administrative measure enacted to be applied only to certain significant offences that are not criminal penalties or are separate from criminal measures, the law can be enacted retroactively.

³³ Manit Jumpa. (2012). **Study Guide for the Constitution of the Kingdom of Thailand 2007. 3rd Edition, Newly Revised Edition.** Bangkok: Chulalongkorn University, Page 214.

(2) The Constitutional Court's Rulings Protecting the Principle of Presumption of Criminal Liability, or the Presumption that a Suspect or Defendant in a Criminal Case is Innocent (Presumption of Innocence)

The principle in prosecuting a suspect or defendant in a criminal case is to presume that the suspect or defendant is innocent, which is a universal principle stipulated in Article 11 (1) of the Universal Declaration of Human Rights³⁴ and supported by Article 14 (2) of the International Covenant on Civil and Political Rights (ICCPR)³⁵. Thailand has enshrined this principle in several constitutions. Currently, the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) stipulates this principle in section 29 paragraph two.³⁶ In addition, this principle is also stipulated in the Criminal Procedure Code, section 227 paragraph one, which states that “The court shall use its discretion to weigh all evidence and not to convict until it is certain that an offence has actually been committed and that the defendant committed the offence.” and paragraph two, “When there is reasonable doubt as to whether the defendant has committed the offence or not, the benefit of the doubt shall be given to the defendant.” In a criminal case, the order of evidence presentation (Order of Proof) is that the prosecutor must always present evidence first, as stipulated in the Criminal Procedure Code, section 174.³⁷ Regardless of which party

³⁴ Article 11 (1) provides: “Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the necessary guarantees for his defence.”

³⁵ Article 14 (2) provides: “In all criminal proceedings, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.”

³⁶ Section 29 paragraph two, states: “In a criminal case, it shall be presumed that the suspect or defendant is innocent, and before a final judgment is given showing that a person has committed an offence, that person shall not be treated as having committed the offence.”

³⁷ Charan Phakdeethanakul. (2006). **Evidence Law**. 2nd ed. Bangkok: Chirarat Printing, Page 232-233.

has the burden of proof or duty to present evidence, the prosecutor must always present evidence first that a criminal offence has occurred and that the defendant committed the offence. According to the Criminal Procedure Code, section 227, the standard of proof in a criminal case (Proof Beyond Reasonable Doubt) requires the prosecutor to prove to the court without reasonable doubt that the defendant committed the offence. If there is any reasonable doubt that the defendant may not have committed the offence, the benefit of the doubt shall be given to the defendant, i.e., the court shall dismiss the case which is equivalent to hearing the facts that the defendant did not commit the crime.³⁸

However, at present, the development of Thai society in terms of economy and technology has become more complex, resulting in social problems, environmental problems, economic crime problems, and drug problems, which have made it difficult to find evidence to prove certain types of crimes that must be proven to the court without reasonable doubt. Recently, more laws have been enacted to determine the presumption of criminal liability of individuals, which is accepted in many countries' legal systems that the legislature may enact laws to the effect that the commission of a crime leads to the presumption of the law to commit another crime. This presumption of criminal liability of individuals is not a conclusive presumption or a rebuttable presumption, in which the defendant still has the right to present evidence to prove at all times. The burden of proof for the defendant in this rebuttal is not proof beyond reasonable doubt, but proof by evidence that is more substantial. (Preponderance of Evidence) In enacting such law, the Constitutional Tribunal has previously ruled in Case No. Tor. 2/2494³⁹ regarding the legal presumption under the Gambling Act, B.E. 2477 (1934), section 6, that the law which stipulates the legal presumption does not

³⁸ *Idib*, page 244.

³⁹ Pompetch Wichitchonchai. (2009). **Explanation of the Law on the Nature of Evidence**. 2nd ed. Bangkok: The Council of Legal Education, Page 81-82.

conflict with the Constitution because it is not a presumption at the outset before the prosecutor brings in evidence. In the case of a legal presumption, it is a presumption after the prosecutor has brought in evidence or the prosecutor still has the duty to bring evidence to meet the conditions of the presumption first. Therefore, such a presumption does not conflict with the Constitution in the matter of proof beyond reasonable doubt.

Later in 2001, the Constitutional Court's ruling No. 11/2544 was issued, which may be considered as an emphasis or acceptance of the rebuttable presumption under the Narcotics Act, B.E. 2522 (1979), section 15 paragraph two, which states that "the production, import, export or possession of Category 1 narcotics calculated as pure substances of twenty grams or more shall be deemed to be the production, import, export or possession for sale". This does not conflict with or contradict the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 33, which states that "in a criminal case, it shall be presumed that the suspect or defendant is not guilty" because before the defendant was affected by the presumption under section 15 paragraph two, that he was a manufacturer, importer, exporter or a person in possession for sale, that person had been proven or evidenced by the prosecutor that he/she was the actual perpetrator, that is, he/she was in possession of narcotics. And the said provision only has the effect of making that person receive a heavier punishment⁴⁰, which can be summarised as follows: In the case where the presumption of criminal liability of a person is only a presumption after the prosecutor has presented evidence and does not conflict with or contradict the Constitution, it is considered a precedent of the Constitutional Court that has been used to adjudicate in subsequent cases up until the present. For example, the Constitutional Court's ruling No. 27/2003 on the Act on Measures for the Suppression of Offenders

⁴⁰ *Idib*, Page 84-85.

in an Offence Relating to Narcotics, B.E. 2534 (1991), section 29, which presumes that the assets of a person involved or previously involved in drug-related offences, the court will decide and order the confiscation of the assets to belong to the Narcotics Prevention and Suppression Fund or not. In this case, it is a law to make the suppression of drug-related offences more effective. It does not consider the applicant to be an offender and does not treat the applicant as an offender in any way, or the Constitutional Court's ruling No. 2/2556 on the Labor Protection Act, B.E. 2541 (1998), section 158, or the Constitutional Court's ruling No. 17-19/2565 on the Securities and Exchange Act, B.E. 2535 (1992), section 244/5 and section 244/6, or the Constitutional Court's ruling No. 9/2566 on the Revenue Code, section 90/5, which is a presumption that the behavior or actions of a person who caused the offence must accept the consequences of their actions. It is not a presumption that the person is an offender from the beginning of the case. The suspect has the right to present evidence to rebut such presumption, in accordance with the general principle of criminal liability that the offender must accept the consequences of his or her action or omission when the law stipulates that it is an offence and all the elements of the offence are completed.

However, since 2012, the Constitutional Court has ruled according to the presumption of innocence to protect the rights and liberties of the suspect or defendant in criminal cases more since the Constitutional Court's ruling No. 12/2555, in which the Court considered that the provision of the law that sets the presumption according to the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), section 54 that "If the offender is a juristic person, the managing director, manager or any person responsible for the operation of that juristic person must be jointly liable with the juristic person who committed the offence, unless it can be proven that he/she did not know or consent to the offence of that juristic person." Such provisions are legal presumptions that result in the presumption of the defendant's guilt without the prosecutor

having to prove any of the defendant's actions or intentions first. It is the use of the wrongdoing of another person as a condition for the presumption that the defendant is guilty and must be punished criminally. It is because of the presumption that if the offender is a juristic person, the managing director, manager or any person responsible for the operation of that juristic person must be jointly liable with the juristic person who committed the offence without the prosecutor having to prove the actions or intentions of the managing director, manager or any person responsible for the operation of that juristic person as to how they were involved in the offence of that juristic person. It is only necessary to prove that the juristic person committed an offence under this Act and that the defendant is the managing director, manager or any person responsible for the operation of that juristic person. Therefore, it is the presumption of the guilt of the suspect and defendant in a criminal case based on the status of the person as a condition, not the presumption of facts that are some elements of the offence after the prosecutor has proven any of the actions related to the offence of which the defendant is accused. It also violates the Rule of Law that the prosecutor in a criminal case must have the burden of proving the defendant's guilt to complete all elements of the offence. In addition, such provisions bring a person into the criminal proceedings to become a suspect or defendant, which may cause such person to have their rights and liberties restricted, such as being arrested or detained without appropriate evidence at the outset that such person has committed or had any intention related to the alleged offence. Therefore, it violates the Rule of Law and the presumption that the suspect or defendant in a criminal case is not guilty or innocent (Presumption of Innocence).

After the Constitutional Court's ruling No. 12/2555, there were many other laws that were enacted in a similar manner and when the case was brought to the Constitutional Court, it became a precedent for the Constitutional Court to always decide whether laws enacted in

a similar manner were contrary to or in conflict with the Constitution, namely: Constitutional Court Ruling No. 5/2556 on the Copyright Act, B.E. 2537 (1994), section 74 Constitutional Court Ruling No. 10/2556 on the Telecommunications Business Act, B.E. 2544 (2001), section 78 Constitutional Court Ruling No. 11/2556 on the Place of Entertainment Act, B.E. 2509 (1966), Section 28/4 Constitutional Court Ruling No. 19-20/2556 on the Fertilisers Act, B.E. 2518 (1975), section 72/5 and Constitutional Court Ruling No. 3/2559 on the Act on the Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999), section 9, which resulted from the Constitutional Court's rulings resulting in the provisions of several laws being terminated by the court's rulings, causing the legislature to enact the Act on Amendment of Provisions of Laws Relating to Criminal Liability of Representatives of Juristic Persons, B.E. 2560 (2017) to revoke and amend all 76 laws with similar provisions in Thailand.

From the above-mentioned Constitutional Court rulings, in the case of the enactment of laws on the presumption of criminal liability of representatives of juristic persons to be jointly liable with juristic persons when juristic persons commit offences in Thailand in the past, it can be seen that the results of the rulings can be a clear precedent to some extent that if any provision of law stipulates the presumption in a manner that all representatives of juristic persons who are responsible for the operations must be jointly liable with juristic persons when juristic persons commit offences immediately, even if the law stipulates an exception to prove that they did not know about or consent to the offence, it is considered that such provision of law is contrary to or in conflict with the Constitution. However, if any provision of law stipulates a specific presumption for representatives of juristic persons who are responsible for the offence or is caused by the order, failure to order or failure to act of the representatives of such juristic persons or is an presumption of facts that are elements of the offence only some of the points after

the prosecutor has proven any action related to the offence that the defendant is accused of, which is not an initial presumption before the prosecutor brings in evidence, it is considered that such provision of law is not contrary to or in conflict with the Constitution. The Constitutional Court rulings in this manner are consistent with the concepts and cases that have occurred in foreign countries that rely on the principle of Rational Connection. That is, the facts to be proved and the facts that are elements of the presumption must be reasonably and naturally related. Or when the facts that are conditions of the presumption have occurred, it is certain beyond doubt that the facts to be proved exist. In this case, the defendant must be able to access evidence that is relevant to the facts that have been presumed more than the prosecutor. And importantly, the defendant must be able to present evidence to refute it. In other words, the provisions of the law must only push the duty to bring evidence to testify or present evidence. The prosecutor must still have a role or have a burden of proof or a burden of persuasion (Legal Burden / Burden of Persuasion) in order to meet the standards required by the law. That is, the prosecutor must still prove beyond reasonable doubt. If the prosecutor cannot persuade the court to believe, the prosecutor must lose the case and vice versa, the defendant in a criminal case does not have to prove beyond reasonable doubt. The defendant only has to present evidence to show that it is more likely than the prosecutor's evidence, which is enough for the court to dismiss the case. which is in accordance with the general principles of criminal procedure law.

(3) The Constitutional Court's Rulings Protecting the Rights of Suspect or Defendants in Criminal Cases in Cases of Custody or Detention and Bail Requests

The Constitution of the Kingdom of Thailand B.E. 2560 (2017), section 29 paragraph three, has guaranteed the principle of custody and detention the suspect or defendant to be done only as necessary to prevent escape, and paragraph four has stipulated that the testimony of

a person in a criminal case cannot be forced to testify against oneself. When considering the Criminal Procedure Code, there are provisions on the custody or detention of the suspect, which is considered a coercive measure that severely affects the rights and liberties of individuals because it makes the arrested person in custody, unable to act freely. The principle of custody of the suspect in a criminal case, the Criminal Procedure Code has set an important principle in section 87 regarding the prohibition of detaining the arrested person for longer than necessary according to the circumstances of the case. In the case of petty offences, the arrested person will be detained only for the time to be questioned for testimony and to know who he/she is and where he/she is. Then release him. In the case that the arrested person is not granted bail and there is a necessary reason to investigate or file a lawsuit. The arrested person must be brought to court within forty-eight hours from the time the arrested person is brought to the inquiry official's office under section 83, unless there is force majeure or other unavoidable necessity, in which case the inquiry official or public prosecutor must submit a request to the court for a detention warrant for the suspect. The court must ask the suspect whether he has any objections and the court may summon the inquiry official or public prosecutor to explain the necessity or may call for evidence to be used in the consideration.

As for the request for bail for a suspect or defendant in a criminal case, section 29 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), stipulates the principles regarding requests for bail for suspects or defendants in criminal cases, which must be considered and bail cannot be requested in excess of what is appropriate for the case. The denial of bail must be in accordance with the law, with the Criminal Procedure Code stipulating the details from section 106 to section 119 *bis*.

In summary, the principle of the provisions of the Constitution of the Kingdom of Thailand regarding the control of suspects or

defendants is⁴¹ that the custody of suspects or defendants shall be carried out only to the extent of necessary to prevent escape. The request for bail of a suspect or defendant in a criminal case must be considered based on the reasons and necessity. However, the request for bail does not mean that the suspect or defendant will automatically be granted bail upon filing the request. The request for bail of a suspect or defendant that is excessive in accordance with the case shall not be made, and the consideration of not granting bail must be in accordance with the law, which is currently section 108 and section 108/1 of the Criminal Procedure Code. However, if considering according to the Criminal Procedure Code, in deciding the request for bail, these various reasons must be considered together (section 108), and the order not to grant bail can be made only when there is a reasonable ground to believe one of the reasons according to section 108/1.

The Constitutional Court has made a ruling on the rights of suspects or defendants in criminal cases in the case of custody or detention and bail requests as stated in the Constitutional Court's ruling No. 24/2565 regarding the Criminal Procedure Code, section 71 paragraph one, which stipulates that the grounds for issuing an arrest warrant under section 66 shall be applied to the grounds for issuing a detention warrant for a suspect or defendant *mutatis mutandis*. The Criminal Procedure Code, section 108/1 paragraph one (2), (3), (4), and (5), stipulates on the grounds for ordering not to grant bail based on grounds other than to prevent escape, which raises the issue of whether the power to set conditions for issuing a detention warrant and ordering not to grant bail based on grounds other than such would be in conflict with or contradictory to section 29 paragraph three of the Constitution. The Constitutional Court ruled that section 29 paragraph three of the Constitution, which

⁴¹ Kittipong Kamolthamwong. (2022). **New Principles on People's Rights and Liberties in the Constitution of the Kingdom of Thailand B.E. 2560**. Bangkok: Winyuchon, Page 141-142.

stipulates that the custody or detention of a suspect or defendant shall be carried out only to the extent of necessary to prevent escape. It is a provision that stipulates measures, methods, or circumstances to treat suspects or defendants when they were in custody or detained under state power. It differs from the conditions for bringing suspects or defendants under state power by issuing a detention warrant and ordering not to grant bail under section 28 paragraph two, and section 29 paragraph five of the Constitution, which do not specifically stipulate conditions. Therefore, the legislative branch has the power to stipulate conditions for issuing a detention warrant and ordering not to grant bail for reasons other than to prevent them from escaping. As for bringing suspects or defendants under state power, whether by issuing a detention warrant or ordering not to grant bail, it is stipulated in section 28 paragraph two, which stipulates that arrest and detention of a person shall not be made except by a court order or warrant or other reasons as stipulated by law, and section 29 paragraph five, which stipulates that a request for bail for a suspect or defendant in a criminal case must be considered and bail cannot be requested to be excessive in accordance with the case. The denial of bail must be in accordance with the law. Therefore, the conditions for limiting the rights of a person under section 29 paragraph three, are different from the conditions for bringing the suspect or defendant under the authority of the state by issuing a detention warrant and ordering not to grant bail under section 28 paragraph two, and section 29 paragraph five of the Constitution. Although section 71 paragraph one of the Criminal Procedure Code, in conjunction with section 66 paragraph one (1) and (2), and section 108/1 paragraph one (2), (3), (4), and (5) are provisions that limit the rights and liberties of life and body of a person to some extent, the purpose of such provisions is to ensure that the suspect or defendant must be present in the court. Such limitation of rights and liberties is proportional between the protection of the rights and liberties of the suspect or defendant in a criminal case

and the benefits of the smooth conduct of the criminal justice, protection of the injured person, and the peace and order of society. Therefore, it does not conflict with or contradict the Constitution.

(4) The Constitutional Court’s Ruling Protecting the Right of a Person Not to Make a Statement Incrimination Himself or Herself in Criminal Cases

The right to testify in a criminal case is the right of the suspect to testify or not. If the suspect testifies, the statement given by the suspect may be used as evidence in the trial, as provided in the Criminal Procedure Code, section 134/4.⁴²

The prohibition of being compelled to testify or act against oneself is a provision in accordance with the 1966 International Covenant on Civil and Political Rights (ICCPR) and translated from the words in the Japanese Constitution, it is called “testimony against oneself or confession”, such as in the case of making a confession plan. If it is an involuntary act of the person making the confession plan, it may be considered an act against oneself.⁴³

The Constitutional Court has made a ruling on forcing individuals to testify against themselves in criminal cases, as shown in the Constitutional Court’s ruling No. 4/2556 on the Mutual Assistance in

⁴² Section 134/4 paragraph one, states that “When interrogating the suspect, the investigator must inform the suspect that (1) the suspect has the right to give a statement or not. If the suspect gives a statement, the suspect’s statement may be used as evidence in the trial. (2) The suspect has the right to have a lawyer or a person whom he trusts listen to the interrogation.” Paragraph two states that “When the suspect is willing to give a statement, the statement must be recorded. If the suspect is not willing to give a statement at all, it must be recorded.” And paragraph three states that “Any statement that the suspect gives to the investigator before being informed of the right according to paragraph one or before proceeding according to section 134/1, section 134/2 and section 134/3 cannot be accepted as evidence to prove that person’s guilt.”

⁴³ Meeting minutes of the 10th Constitution Drafting Committee meeting, Monday 19 October 2015, page 15.

Criminal Matters Act, B.E. 2535 (1992), section 41, which forces defendants to be bound by evidence and documents obtained from the prosecutor's testimony in foreign courts where the defendants did not have the opportunity to examine, acknowledge, or adequately defend himself/herself, and also allows the court to use such evidence together with other evidences, which is unfair to the defendants. It is also inconsistent with Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR), which concerns the right to be tried in his presence, the right to defend himself/herself in person or through legal assistance, the right to examine, or have examined, the witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him, which affects the essence of the rights in the justice process and is inconsistent with the Rule of Law as guaranteed and protected by the Constitution. On the other hand, if the provision of the law is only to provide the court with discretion, it must still be subject to the principle of hearing both sides. The court still has the power to seek the facts by itself without relying on the evidences or facts presented by the parties to the court and the defendant has the opportunity to examine all the evidences before the trial, giving him/her the opportunity to defend himself/herself fully. It is not considered to be forcing a person to testify in a criminal case against himself/herself and does not violate the Rule of Law, as stated in the Constitutional Court's ruling No. 23/2564 on the Procedures for Corruption and Malfeasance Case Act, B.E. 2559 (2016), section 21 paragraph two, which specifies that on the day of the examination of evidence, if any party does not object or does not clearly object to the evidence, the court will order to accept the evidence of the another party into the case without an investigation.

2.1.6 The Role of the Constitutional Court in Protecting the Liberty of Travelling and the Liberty of making the Choice of Residence

The Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 38⁴⁴, guarantees the liberty of travelling and the liberty of making the choice of residence of people.⁴⁵ The liberty of travelling and the liberty of making the choice of residence are matters of actual personal rights⁴⁶, guaranteed and protected under the Universal Declaration of Human Rights (UDHR), Article 13⁴⁷, as well as the International Covenant on Civil and Political Rights (ICCPR), to which Thailand became a party in 1996, Article 12.⁴⁸

⁴⁴ Section 38 paragraph one, states that “A person shall have the liberty of travelling and the liberty of making the choice of residence.” Paragraph two states that “The restriction of the liberty under paragraph one shall not be made except by virtue of the power under the provisions of law enacted for the security of the state, public order or welfare, or for the purpose of town planning, or for the purpose of maintaining the status of a family, or for the welfare of minors.”

⁴⁵ Thailand has guaranteed liberty of travelling and the liberty of making the choice of residence in the constitution, first stipulated in the Constitution of the Kingdom of Thailand B.E. 2492 (1949), section 41, and similarly stipulated in every subsequent constitution, including the Constitution of the Kingdom of Thailand B.E. 2560 (2017), section 38, while maintaining the principle of guaranteeing and protecting liberty of travelling and the liberty of making the choice of residence, including the limitations on such liberty. In addition to the provisions in the constitution, such rights and liberties are also guaranteed in other laws in the Thai legal system, such as the Civil and Commercial Code in the section on domicile and missing persons, or the Criminal Code in the section on trespassing, including minor offences related to obstructing public roads that may hinder safety or convenience of traffic, etc.

⁴⁶ Phavika Chaiduang. (2000). **Restrictions on liberty of travel and choice of residence of citizens under the Constitution of the Kingdom of Thailand B.E. 2540**. Master of Laws Thesis, Chulalongkorn University, Faculty of Law, Page 100.

⁴⁷ Article 13 states that “Everyone has the right to liberty of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.”

⁴⁸ Article 12 states that “Everyone lawfully within the territory of any state shall have the right to liberty of movement and liberty to choose his or her residence within that

The Constitutional Court has made a ruling on the liberty of travelling and the liberty of making the choice of residence as stated in the Constitutional Court ruling No. 24/2555 regarding the Internal Security Act, B.E. 2551 (2008), section 18 paragraph one (1), (2) and (5). Although it is a provision that restricts the liberty of travelling and the liberty of making the choice of residence within the Kingdom according to the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), it is in accordance with the conditions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 34 paragraph two, which is to enact a law for the security of the state, peace and order, or welfare of the people in order to be able to prevent and suppress disasters that occur in a timely manner. Therefore, it is necessary to give the Director of Internal Security Operations Command (ISOC) the power to issue regulations prohibiting or setting conditions on the use of transportation routes or the use of vehicles or prohibiting entry or exit from specified areas, buildings or specified locations during the operation period. This is for the benefit of preventing, suppressing, stopping, restraining and resolving or alleviating incidents in the area that affect internal security of the Kingdom temporarily until the situation can be resolved. Therefore, it does not conflict with or contradict the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 34.

This also appears in the Constitutional Court's ruling No. 6/2013 on the Securities and Exchange Act, B.E. 2535 (1992), section 267 paragraph four, which empowers officials or the court to use measures to prevent the suspect from fleeing. This is a measure to

territory. Everyone shall be free to leave any country, including his own. The aforementioned right shall not be subject to any restrictions except those which are lawful and are necessary to protect national security, public order, public health or morals, or to protect the rights and liberties of others, and are consistent with the other rights guarantees in the present Covenant. No one shall be arbitrarily deprived of his or her right to enter his or her country.”

temporarily prevent the suspect from leaving the Kingdom for the purpose of bringing the suspect to justice. Because if the suspect has fled or left the Kingdom, arresting the suspect will be difficult. Therefore, even though the said provision is a limitation on the liberty of travelling of individuals as guaranteed in section 34 paragraph one of the Constitution, it is a limitation on liberty by virtue of the power of the provisions of law as stipulated in section 34, paragraph two of the Constitution, specifically for the security of the state, peace and order, or the welfare of the people. Therefore, it does not conflict with or contradict section 34 paragraph one and paragraph two of the Constitution.

According to the above ruling, it can be seen that when the Constitution of the Kingdom of Thailand guarantees the liberty of travelling and the liberty of making the choice of residence of individuals, the state's action to limit such liberty must be in accordance with the conditions stipulated in the Constitution only, which must rely on the power of the law for purposes that are important and necessary for the security of the state, peace and order, or the welfare of the people or city planning or to maintain the status of the family or for the welfare of minors, resulting in individuals not being arbitrarily deprived of such liberty by the state, but must be within the framework protected by the Constitution.

2.2 Politics and Governance

The Constitutional Court plays a role in protecting political and administrative rights and liberties in many areas, including protecting the right to protect the constitution, protecting the liberty to form political parties, and protecting individuals from deportation, bans from entering the Kingdom, and revocation of nationality, as detailed below:

2.2.1 The Role of the Constitutional Court in Protecting the Rights and Preserving the Constitution

According to the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 49⁴⁹ stipulates that in the event that any person is aware of the actions of a person or political party that exercises their rights and liberties under the Constitution to overthrow the democratic regime with the King as Head of State, they have the right to file an application with the Attorney General to request the Constitutional Court to rule and order the cessation of such actions. In the event that the Attorney General issues an order not to proceed as requested or does not proceed within 15 days from the date of receipt of the application, the applicant may file an application directly to the Constitutional Court.⁵⁰

Therefore, section 49 of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) aims to be a shield to protect the democratic regime with the King as Head of State and to stipulate a mechanism for action in the event of a violation. That is, those who find an action that is considered to be an overthrow of the regime have the right to file an application with the Attorney General. If the Attorney General does not accept the application or does not take action within 15 days, those who find an action that is considered to be an overthrow of the regime

⁴⁹ Section 49 paragraph one, states that “No person shall exercise his or her rights or liberties to overthrow the democratic regime with the King as Head of State.” Paragraph two states that “Anyone who knows that an act has been committed under paragraph one has the right to petition the Attorney General to request the Constitutional Court to rule and order the cessation of such act.” Paragraph three states that “In the event that the Attorney General issues an order not to proceed as requested or does not proceed within fifteen days from the date of receipt of the request, the petitioner may submit a petition directly to the Constitutional Court.” Paragraph four states that “The action under this section shall not affect the criminal prosecution of the person who committed the act under paragraph one.”

⁵⁰ The provisions of this section 49 were first stipulated in the Constitution of the Kingdom of Siam, B.E. 2475 (1932), amended B.E. 2495 (1952), section 35, and were stipulated in the same manner in every constitution. They are provisions laying down principles to protect the democratic regime with the King as Head of State. The provisions in other paragraphs were first stipulated in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 63, and were stipulated in the same manner in the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 68.

can file an application directly with the Constitutional Court so that the Constitutional Court can consider whether such action is considered to be an overthrow of the regime. If it is, the Constitutional Court will have the power to order stopping or ceasing the action. The Constitutional Court is therefore like a shield or armor to prevent any person or organisation from overthrowing the constitution.

In addition, when comparing the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), there is an interesting remark that the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), in terms of protecting the democratic regime with the King as Head of State, found that section 68 provides two types of protection: 1. Protection of the exercise of rights and liberties to overthrow the democratic regime with the King as Head of State, and 2. To obtain power to govern the country by methods that are not in accordance with the methods prescribed in this Constitution. This is different from the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), which only protects the exercise of rights and liberties to overthrow the democratic regime with the King as Head of State. It does not provide protection for obtaining power to govern the country by methods that are not in accordance with the methods prescribed in the Constitution. Therefore, if section 49 is considered, there is an issue to consider whether there is an act to obtain power to govern the country by any method, but if it does not overthrow the regime and maintains the democratic regime with the King as Head of State, is it considered an offence under this section or not? For example, a coup d'état overthrowing the power of the previous government but the coup leaders still ordered a new election immediately and maintained the democratic regime with the King as Head of State. Therefore, it is worth considering whether those who carried out such actions in the examples would be guilty under section 49, which can be requested to cancel the actions by the Constitutional Court or not.

However, in addition to the above example, other examples of actions that are adverse to the Constitution by individuals or groups can be cited, such as academics who express their opinions through the media about the idea of separating a country to establish an independent state, which is contrary to the principle of a single and indivisible kingdom. Those who witness or know of such actions have the right to submit an application to the Attorney General to investigate the facts and submit an application to the Constitutional Court to consider to stop such actions. The Constitutional Court had previously ruled in the ruling No. 19/2564 that the respondents' actions in public speeches on several occasions and in several locations, especially on August 10, 2020, demanding the amendment of the Constitution on the status of the King who is under the Constitution and above political responsibility, and to repeal the law prohibiting anyone from violating, defaming, or insulting the monarchy, which was an exercise of rights or liberties to overthrow the democratic regime with the King as Head of State under section 49 paragraph one of the Constitution, and to order the three respondents, including the network organisations, to cease such actions that will occur in the future, according to section 49 paragraph two of the Constitution, and the ruling No. 3/2567, which ruled in the same direction that the actions of the two respondent's behaviors of exercising liberty to express opinions to demand the overthrow of the democratic regime with the King as Head of State, by concealing the proposal of a bill to amend section 112 of the Criminal Code and using it as party policy, even though the events in the application had already passed. However, the campaign to repeal or amend the Criminal Code by the two respondents has been continuous and systematic, using various actions, including holding public assemblies, arranging political activities, campaigning via social media, proposing a bill to the House of Representatives, and using it as an election campaign policy. If the two respondents are allowed

to continue to do so, it is not too far from leading to the overthrow of the democratic regime with the King as Head of State. The actions of the two respondents are therefore the exercise of rights or liberties to overthrow the democratic regime with the King as Head of State under section 49 paragraph one of the Constitution. Section 49 paragraph two, gives the Constitutional Court the power to order the cessation of such actions that will occur in the future. Therefore, both rulings have the characteristics of explaining the exercise of rights or liberties to overthrow the democratic regime with the King as Head of State under section 49 paragraph one of the Constitution. The Constitutional Court has the power to order the cessation of such actions, including actions that will occur in the future, under section 49 paragraph two of the Constitution. When considering both rulings, it can be seen that only the ruling in which the Constitutional Court ordered the abolition of such actions was provided, but no methods or preventions were specified to prevent such actions from occurring again. This leaves a question as to whether the protection and purpose of section 49, which aims to protect the democratic regime with the King as Head of State, has been successful. The Constitutional Court has rendered Constitutional Court Order No. 2/2567, which issued the enforcement order in accordance with the Constitutional Court's Ruling No. 19/2564. However, in the said order, the Constitutional Court only ordered that the Constitutional Court's ruling on the exercise of rights or liberties to overthrow the democratic regime with the King as Head of State under section 49 has the effect of forcing individuals to cease such actions, which is already enforceable. It is the duty of the executive branch to proceed with the criminal justice before the court with jurisdiction. However, in practice, there is still a lack of clarity as to which state agency should be the host and responsible agency for taking legal action in this matter in a clear and concrete manner.

2.2.2 The Role of the Constitutional Court in Protecting the Liberty to Establish Political Parties

The Constitution of the Kingdom of Thailand, B.E. 2560 (2017), Section 45⁵¹, is a provision to guarantee the liberty to form political parties. This liberty is part of the liberty of association. Many international conventions guarantee the liberty of association, although they do not specifically mention the liberty to form political parties, such as article 20 of the Universal Declaration of Human Rights (UDHR),⁵² article 22 of the International Covenant on Civil and Political Rights (ICCPR),⁵³ and article 11 of the European Convention on Human Rights (ECHR),⁵⁴ etc. The UN Human Rights Committee, the dispute settlement body under the ICCPR, and the European Court of Human Rights (ECtHR), the dispute settlement body under the ECHR, have both ruled in several cases that liberty of association extends to the liberty to form political parties.⁵⁵

⁵¹ Section 45 paragraph one, states that “A person shall have the liberty to unite and form a political party in accordance with the democratic regime with the King as Head of State as prescribed by law.” Paragraph two states that “The law under paragraph one must at least contain provisions regarding the administration of a political party, which must be stipulated to be open and subject to scrutiny, provide opportunities for members to participate widely in policy-making and the nomination of candidates, and specify measures to enable independent action without being influenced or guided by persons who are not members of that political party, including measures to supervise members of a political party to prevent them from acting in a way that violates or fails to comply with election laws.”

⁵² **Universal Declaration of Human Rights:** Article 20 (1) Everyone has the right to liberty of peaceful assembly and association. (2) No one may be compelled to belong to an association.

⁵³ **International Covenant on Civil and Political Rights:** Article 22(1) Everyone shall have the right to liberty of association with others, including the right to form and join trade unions for the protection of his interests.

⁵⁴ **European Convention on Human Rights:** Article 11 (1) Everyone has the right to liberty of peaceful assembly and to liberty of association with others, including the right to form and to join trade unions for the protection of his interests.

⁵⁵ Narongdej Srukosit. (2002). **Guidelines for Amending the Law on the Dissolution of Political Parties.** 2nd ed. Bangkok: King Prajadhipok’s Institute, Page 54.; and European Commission for Democracy through Law (Venice Commission). “Guidelines on Prohibition

The establishment of political parties is related to the exercise of state power because it is the starting point for entering into the possession and exercise of power. Therefore, internationally, it is accepted that the criteria for exercising liberty in establishing political parties are separate from the criteria for exercising liberty of association in other forms.⁵⁶ For Thailand, such criteria were accepted and approved. This can be seen from the fact that the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) separated the liberty to establish political parties in section 45, from the liberty of association in other forms, stipulating that “A person shall have the liberty to form a political party in accordance with the democratic regime with the King as Head of State as prescribed by law.” The phrase “in accordance with the democratic regime” was stipulated to be the scope and initial preventive measure to maintain democratic governance under the constitution, which is an important fundamental principle of the constitution that cannot be amended or changed. The framework for political parties’ operations that do not conflict with or contradict democratic regime is part of the principle of protecting and maintaining a good democracy, or what is known as the “Sustainable Democracy”⁵⁷ The liberty for the people to establish political parties must also be under the framework of the rules “as prescribed by law.”⁵⁸

and Dissolution of Political Parties and Analogous Measures,” Retrieved on October 2, 2023, from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e) (Please see Page 6 of aforementioned documents)

⁵⁶ OSCE Office for Democratic Institutions and Human Rights (ODIHR), “Guidelines on Political Party Regulation,” Retrieved on October 2, 2023, from <http://www.osce.org/files/f/ documents/2/b/77812.pdf> (Please see page 18 and 21 of aforementioned document).

⁵⁷ Office of the Constitutional Court. (2020). **The Constitutional Court and the concept of self-protective democracy (Sustainable Democracy)**. Bangkok: Office of the Constitutional Court, Page 1-10.

⁵⁸ Organic Act on Political Parties B.E. 2560 (2017).

Although the people have the liberty to establish political parties as guaranteed by the constitution, the constitution also stipulates the boundaries of liberty, stating that the establishment of political parties must be in accordance with the democratic regime with the King as Head of State as stipulated by law. Therefore, in order for a political party to be established according to the ideology of democratic regime and to be a legitimate political party in order to push policies that meet the needs of the people, allowing the people to play a role or participate in the operation of the political party to the fullest, in order for political parties to become true political institutions (Institutionalisation of Political Parties or Party Institutionalisation) and to promote democratic principles within political parties, the Constitutional Court is an organisation that plays an important role in controlling the establishment of political parties that conflict with or contradict the intention of the constitution by ordering the dissolution of political parties if the established political party has committed an act according to the Organic Act on Political Parties, B.E. 2560 (2017), section 92, namely 1) overthrowing the democratic regime with the King as Head of State. Or to obtain power to govern the country by a method that is not in accordance with the path stipulated in the Constitution; 2) Acting in a manner that may be hostile to the democratic regime with the King as Head of State; 3) Violating section 20 paragraph two, section 28, section 30, section 36, section 44, section 45, section 46, section 72 or section 74; and 4) having grounds to dissolve a political party as stipulated by law. The Constitutional Court has previously ruled on cases to protect the liberty to establish political parties without violating or contradicting the Constitution or the law, such as Ruling No. 16/2565, in which the Constitutional Court ruled that the establishment of a political party by encouraging people to apply for party membership by having them join the marigold-making group at the party branch without having to pay a party maintenance fee and offering to buy materials and equipment and buy them back at a price of 1 baht per flower until the

political party has 500 members and can open a party branch, is an act that is inconsistent with section 30 of the Organic Act on Political Parties, B.E. 2560 (2017)⁵⁹, which results in political parties receiving party members who seek bribes without faith in the political party or feeling that they are the owners of the party. Such party members will not care about truly participating in the operations of the political party. Therefore, political parties cannot be strong political institutions or democratic organisations that can push the people's ideas into practice, which is not in accordance with the intention and purpose of the Constitution, section 45. Therefore, the Constitutional Court ordered the dissolution of the said political party. In addition, according to the ruling No. 5/2563, the Constitutional Court ruled that the establishment of a political party where the party leader agrees to lend the party a large amount of money to operate the party, which the executive committee of the political party should know that being in debt to any person in large amounts will result in the domination or guidance from the person who is the creditor, which will result in financial advantages to be the sole or group of the party's mastermind, is inconsistent with the Organic Act on Political Parties, B.E. 2560 (2017) ,section 72⁶⁰, resulting in the political party becoming a political business or any person taking advantage of financial advantage to be the sole or group of the party's mastermind, does not make the political party belong to the people because the people do not participate in the establishment and management of the party, there is no democratic principle within the political party, causing politicians and political parties to be unable to perform their duties or conduct activities independently because they are unlawfully influenced or guided

⁵⁹ Section 30 states: "No political party or any person shall give, offer or promise to give money, property or any other benefit, directly or indirectly, to induce any person to apply for membership, except for the rights or benefits that a person should receive as a member."

⁶⁰ Section 72 states: "A political party and its office holders are prohibited from accepting donations of money, property or other benefits, knowing or having reasonable cause to suspect that they came from an illegal source."

by a person, therefore it is inconsistent with the intention of Section 45 of the Constitution. Therefore, the Constitutional Court ordered the dissolution of the said political party.

However, not only in the case of dissolution of political parties that the Constitutional Court has ruled to protect the liberty to establish political parties in accordance with the Constitution and law, but according to the ruling No. 20/2565, the Constitutional Court has also examined the constitutionality of the draft law or the organic law on political parties to protect the liberty to establish political parties by ruling that the drafting of the political party law to collect fees and maintenance fees for political parties or the amendment of the law to allow political party members to consider selecting candidates for constituency elections in every constituency in that province or the amendment of the law to allow political party branches or provincial party representatives to hold meetings to consider the list of candidates in each constituency, which must be a list of candidates that political party members approve and must include the opinions of political party members in the consideration, and the amendment of the law to allow the consideration of the list of candidates for the party-list election must be a list of candidates that political party members approve and must include the opinions of political party members in the consideration, allows political party members to participate in being the true owners of the political party and be responsible for the political party of which they are members, promotes party members to participate more in politics with the political party, is in accordance with the principle of proportionality and appropriate for the case, does not conflict with or contradict the intention and purpose of section 45 of the Constitution.

In addition, according to the Constitutional Court's ruling No. 4/2561, the Constitutional Court previously ruled that the law on political party, which stipulates the criteria and conditions for political party membership and requires political parties to register their members

correctly, is important for the development of political party institutions in terms of the existence of political party members. It confirms the public's support for the operations of political parties, and is therefore significant for political reform. It provides liberty to members of political parties that have been established and are still in existence, and provides recognition and protection of the rights and liberties to form political parties, giving them the opportunity to review themselves to see if they still have a firm intention to continue to be members of that political party independently and voluntarily. Furthermore, the amendment of the Political Party Act to create political party branches and provincial political party representatives as a mechanism to support political participation by people in areas nationwide through the application for membership of political parties, which are the mass bases spread across the area, reflects the principle of being a political party for the people in accordance with the intention of the law, which allows political party members to participate widely and to be able to act independently without being influenced or guided by persons who are not members of the political party, in accordance with the intention and purpose of Section 45 of the Constitution or the ruling of the Constitutional Tribunal No. 3-5/2550. The Constitutional Tribunal previously ruled that: Reasons for dissolution of political parties according to the Political Party Act, B.E. 2541(1998), section 66 (2), (3) and (4)⁶¹ is to prevent political parties that have acted improperly or

⁶¹ Section 66 states that “When a political party commits any of the following acts, the Constitutional Court may dissolve the political party... (2) committing an act that may be hostile to the democratic regime with the King as Head of State according to the Constitution; (3) committing an act that may be a threat to national security or contrary to the law or public peace or morality; or (4) committing an act in violation of Section 23 paragraph one, Section 52, or Section 53.”

Section 23 paragraph one, states: “A political party shall not accept a person who is not a Thai national by birth as a member or hold any position in a political party or allow any action to be taken for the benefit of the political party.”

caused serious damage to the country from being able to continue their political activities and cause damage to the country. Therefore, it is not a provision that is unnecessary and affects the essence of the liberty of individuals to form political parties as stated in the constitution.⁶²

Section 52 states that “No political party or any member shall receive money, property or other benefits from anyone in order to perform or support any act that undermines the security of the Kingdom, the throne, the national economy or the administration of the country, or perform any act that disturbs or threatens the peace, order or good morals of the people, or perform any act that destroys the country’s resources or undermines the public health.”

Section 53 states that “A political party or any member shall not receive money, property or other benefits for the operation of a political party or political activities from:

(1) A person who is not a Thai national

(2) A juristic person under foreign law that operates a business or has a branch registered in or outside the Kingdom

(3) A juristic person registered in the Kingdom in which a person who is not a Thai National holds more than twenty-five percent of the capital or shares

(4) An organisation or juristic person that receives capital or receives a subsidy from abroad and whose objective is to operate for the benefit of a person who is not a Thai national or whose manager or director is a person who is not a Thai national

(5) A person, organisation or juristic person that receives money, property or other benefits for the operation of a political party or political activities from a person, organisation or juristic person according to (1), (2), (3) or (4)

(6) A person, organisation or juristic person as specified in the announcement of the Election Commission.”

⁶² Section 45 paragraph one, states that “A person shall have the liberty to express opinions, speak, write, print, advertise and communicate by other means.” Paragraph two states that “The restriction of the liberty under paragraph one shall not be made except by virtue of the power under the specific law to maintain the security of the state, to protect the rights, liberties, honor, reputation, family rights or privacy of others, to maintain public peace or good morals or to prevent or suppress the mental or health deterioration of the public.” Paragraph three states that “Ordering the closure of a newspaper or other media to infringe on the liberty under this section shall not be made.” Paragraph four states that “Prohibiting a newspaper or other media from presenting news or expressing opinions in whole or in part or interfering in any way to infringe on the liberty under this section shall not be made except by virtue of the power under the law enacted under paragraph two.” Paragraph five states that “Requiring news or articles to be examined by officials before being published in newspapers or other media. It shall not be done except during the time when the country is in a state of war, but it must be done in

2.2.3 The Role of the Constitutional Court in Protecting Individuals from Deportation, Bans from Entering the Kingdom and Revocation of Citizenship

Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 39⁶³ stipulates that deportation, bans from entering the country and revocation of nationality of Thai nationals by birth⁶⁴ shall not be made in order to protect the rights and liberties of Thai nationals, which are absolute rights without exception. The recognition and protection of the rights and liberties of Thai nationals shall not be deported from the Kingdom or prohibited from entering the Kingdom, in accordance with Article 13 of the Universal Declaration of Human Rights,⁶⁵ including the International Covenant on Civil and Political Rights (ICCPR) Article 12.⁶⁶ The prohibition on the revocation of nationality of Thai nationals by birth is in line with the Universal Declaration of Human Rights, which recognizes the right to nationality in Article 15.⁶⁷ This includes the

accordance with the powers under the provisions of the law which has been enacted in accordance with paragraph two.” Paragraph six states that “The owner of a newspaper or other mass media business must be a person of Thai nationality.” Paragraph seven states that “The state shall not allow the giving of money or other property to support a private newspaper or other mass media business.”

⁶³ Section 39 paragraph one, states that “No Thai national shall be deported from the Kingdom or prohibited from entering the Kingdom by any Thai national.” Paragraph two states that “No Thai nationality shall be revoked by any person who has acquired Thai nationality by birth.”

⁶⁴ This provision was first enacted in the Constitution of the Kingdom of Thailand B.E. 2492 (1949) and has been enacted in a similar manner in every constitution. The prohibition on the revocation of the nationality of a Thai national by birth is a newly enacted provision in the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

⁶⁵ Article 13 states “Everyone has the right to leave any country, including his own, and to return to his country.”

⁶⁶ Article 12 states “Everyone shall be free to leave any country, including his own, and shall not be arbitrarily deprived of the right to enter his country.”

⁶⁷ Article 15 states “Everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

International Covenant on Civil and Political Rights (ICCPR) in Article 24 (3).⁶⁸ It is also in line with the Convention on the Rights of the Child (CRC), to which Thailand became a party in 1992, under Article 7.⁶⁹

The above principles are confirmed by the Constitutional Court's ruling No. 7/2563 in the case where the petitioner requested the Constitutional Court to rule that the Ministry of Interior's order did not allow the petitioner to enter the Kingdom because the petitioner is a person prohibited from entering the Kingdom under section 12 paragraph one (8) of the Immigration Act B.E. 2522 (1979) and the letter of order of the Commander of the Immigration Bureau, which did not approve the recording of additional information to allow the petitioner to enter the Kingdom, which conflicts with or contradicts section 39 of the Constitution, including the ruling that the petitioner can enter the Kingdom of Thailand as a Thai national by birth to add his name to the population register and apply for a national ID card as a Thai national. The Constitutional Court considered that section 7 paragraph one (1) of the Nationality Act B.E. 2508 (1965) is a provision that allows a person born to a father or mother who is Thai, whether born in or outside the Kingdom of Thailand, if any person has all the elements of fact as specified by law, they will receive Thai nationality by birth, which is a right guaranteed by the Constitution in section 39 paragraph two. However, such persons must still proceed according to the process prescribed by law. Section 57 of the Immigration Act B.E. 2522 (1979) stipulates that persons who have sufficient evidence that officials can believe that they are Thai can prove their status as Thai nationals by submitting a request according

⁶⁸ Article 24 (3) provides: "Every child has the right to acquire a nationality."

⁶⁹ Article 7 provides that "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the observance of these rights in accordance with their domestic law and their obligations under relevant international instruments in this regard, in particular where the child is in a stateless state."

to the regulations of the Royal Thai Police Office on requesting verification of nationality B.E. 2557 (2014). Although such regulations do not contain any content that would deprive the rights of persons who are Thai nationals by birth to travel into the Kingdom to request verification of Thai nationality, they do affect persons who have been denied entry by the Ministry of Interior's order. If such persons are given the opportunity to enter the Kingdom to request verification of Thai nationality or are given the opportunity to request verification of Thai nationality abroad from a government agency stationed abroad that is responsible for verifying Thai nationality, such persons' rights and liberties are protected under section 39 of the Constitution. Deportation of Thai nationals from the Kingdom or prohibition of Thai nationals from entering the Kingdom shall not be permitted under section 39 paragraph one of the Constitution.

In summary, the Constitution of the Kingdom of Thailand stipulates that the deportation, ban from entering the country and revocation of nationality of Thai nationals by birth shall not be made, which is an indication of the recognition and protection of the rights and liberties of Thai nationals from being deported from the Kingdom or from being prohibited from entering the Kingdom, including the recognition and protection of the revocation of nationality of Thai nationals by birth, which is in line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and has been reaffirmed by the ruling of the Constitutional Court of the Kingdom of Thailand.

2.3 Economics and Society

The Thai Constitutional Court plays a role in protecting economic and social rights and liberties in many important areas, including property rights and liberty of to engage in an occupation, as detailed below:

2.3.1 The Role of the Constitutional Court in Protecting Property Rights

The Constitution, section 37, provides for the protection of the rights of the people against expropriation of their property, in accordance with Article 17 of the United Nations Universal Declaration of Human Rights, which states “Every human being is entitled to the right to property, own or jointly owned by others, and such right shall not be deprived of him.”⁷⁰ The reason why the constitution must provide for and protect citizens from property expropriation is because property expropriation is an exercise of state power that directly affects citizens’ property rights. If there is no provision in the constitution to provide support and protection, injustice to citizens may occur. The state must not expropriate more property beyond necessity.

The Constitutional Court, as an organisation responsible for protecting the constitutionality of laws, has played an important role in adjudicating and establishing legal principles related to the expropriation of real estate in many cases. In Ruling No. 13/2556, the Constitutional Court held that the expropriation of real estate, which limits the property rights of individuals, must be limited by law as necessary for the public interest or the benefit of the country as a whole. However, such limitations must be in accordance with the principles of law under the Constitution. The expropriation of real estate by the state cannot be done arbitrarily. In addition to the expropriation of real estate in accordance with the criteria, methods, and conditions stipulated in the Constitution and relevant laws, it must also be in accordance with the principles of law. When the state uses people’s land, it must not affect the people’s exercise of their land rights. If it is necessary to use people’s land rights as necessary for the public interest or the benefit of the country as

⁷⁰ The provisions on expropriation were first provided for in section 34 of the Constitution of the Kingdom of Thailand, B.E. 2492 (1949), and have been provided for in a similar manner in every other constitution.

a whole, it must pay compensation to the owner or possessor of the land, regardless of the extent to which the state has encroached on people's land. This is stated in part in the Constitutional Court Ruling No. 21-28/2563, which states that *"...when the state uses people's land, even if it is for public benefit, it still damages people's property rights. Regardless of whether the size of the water pipe has a diameter of eighty centimeters or more or less than eighty centimeters..."* any law that allows government officials to exercise discretion not to pay compensation to citizens, that law is contrary to or in conflict with the Constitution.

2.3.2 The Role of the Constitutional Court in Protecting Liberty to Engage in an Occupation

The role of the Constitutional Court in protecting in a democratic country with a liberal economic system, liberty to engage in an occupation is a universal principle guaranteed by the Constitution. The state's duty in the economic sector is only to supervise the free and fair conduct of private business. The state shall not issue any laws or criteria that hinder or limit the liberty to engage in an occupation of individuals, unless it falls under an exception according to the law⁷¹, which the Thai Constitution also has provisions protecting liberty to engage in an occupation.⁷²

⁷¹ Siranart Witthayathammat. Liberty to engage in an occupation: A Study from the Law Prohibiting Smoking in Entertainment Venues. Retrieved on January 16, 2024, from <http://public-law.net/publaw/view.aspx?id=1282>.

⁷² Thailand has a provision on liberty to engage in an occupation in the Constitution of the Kingdom of Siam, B.E. 2475 (1932), section 14, and similar provisions in every constitution, including the current constitution, which provides for the liberty of individuals to engage in occupations. As for limiting liberty to engage in an occupation, it is an exception that can be done only when the constitution or law stipulates that it does not conflict or contradict the constitution, such as to maintain national security or economy, for fair competition, to prevent or eliminate monopolies, to protect consumers, to regulate occupations only as necessary, for other public benefits.

Although in principle, the restriction of liberty to engage in an occupation to maintain security can be done, the conditions of such restriction do not last forever, but must also be consistent with the changing social conditions. In the Constitutional Court's ruling No. 12/2552, which was a case where the Revolutionary Council announced a prohibition against the owner or possessor of a food or beverage selling place selling food or beverage from 01.00 to 05.00 unless receiving a permit from the Commissioner-General of the Police Department for Bangkok and Thonburi or the Governor for other provinces, the Constitutional Court laid down the principle that *"...in considering a law that restricts the rights and liberties of individuals guaranteed by the Constitution, in addition to considering the state of affairs and the way of life of the people at the time the law was enacted, it must also consider the state of affairs and the way of life of the people at the time the law was enacted..."* the state enacting a law to set measures to restrict the rights and liberties of the people at that time does not mean that the legal measures will be appropriate forever if the social conditions change according to the era and necessity. The provisions of the law must change according to the social conditions; otherwise, such provisions of the law must conflict with or contradict the Constitution. In addition, this ruling of the Constitutional Court also established the principle that the unnecessary restriction of the liberty to sell food or beverages, in addition to infringing on the liberty to engage in the occupation of the service provider, also creates a burden for the people who need to consume food and beverages. Restricting the liberty to engage in an occupation, on the other hand, increases the burden for consumers. Therefore, the restriction of the liberty to engage in an occupation must take into account the liberty of the consumers as well.

It can be seen that the Constitutional Court considers and decides cases to protect the rights of the people by considering the social, economic and political contexts as well because "Reason is the soul

of the law. When the reason of any law is changed, that law is also changed.”⁷³ Therefore, the limitations on liberty to engage in an occupation, including the limitations on other liberties, are not static, but must move according to the dynamics of society as shown in the ruling of the Constitutional Court.

⁷³ Thanin Kraiwichian. Legal Proverbs. Retrieved on March 11, 2024, from https://digital.library.tu.ac.th/tu_dc/frontend/Info/item/dc:168542

Chapter 3: From Verdict to the Development of a Better Legal System

The origin of the Thai Constitutional Court was the development on the foundation of the original Thai constitutional justice, which began with the first constitutional dispute in 1946. Then, there was a development in the structure, duties, and powers in a specific context along with the political and administrative history of Thailand until the political reform in 1997, when it was reformed into a “Constitutional Court”, which in theory is considered a constitutional justice in the European Model or the Austrian Model, which means a system that provides a judicial organisation that performs specific duties in considering and deciding constitutional issues or disputes in the form of a separate court, separate from the civil, criminal, or administrative court systems.⁷⁴

The Thai Constitutional Court has continued to develop amidst Thailand’s political history through a period of political conflict and ideological struggles and differences of opinion among the people in the country. For this reason, the Constitutional Court is a constitutional judicial organisation which is considered the highest political rule. It is therefore inevitable that it will play a role as a character in such history and has been criticized in all aspects, both academically and politically, up until the present.

To be fair, from the case statistics and the setting of the Constitutional Court’s norms presented above, it can be said that the Constitutional Court has played an important role in protecting the rights and liberties of the people, which has always been its main role and duty. The Constitutional Court’s rulings in many cases have created

⁷⁴ Louis FAVOREU (1996). **Les Cours constitutionnelles**. Paris : Presses Universitaires de France, Page 5.

changes that are beneficial to the protection of rights and liberties or the setting of norms of the rule of law in Thai society and legal system for more than 25 years, including rulings that have set important principles in Thai politics and governance in many cases.

The Constitutional Court of the Kingdom of Thailand plays a role in protecting the rights and liberties of the Thai people in all three areas: human rights, political and administrative rights and liberties, and economic and social rights and liberties. This is done by applying the principles of rights and liberties, human rights and human dignity, as well as the universal values of democratic governance, to be in line with the context of society and the legal system that has its own unique development, history, and culture in the specific context of Thailand, as shown in the rulings presented in detail above. The role of the Constitutional Court in protecting the rights and liberties of the people does not only affect the individuals involved in the petition or those involved who must be subject to or have to use that law. However, the rulings of the Constitutional Court are also in the nature of revoking or proposing to review the provisions of the law that are inconsistent with the context or social values of the changing era.

This is because the Constitutional Court has the duty and power to decide whether a law provision is in conflict with or contradicts the Constitution, which directly results in the unenforceability of that law provision, which is equivalent to the cancellation of that law provision. In theory, this power is called “Negative Legislative Power” (*Negative Legislation*) because in another perspective, deciding whether a law is in conflict with or contradicts the Constitution is equivalent to “rejecting” the principles of the original law and is like an implied declaration of “agreement” with the principles that contradict the unconstitutional principles. The Thai Constitutional Court has used this negative legislative power to gradually change certain laws to be in line with society.

The first Constitutional Court ruling that led to the amendment of the law that seemed to be the most ordinary thing that society had

seen as something that had to be done according to tradition was the provision of the law that required married women to change to use the last name of their spouses in a mandatory manner, according to the Constitutional Court ruling 21/2546, which pointed out that the law that was a mandatory provision that required married women to use only the last name of their husbands violated the principle of equality because it deprived married women of their right to use their last names. Later, the relevant law was amended to allow married people to choose to use their spouse's last name or to use their original last name. Later, there was the Constitutional Court ruling No. 17/2555, in which the Constitutional Court ruled that section 57/3 and section 57/5 of the Revenue Code, which stipulate that the collection of income tax from husbands and wives who lived together throughout the previous tax year shall be considered the wife's assessable income as the husband's income and that the husband shall have the duty and responsibility to file a tax return and pay taxes, had a problem with the constitutionality. The court gave the following reasons, concluding that the provision violated the principle of equality between men and women and making married women pay higher taxes than single women is not aimed at creating stability in the family institution. Therefore, men and women do not like to marry or plan their taxes by registering for divorce so that they do not have to combine the assessable income of both parties and have to pay higher taxes.

If we consider both of these rulings from a social perspective, the determination of surnames and the calculation of taxes for married women are traces of the culture of "patriarchy" or "patriarchal" society, which views men as the head of the family. Therefore, it is natural for married women to change their surnames accordingly. In terms of taxes, it is presumed that the husband is the main earner of the family. If the wife has some income, it is not important, so that income is included as the husband's income. However, when the world society and Thai

society have developed towards equality, laws that have traces of such culture have not been reviewed or amended until the Constitutional Court pointed out the inconsistency of the law with the changing society.

In addition to the above, many rulings of the Constitutional Court have pointed out the problems of many laws that are stipulated under the concept that “*people are the governing unit of the state*”. Therefore, the efficiency of law enforcement or the benefits of the state must be considered before the rights or liberties of the people. However, since the Thai Constitution of the Kingdom of Thailand B.E.1997 changed the concept of the relationship between people and the state to “people are the owners of the highest power and are the holders of the rights to state power”, the laws enacted with the original concept are therefore inconsistent with such principles and conflict with the current constitution. A clear example is the Constitutional Court’s ruling⁷⁵ No. 12/2555, in which the Constitutional Court raised the international legal principle of the presumption of innocence, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, to which Thailand is a party and has obligations, by ruling that such principles have the value of a rule of law. Therefore, a provision of law that shifts the burden of proof to a person responsible for the operation of a juristic person, using such status as a condition, is contrary to the Constitution and the rule of law. This ruling resulted in the Parliament enacting the Act on Amendment of the Provisions of Laws Concerning Criminal Liability of Representatives of Juridical Persons B.E. 2560 (2017) to enforce the sweeping of 76 laws with contents that conflict with or contradict the Constitution, with new contents that are unlikely to have constitutionality issues.

⁷⁵ Including many Constitutional Court rulings that uphold the principles of this ruling, such as the Copyright Act B.E. 2537 (1994) (Constitutional Court Ruling No. 5/2556), the Telecommunications Business Act B.E. 2544 (2001) (Constitutional Court Ruling No. 10/2556), the Entertainment Establishments Act B.E. 2509 (1966) (Constitutional Court Ruling No. 11/2556), the Fertilizer Act B.E. 2518 (1975) (Constitutional Court Ruling No. 19-20/2556).

The Constitutional Court's ruling on the protection of people's rights or liberties that has a significant legal impact at the level of reforming the principles or concepts of the original law that are inconsistent with the principles of protecting people's rights or liberties under the current constitution is the Constitutional Court's ruling No. 4/2563, in which the Constitutional Court ruled that section 301 of the Criminal Code, regarding the offence of a woman causing herself to miscarry, is contrary to or contradicts the principle of equality between men and women under section 27 of the Constitution. As for section 305, which is an exception to the conditions in which doctors can perform abortions on women, even though the Constitutional Court saw that it did not conflict with the Constitution, such provisions should be amended to suit the situation by assigning relevant agencies to amend and improve the law within 360 days. Finally, the Parliament amended the Criminal Code Amendment Act (No. 28) B.E. 2564 (2021), which amended sections 301 and 305 to be consistent with the Constitutional Court's ruling. This ruling is the first ruling in which the Constitutional Court has received a petition filed directly by citizens under section 213 of the Constitution, and has proceeded in accordance with the Organic Act on the Procedure of the Constitutional Court B.E. 2561 (2018) in all respects. Therefore, this ruling is a historical and normative matter in terms of both the content and the process of filing a petition, because the issue of whether women should have the right to decide whether to become pregnant or terminate their pregnancy without it being a criminal offence has been a long-standing debate. The Criminal Code, which defines the offence of causing an abortion, has been enacted since B.E. 2499 (1956). Previously, there have been attempts to review or amend the law on this issue many times. Both by those involved in enforcing the law and by the mechanism of the parliament, but they have not been successful. This historic change in the principle of abortion in Thai criminal law is yet another time that the amendment or enactment of the law has been amended, starting from the ruling of the Constitutional Court.

Nonetheless, in the Constitutional Court's ruling No. 4/2563, there is an issue that is considered an academic debate, namely, in the said ruling, the Constitutional Court ruled only on the issue that only section 301 of the Criminal Code is in conflict with or contradicts the Constitution. However, the Constitutional Court ruled that section 305 does not conflict with or have a problem with the constitutionality of the Constitution. However, such provisions should be amended to suit the situation by ordering the relevant agencies to amend and improve the law within 360 days. The order in this section should only mean the amendment of section 301 of the Criminal Code. However, the relevant parties have amended both sections of the Criminal Code at the same time, which is an academic question about the legal status of the Constitutional Court's "advice" and whether it is enforceable or not.

After the said ruling, the Constitutional Court began to have a guideline for its ruling, even though the court ruled that the provisions of the law may not conflict with the constitution, but they were not consistent with the current social context or were obstacles to the exercise of the people's rights or liberties. For example, in the Constitutional Court ruling No. 20/2564, the Constitutional Court ruled that the Civil and Commercial Code section regarding the stipulation that marriage can only be between a man and a woman would not conflict with the constitution as requested. However, it also provided recommendations to the parliament, the cabinet, and relevant government agencies that they should consider enacting laws to properly recognize the rights and duties of LGBTQ individuals in the said ruling or in the Constitutional Court ruling No. 21/2564, the Constitutional Court ruled that section 44 of the Administrative Procedure Act B.E. 2539 (1996), which requires the parties to appeal an administrative order within fifteen days from the date of notification of the order, would not conflict with the constitution. However, the Constitutional Court provided recommendations to relevant government agencies that they should consider amending

and improving the time limit for appealing an administrative order in order to protect the people's rights to access the administrative justice process appropriately.

It is noted that this approach of the Constitutional Court is similar to the ruling under reservation (*La décision sous réserve*) or the reservation of interpretation (*Réserve d'interprétation*) of the French Constitutional Council, which was influenced by the reasoning of the German and Italian Constitutional Courts. The French Constitutional Council has set a form of ruling in cases where the Council considers that a provision of law may have some constitutional issues, but in some aspects, such provision may not be unconstitutional if the problematic provision of law is used and interpreted in a limited manner or according to the interpretation guidelines set by the Constitutional Council. Therefore, there is a "third approach" in which the Constitutional Council may have a "reservation" in its ruling, which is to make the provision enforceable without conflicting with the Constitution through a reservation of interpretation. This approach of ruling is more beneficial than making a ruling that a provision of law conflicts with or is unenforceable, by requiring state agencies or courts to enforce it according to their duties and powers in accordance with the reservation of interpretation. The French Supreme Court (*La Cour de cassation*) also accepted that: The reservation of the interpretation of the Constitutional Council is a motif that must be binding on the Court of Justice, according to Article 62 paragraph 2 of the French Constitution, which states that "*the ruling of the Constitutional Council shall be final and binding on all public, administrative and judicial powers.*" In this regard, section 211 paragraph 4 of the Thai Constitution also contains the same text as Article 62 paragraph 2 of the French Constitution. Therefore, the issue of how the "advice" contained in the ruling of the Constitutional Court will be binding in terms of the constitution and law on the relevant organisations or agencies remains an academic debate that may be a further challenge

in the study of constitutional law and law on the Thai Constitutional Court.

Another interesting role of the Constitutional Court in creating change in the legal system is its examination of the results of the coup's exercise of power in the form of legal provisions.

In the Thai legal system, there is a special type of law that has the same enforcement as the Act. It is called by different names: Announcements or orders of the Revolutionary Council, Announcements or orders of the Administrative Reform Council, Announcements or orders of the National Council for Peace and Order, and Announcements or orders of the National Council for Peace and Order or the Head of the National Council for Peace and Order, which can be collectively called "coup laws." These laws were created by various coup groups in the history of Thai politics that successfully acquired state power in reality and exercised that power in the form of issuing orders or setting abstract criteria that have general effects and are not intended to be enforced on any specific person or case, or in the form of establishing organisations that exercise state power, administrative agencies, including the division of government departments, and amending provisions of laws at the act level. The exercise of power by the coup group is also in the form of the exercise of legislative power. Therefore, even though the coup group has lost power, the announcements or orders of the coup group must still remain because they are legally binding on other laws or other state organisations or agencies.

In the past, the Thai judiciary has been criticized by academics and political circles for accepting that coups d'état actually created state power, which has been a precedent since the Supreme Court's Judgment No. 45/2496. However, such acceptance is a double-edged sword that opens the way for the coup's laws to be examined for constitutionality or legality later by the judiciary, such as the Supreme Court's precedent in the Supreme Court's Order No. 1131/2536 (Plenary Session).

The Thai Constitutional Court also tends to follow the Supreme Court in that although the coup's exercise of power may be the source of law, laws resulting from the coup's exercise of power must be subject to retrospective scrutiny when the country returns to a normal legal system, under the standard of scrutiny in normal circumstances. The Constitutional Court's rulings, which set the principles for scrutiny of the constitutionality of the coup's regulations, announcements, or orders, set three interesting precedents:

Firstly, the Constitutional Court has established the principle that if there is a dispute over the constitutionality of the coup law, the constitution used as the basis for consideration of the case is the constitution in force on the date the Constitutional Court makes its ruling. The Constitutional Court explained in part in its Constitutional Court ruling No. 12/2552 that the examination of the constitutionality of any provision of law must consider whether the provision of such law conflicts with or contradicts the constitution in force at the time the Constitutional Court makes its ruling.

Secondly, the Constitutional Court has established the principle in the above ruling that the coup law must be examined for its constitutionality under the context of society at the time it was enforced and contested by the Constitutional Court. The Constitutional Court reasoned that at the time the coup group seized power to govern the country, it was necessary to use decisive measures. Therefore, it was necessary for the people to remain peaceful and not cause chaos that affected the security of the country. It was necessary to limit some rights and liberties of the people. Therefore, the issuance of announcements or orders by the coup group that have the effect of law to achieve such objectives may be acceptable or understandable. However, when such conditions or situations end and the country returns to normal with a complete constitution in force, if any of the coup laws are still in force and contested to the Constitutional Court for examination of their

constitutionality, the rights or liberties guaranteed by the constitution must be considered together with the context, circumstances of the country, and the people's way of life at that time. The Constitutional Court later upheld this ruling in Constitutional Court Ruling No. 2/2562.

Thirdly, the most interesting observation is that the Constitutional Court has established the principle that even though the Constitution guarantees that the actions of the coup group that have the effect of law are considered constitutional, lawful and final, but when the exercise of power by the coup group has the effect of law and has the status of an Act, such provision must be examined to see whether it is constitutional or not by the Constitutional Court. In other words, the Constitutional Court did not take the provision that is considered as “the self-immunity provision for the exercise of power by the coup group” to be a provision that cuts off the Constitutional Court's power to consider the constitutionality of the coup group law that should have received immunity from the effect of such provision.

“The provision of immunity for the exercise of power by the coup group” is a provision that the coup group will stipulate as an implication that any exercise of power by the coup group, whether after the coup or during the use of the interim constitution after the coup, shall be considered constitutional and legal until the current constitution or the permanent constitution comes into force, such as the current constitution (B.E.2560) (2017) stipulates in section 279 that, *“All announcements, orders and actions of the National Council for Peace and Order or the Head of the National Council for Peace and Order that are in force on the day before the promulgation of this Constitution or that will be issued in accordance with Section 265 paragraph two, regardless of whether they are announcements, orders or actions that have constitutional, legislative, administrative or judicial effects, such announcements, orders, actions and the compliance with such announcements, orders or actions shall be announcements, orders,*

actions or actions that are in accordance with this Constitution and the law and shall continue to be in accordance with this Constitution. The cancellation or amendment of such announcements or orders shall be made by an Act, except for announcements or orders that are in the nature of the exercise of executive power. The cancellation or amendment shall be made by an order of the Prime Minister or a resolution of the Cabinet, as the case may be...”

However, the Constitutional Court did not take such provisions to deprive the Constitutional Court of its power to consider and decide whether the announcements or orders of the coup makers, which have the same purpose and force as this law, are contrary to, contradictory to, or have a problem of constitutionality or not, and the Constitutional Court may decide whether the orders or announcements of the coup makers, which the transitional provisions of the Constitution have certified as constitutional and legal, may still be contrary to, contradictory to, or have a problem of constitutionality.

The first Constitutional Court ruling that ruled that a law issued by the coup d'état was in conflict with the constitution, despite the provisions of the constitution guaranteeing its constitutionality, was Constitutional Court Ruling No. 2/2562. The Constitutional Court did not use section 309, which guarantees the constitutionality and lawfulness of announcements and orders of the Council for National Security (CNS) in the Interim Constitution B.E. 2549 (2006) and the Constitution B.E. 2550 (2007), as a reason to cut off the court's authority to rule on the issue of the constitutionality of the CNS announcements that were petitioned. However, if we consider the Constitutional Court's normative approach, we can understand that since the Constitutional Court's consideration of any matter must use only the current constitution, which is the one in force on the date the court is considering and making a ruling, at the time of the consideration, the Constitution B.E. 2550 (2007) had already ceased to be in force. Thus, the effect of section 309, which

stipulates that any action guaranteed in the (interim) Constitution of the Kingdom of Thailand B.E. 2549 (2006) ...etc... shall be considered as being in accordance with “This Constitution” has already ceased to be effective because the term “This Constitution” must refer only to the Constitution B.E. 2550 (2007), not the current Constitution B.E. 2540 (2017) which the Constitutional Court used as the basis for its consideration and adjudication.

However, the above reasons cannot be used to explain the case of the Constitutional Court’s Ruling 30/2563, because the announcement or order of the Head of the National Council for Peace and Order (NCPO) in question was an exercise of power under section 44 of the Interim Constitution B.E. 2557 (2014), in conjunction with section 279 paragraph two of the current Constitution, while the transitional provisions of section 265 paragraph two of the current Constitution still allow the Head of the NCPO to exercise such power.

In the Constitutional Court’s ruling No. 30/2563, the Constitutional Court explained by citing section 279 paragraph one of the Constitution, first explaining that the said section of the Constitution stipulates that all announcements, orders, and actions of the National Council for Peace and Order or the Head of the National Council for Peace and Order that were in force on the day before the promulgation of this Constitution or that will be promulgated in accordance with section 265 paragraph two, are announcements, orders, actions, or practices that are in accordance with this Constitution and the law, and will continue to be in accordance with this Constitution. The cancellation or amendment of such announcements or orders shall be made by an Act, except for announcements or orders that are in the nature of the exercise of executive power, in which case the cancellation or amendment shall be made by an order of the Prime Minister or a resolution of the Cabinet, as the case may be. Therefore, since the NCPO orders contested in this petition have not been canceled by legislative or executive power,

the status of both NCPO announcements still has the effect of a single law. The Constitutional Court then cited Section 210 of the Constitution, which is the master text that gives the Constitutional Court the power to rule that since section 210 (1) stipulates that the Constitutional Court has the duty and authority to examine the constitutionality of laws, including the two NCPO announcements, The Constitutional Court therefore has the power to consider and rule on the constitutionality of these two NCPO announcements and may consider whether the law (in the form of NCPO orders and announcements) is in conflict with or contradicts the Constitution under the Constitutional Court's authority. This explanation is in accordance with the theory of negative acts of legislation, in which the Constitutional Court has the power to revoke or revoke a law that is in conflict with or contradicts the Constitution.

The Constitutional Court's ruling that the coup laws were in conflict with or contradictory to the Constitution on two occasions, even though the laws contained texts confirming their constitutionality in both the interim constitution promulgated by the coup group and succeeded to the permanent constitution, regardless of whether the constitutions had been revoked or were still in force, the Constitutional Court could consider and rule to examine the consequences of the exercise of such power as a provision of law at the level of an Act. This is a clear standard and an announcement of an important constitutional and legal principle. Although the standard of the Constitutional Court's rulings is limited to cases of the exercise of power by the coup group in the form of a provision of law that is in accordance with the scope of duties and powers of the Constitutional Court, the most important thing is that the Constitutional Court announced the confirmation of the important principle of the exercise of judicial power that no matter what provision of law determines to be final or lawful or constitutional, such provision is considered binding only on the party exercising that law. However, it is not a provision that has the effect of limiting the power of the court to

administer justice by the judicial organisation. It may be a standard for other judicial organisations to use in considering the exercise of power or actions by the coup group in other forms that are under the jurisdiction of each court. Although there are immunity or amnesty provisions in the constitution.

Chapter 4: Conclusion

The Constitutional Court of the Kingdom of Thailand, established under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), has performed the duty of protecting the supreme law of the constitution amidst various changes for 26 years. In its duty to protect the constitution, the Constitutional Court also has the duty to protect the rights and liberties of the people that the constitution protects and guarantees, whether it is the role and duty to protect rights and liberties through various rulings as mentioned in Chapter 2, which consists of:

(1) The role of the Constitutional Court in protecting human rights and liberties covers many aspects, including the protection of human dignity, the protection of rights and liberties under the rule of law, the protection of the right to equality, the protection of rights and liberties in life and body, the protection of rights in the justice process, and the protection of liberty of travel and choice of residence.

(2) The role of the Constitutional Court in protecting political and administrative rights and liberties is multidimensional, including the protection of constitutional rights, the protection of liberty to form political parties, and the protection of individuals from deportation, bans from entering the Kingdom, and revocation of nationality.

(3) The role of the Constitutional Court in protecting economic and social rights and liberties in several important areas, including property rights and liberty to engage in an occupation.

Many of the Constitutional Court's rulings have had an important impact on the development of Thailand's legal system and better guaranteeing the rights of the people.

Throughout its history, the Thai Constitutional Court has faced changes that have driven it to perform its duties by constantly adapting to such changes. In the future, the Constitutional Court will inevitably continue to face new challenges in line with globalisation, whether they are external or domestic challenges.

The major external challenge is that the World Conference on Constitutional Justice (WCCJ) was established to promote constitutional review, protection of human rights and the rule of law at the international level, and strengthen constitutional justice, including the United Nations' Sustainable Development Goals (SDGs), especially Goal 16, which focuses on promoting peaceful societies, ensuring universal and equal access to justice for all citizens, and enforcing the law equally for sustainable development. As a result, the Constitutional Court has a mission to provide justice to the people through rulings to protect the rights and liberties of the people, taking into account the universality of human rights principles and the identity of the nationalities or local communities of Thailand in accordance with the rule of law, and developing the justice process of the Constitutional Court so that the people can access constitutional justice by filing petitions with the Constitutional Court conveniently and with fair consideration for the collective benefit of the country and the people as a whole in a sustainable manner.

In addition, another important external challenge is that the modern world is a digital world, a phenomenon driven by rapid modern technology, which will lead to changes in people's way of life, public administration, and the Constitutional Court's consideration and adjudication of cases. Therefore, it is necessary for the Constitutional Court to adapt to the situation by introducing modern technology to facilitate constitutional justice, such as the introduction of the electronic constitutional case system (e-Filing)⁷⁶, which is a system used to submit petitions or letters requesting the Constitutional Court to consider and adjudicate, which the Constitutional Court has designated to provide electronic public services (e-Filing and e-Service) to facilitate the public in accessing the proceedings of the Constitutional Court conveniently, quickly, and economically, and the introduction of a search system for

⁷⁶ <https://efiling.constitutionalcourt.or.th/>

the Constitutional Court's rulings and orders (Full-Text Search)⁷⁷, which is a system providing services to the general public to search for rulings and orders of the Constitutional Court, which includes information on rulings and orders of the Constitutional Court, personal opinions of the Constitutional Court judges as a group, summaries of rulings and abbreviations from 1998 to the present. The introduction of the Intelligent Search System (ISS)⁷⁸ is a system that provides services to the public. It is a system that collects the rulings and orders of the Constitutional Court and equivalent organisations worldwide that are published on the websites of each unit of the Constitutional Court and equivalent organisations worldwide. The information will be automatically retrieved and combined in one place for easy searching. It can support the needs of the public more comprehensively and more quickly, and improve the efficiency of the services provided to the public by the Constitutional Court and the Office of the Constitutional Court.

However, on the contrary, what is deteriorating and having an impact all over the world is the worsening environmental problems, climate change, possible more severe epidemics, and economic and social inequality that will widen further due to the advent of technology, which will push for new rights that have more constitutional value, such as the right to a good environment, the right to be forgotten or erased, or the liberty to remain anonymous in the network system, and may include the right to one's own identity that is starting to be a problem when artificial intelligence (AI) can imitate the voice and can create the appearance or personality or writing style of a person based on only some prototypes.

These challenges are not only the executive branch or the legislature that must enact laws to support or pursue these technologies or social problems, but also the Constitutional Court, which is a

⁷⁷ <https://efiling.constitutionalcourt.or.th/web/search.php>

⁷⁸ <https://iss.constitutionalcourt.or.th/>

constitutional judicial body with undeniable legislative power, on how to maintain the balance of rights, liberties, human dignity, human rights, the values of democratic governance, and the spirit of the Thai nation amidst the challenges of this era of change.

For the major domestic challenge, it is to maintain the supremacy of the constitution. At present, the Constitution of the Kingdom of Thailand B.E. 2560 (2017) aims to create a mechanism for reforming the country in various important and necessary areas with mutual cooperation, including reducing the conditions for conflicts so that the country can be peaceful on the basis of unity and reconciliation. To proceed with these matters, cooperation between people from all sectors and all government agencies is required in accordance with the “Pracharat” approach under the rules and regulations of the democratic regime with the King as Head of State. The Constitutional Court is an important organisation that plays a role in supporting the country’s reform to proceed smoothly and still under the important principles set out in the constitution.

Amidst all the challenges mentioned, the Constitutional Court will continue to adhere to the legal principles and the motto “Uphold the rule of law, uphold democracy, and care about the rights and liberties of the people”.

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