

**The International Conference “Constitutional Justice : Doctrine
and Practice”**

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The Constitutional Court of the Russian Federation

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Honorable the President of the Constitutional Court of the Russian Federation, Valery D. Zorkin, the delegations and the distinguished guests.

First of all, I would like to thank the Constitutional Court of the Russian Federation to invite the Constitutional Court of the Kingdom of Thailand in this honorable event today.

Rights and liberties of all people are the most significant feature of the modern world where Human Rights and Human Dignity have been recognized and protected through both international and domestic law. The Constitutional Court of the Kingdom of Thailand has realized the importance of this feature. There are many outstanding rulings on this matter which I would like to demonstrate and exchange in this forum.

This presentation will be divided into 3 items: First, the Constitutional Court structure and its power and duties. Second, the cases that concern the Constitutional Justice of

Thailand. And finally, the Constitutional Court dealing with the new Constitution.

1. The Constitutional Court structure and its Powers and Duties

The Constitutional Court of the Kingdom of Thailand is a specialized court that exercises in the Constitutional review and protects Rights and Liberties of the people under the Rule of Law, Democracy and Human Rights. This form of specialized court was first adopted in Austria Republic in 1925 and recognized in the Federal Republic of Germany. The Constitutional Court consists of the President and 8 judges, appointed by the King upon the advice of the Senate.

In terms of the sources of the Constitutional Court Judges are follow: 3 judges of the Supreme Court of the Justice, 2 judges of the Supreme Administration Court, 1 qualified persons in law 1 qualified persons in political science, public administration or other social sciences and 2 qualified persons in director – general or prosecutor deputy.

Ladies and Gentlemen,

Now, Thailand has the Constitution of the Kingdom of Thailand 2017 provided for the Constitutional Court to have the power to determine whether or not a law is contrary to or inconsistent with this Constitution, and shall have the powers

as prescribed by the organic law on ombudsman and the organic law on political parties. The Constitutional Court shall consider and decide cases as provided by law in accordance with the Rule of the Constitutional Court procedure and the Regulation of the Constitutional Court Case Management.

2. The Judgement concerning to the protection of fundamental rights

2.1 The Ombudsman requested for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case where section 12 of the Names of Persons Act, B.E. 2505 (1962), raised the question of constitutionality.

The point to be considered was whether the wording in section 12 of the Names of Persons Act, B.E. 2505 (1962), bore a meaning which made it mandatory for married women to use their husbands' surnames only, or it granted married women with the right to use their husbands' surnames. The Constitutional Court held that the crucial words of section 12 were "shall use", which expressly bore the characteristics of a mandatory provision. By analogy with the wording in section 6

of the Names of Persons Act, B.E. 2465 (1913), it could be seen that there was a difference in the two uses of words. In other words, section 6 employed the words "... and is able to use one's previous name and previous surname", which clearly indicated the intention that women retained the right to use their maiden names after marriage. The Names of Persons Act, B.E. 2484 (1941), and the Names of Persons Act, B.E. 2505 (1962), altered such principle. The parallel provisions had been altered to mandatory provisions. Thus, it followed that the Names of Persons Act, B.E. 2505 (1962), intended to abrogate married women's right to use their maiden names. The previous principle of allowing married women to use their maiden names was altered to a compulsion that married women should use only their husbands' surnames.

Once it had been determined that the provision of section 12 had the characteristics of a mandatory provision for married women to use their husbands' surnames only, which was encroachment of the right to use of surnames of married women resulting in an inequality in rights as between men and women, it followed that the provision created inequality under the law due to differences in sex and personal status. The case

was also an unjust discrimination because married women were one-sidedly compelled to use their husbands' surnames on the grounds of marriage, and not to the grounds of differences in physical attributes or obligations between men and women rights from the differences in sex such that discrimination was necessary.

The Constitutional Court held that section 12 of the Names of Persons Act, B.E. 2505 (1962), was unconstitutional by reason of being contrary to or inconsistency with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provision was therefore unenforceable according section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2.2 The Constitutional Review of the Amendment to the Constitutional Draft

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

The Constitutional Court found as follows. The Constitution of the Kingdom of Thailand B.E. 2550 (2007)

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

The Constitutional Court thus held by a majority of 6 to 3 votes that the conduct of deliberations and voting on the

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

3. The Constitutional Court and the New Constitution

According to the system of judicial constitutionality review of law in the modern world, the Constitutional Court is a significant mechanism in performing the duty of interpreting law to not be contrary to or inconsistent with the Constitution. Consequently, the Constitutional Court fulfills an important role

concerning the protection of the Constitution, the security of rights and liberties of people, and the assurance of public interest, and the maintenance of democratic regime of government with the King as Head of State. Nonetheless, to sustain the supremacy of the Constitution, the commission of political organs or institutions shall be controlled in order to be harmonious with the Constitution. Furthermore, in connection with Thai society's aspiration, the Constitution's authority does not concern only the protection of the Constitution, but also the security of democratic regime of government with the King as Head of State where other organs are not able to perform this duty or there are not any State organs mechanisms to be reliable.

There are many interesting perspectives concerning powers and duties of the Constitutional Court under the new Constitution, approved by the national referendum on 7 August 2016, on the protection and maintenance of the democratic regime of government with the King as Head of State. They could be categorized as the followings:

3.1 The administration and upholding the sovereignty

The Constitutional Court of the Kingdom of Thailand exercises on whenever on provision under this Constitution is applicable to any case, an act shall be performed or a decision shall be made in accordance with the constitutional conventions of Thailand under the democratic regime of government with the King as Head of State. Moreover, the Court also has the authority to decide and rule on a treaty which Thailand concludes with other countries and could affect the sovereignty and a wide scale effect on the political, economic, social and commercial security.

3.2 The amendment of the Constitution

According to the Supremacy of the Constitution which Thailand adheres, The Court has the jurisdiction to rule on the draft amendment of the Constitution. This duty is an authority to safeguard or protect the Constitution in order to prevent any law being contrary to or inconsistent with the Constitution. Otherwise, there could be person or a group of person attempts to amend the obtainment and the role of the organ exercising the sovereignty - consisting of the National Assembly; the

Council of Ministers; and Courts, which distorts the spirit of the Constitution and the people expressing through the national referendum. Additionally, the Constitutional Court also has the jurisdiction to review the constitutionality of law both before the promulgation of the law, or, *Priori* Control, and after the promulgation of the law, or, *Posteriori* control.

3.3 The Counter Corruption

In the consideration by the House of Representatives, the Senate, or a committee concerning any proposal, submission of a motion or commission of an act, which results in director indirect involvement by members of the House of Representatives, senators or members of a committee in the use of the appropriations, shall not be permitted. In case, the Constitutional Court decides on the complaint and is of opinion that there is any commission infringing the law, that commission shall be ineffective and the membership of person committing such commission shall be deemed to have been terminated and to have been revoked the right to apply for candidacy in an election. Furthermore, in case, the Council of Ministers executes or gives approval or acknowledges such commission but fails to restrain, Ministers shall vacate office en

masse and their rights to apply for candidacy in an election shall also be revoked. Also, Ministers shall be liable to pay the amount of money with interest. Additionally, the Constitutional Court has power and duty to take decision on the termination of membership of a Minister, a member of the House of Representatives, and a Senator.

3.4 Adjudication on powers and duties of State organs

The Constitutional Court has jurisdiction to rule on question concerning powers and duties of the House of the Representatives, the Senate, the National Assembly, and the Council of Ministers, or Independent Organs. This means such organ may solely wonder about their powers and duties without any disputes of conflicts pertaining to the respective powers and duties between them, such organ can submit a motion to the Constitutional Court. This authority of the Constitutional Court is an “Advisory Power” in addition to the adjudication. Additionally, the Constitutional Court also has authority to review the constitutionality of commission which a person whose recognized rights and liberties under the Constitution are violated.

3.5 The stipulation of ethical standard

In order to oversee and review person exercising State power and Political Conflict of interest, the Constitutional Court and Independent Organs shall jointly stipulate the ethical standard. The standard shall cover the preservation of national honour and interest, also, specify the categories of infraction or non – fulfillment of the standard that are grave.

3.6 The Constitutional Complaint

It is the most important to protect the fundamental rights by the Constitutional Court of the Kingdom of Thailand with the way of the constitutional complaint. A person whose rights or liberties guaranteed by the Constitution are violated, has the right to submit a petition to the Constitutional Court for a decision on whether such action is contrary to or inconsistent with the Constitution. So, the constitutional complaint complements the possibility of the concrete judicial reviews in an important manner.

Ladies and Gentlemen

Now, the Constitutional Court of the Kingdom of Thailand in 19 years old and we deeply confirm that we have still continued to “Adhere the Rule of Law Uphold Democracy and

Protect rights and Liberties of the People” These are the Constitutional Justice in Doctrine and Practice.

Thank you for your attention

Bibliography

1. The Constitution of the Kingdom of Thailand 2007.
2. The Constitution of the Kingdom of Thailand 2017.
3. The Judgement of the Constitutional Court with the name person in 2004.
4. The Judgement of the Constitutional Court with the Constitution amendment in 2012.