# The Constitutional Court
# The Kingdom of Thailand

**Constitutional Court Ruling**
**No. 1/2563 (2020)**

**Dated 21st January B.E. 2563 (2020)**

| | | |
|---|---|---|
| **Between** | **Nattaporn Toprayoon** | **Applicant** |
| | **Future Forward Party, as First, Mr. Thanathorn Juangroongruangkit, as Second, Mr. Piyabutr Saengkanokkul, as Third, and Future Forward Party Executive Committee, as Fourth** | **Respondents** |

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

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

The applicant claimed that Future Forward Party, first respondent, Mr. Thanathorn Juangroongruangkit, second respondent, Mr. Piyabutr Saengkanokkul, third respondent, and Future Forward Party Executive Committee, fourth respondent, exercised rights or liberties to overthrow the democratic regime of government with the King as Head of State as provided under section 49 of the Constitution. It was alleged that the four respondents committed the following acts.

1. On 3rd October B.E. 2561 (2018), the Political Parties Registrar, by the approval of the Election Commission, registered the establishment of the first respondent party as a political party under section 17 of the Organic Act on Political Parties B.E. 2560 (2017) with the second respondent as party leader, the third respondent as party secretary-general and the fourth respondent as party executive committee. In the application for establishment of political party, the first respondent submitted political party regulations with several provisions stated in the terms "democratic principle under the Constitution", but did not use the terms "democratic regime of government with the King as Head of State." These provisions differed from other political parties, thus showing that the first respondent political party regulations did not contain any provision which articulated an

acceptance of the democratic regime of government with the King as Head of State. Such political party regulations were consistent with the ideology, circumstances and actions of the second respondent and third respondent as evident in opinions expressed to the mass media and the public in the past. For example, the second respondent was an investor in the "Fah Deaw Kan" website and magazine, gave an interview to the Matichon Weekly Magazine's issue of 16-22 April B.E. 2553 (2010) pertaining to support of protests by the United Front for Democracy Against Dictatorship (UDD) and met university students and the public at Suan Dusit Rajabhat University on 21st February B.E. 2562 (2019), declaring that he would complete the mission launched by the Khana Ratsadon (People's Party) of B.E. 2475 (1932). The third respondent, for instance, expressed an opinion on 23rd December B.E. 2555 (2012) in a seminar entitled "Liberties of University Students in the Name of the King" at the Faculty of Political Sciences, Chulalongkorn University, and on 17th February B.E. 2556 (2013) in a seminar entitled "Politics, Justice, Royal Institution". Thus, the first respondent political party regulations were not in accordance with section 14(1) of the Organic Act on Political Parties B.E. 2560 (2017), which provided that the regulations of a political party should not exhibit characteristics which were detrimental to the democratic regime of government with the King as Head of State and should not change the form of the state. The actions of all four respondents therefore manifested an intent to overthrow the democratic regime of government with the King as Head of State as provided under section 49 of the Constitution.

2. The policies of the first respondent party were inconsistent with section 15(3) of the Organic Act on Political Parties B.E. 2560 (2017). This was because according to the first respondent party's policy declaration on 16th December B.E. 2561 (2018), the third respondent expressed an opinion to ratify the Rome Statutes of the International Criminal Court. The opinion was in accordance with the first respondent party's policy in clause 7(1) paragraph two, which stated that "... as well as to take actions and implement various international agreements relating to human rights." Thus, it was apparent that the third respondent had the purpose of signing the instrument to realise the first respondent's intent to curb the monarch's role. Furthermore, clause 7(1) of the first respondent party's policy stated that "Future Forward Party aims to revise the Constitution, laws and political institutions to align with principles of constitutional democracy and human rights; in this regard it was necessary to amend the Constitution..." This policy showed that all four respondents were committed to the ideology of overthrowing the monarchical system. It followed that the first respondent party's policies were inconsistent with section 15(3) of the Organic Act on Political Parties B.E. 2560 (2017). As a consequence, the first respondent party's regulations exhibited characteristics which

were detrimental to the democratic regime of government with the King as Head of State as provided under section 14(1), (2) and (3) of the Organic Act on Political Parties B.E. 2560 (2017), which could be deemed to be an act to overthrow the democratic system of government with the King as Head of State under section 49 of the Constitution and section 92(1) and (2) of the Organic Act on Political Parties B.E. 2560 (2017).

3. The first respondent adopted a party logo, which was an inverted equilateral triangle, shared similarities with the logo of illuminati society. It was believed that such society was behind the overthrow of monarchical systems in several European countries. Upon taking into consideration the circumstances of the first respondent which adopted a policy adhering to such society's ideologies, such as the abolition of traditional worshiping of teachers, abolition of the Thai smile, not crouching when paying respect to any royalty and abolition of the patronage of all religions, the first respondent was therefore a political party which was detrimental to the democratic regime of government with the King as Head of State.

The four respondent's issuance of political party regulations, policies and logo, including election campaigns and rallies, interviews with the press media, expressions of opinions pertaining to constitutional amendments and ideas of the second and third respondents in the past all constituted actions inconsistent with section 49 of the Constitution. The applicant had already exercised the right to file a petition to the Attorney-General requesting an order of the Constitutional Court to restrain such actions pursuant to section 49 paragraph two of the Constitution. However, the Attorney-General did not act within fifteen days of receiving the petition. The applicant therefore submitted a direct application to the Constitutional Court for a ruling under section 49 of the Constitution, as follows.

(1) That the first respondent political party regulations were void for being inconsistent with section 49 paragraph one of the Constitution and section 14(1) of the Organic Act on Political Parties B.E. 2560 (2017).

(2) That all four respondents had committed acts to acquire national governing powers by means which were not in accordance with the provisions of section 49 of the Constitution and section 92 paragraph one (1) and (2) of the Organic Act on Political Parties B.E. 2560 (2017).

(3) That an order should be issued to dissolve the first respondent party and to revoke the rights to apply for election candidacy of the second, third and fourth respondents pursuant to section 92 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017).

The applicant submitted a supplemental application alleging that the four respondents showed circumstances, ideas, attitudes and infatuations with western

philosophies, being an anti-royalist movement which viewed the prevailing existence of the monarch in Thai society as incompatible with true democracy. It was alleged that the respondents had concepts of changing the structure of Thai society, as was evident from the second respondent's interview in books, messages posted on facebook and participations in various discussion panels, as well as the fourth respondent, by Miss Pannika Wanich, the first respondent party's spokesperson, posting on her personal facebook page.

The preliminary issue which had to be considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept the application for a ruling under section 49 of the Constitution. The Constitutional Court considered the facts in the application, supplemental application and supporting documents and found that this was a case where the applicant requested a Constitutional Court ruling that the four respondents' actions constituted an exercise of rights or liberties to overthrow the democratic regime of government with the King as Head of State under section 49 of the Constitution. The applicant had already exercised the right to petition to the Attorney-General to request a Constitutional Court order under section 49 paragraph two of the Constitution but the Attorney-General did not take action within fifteen days of receiving such petition. This case was in accordance with section 49 paragraph three of the Constitution which the applicant could submit a direct application to the Constitutional Court. The Constitutional Court therefore ordered the acceptance of the application and supplemental application for ruling and directed the four respondents to submit a reply to the allegations.

The four respondents submitted replies along with supporting documents which could be summarised as follows.

1. The applicant did not have standing to submit this application. Where there was an act by a political party to overthrow the democratic regime of government with the King as Head of State, the Organic Act on Political Parties B.E. 2560 (2017) provided that it was the functions of the Election Commission to submit an application to the Constitutional Court.

2. On the applicant's claim that the first respondent political party regulations did not contain a provision on "democratic regime of government with the King as Head of State", and instead used the words "democratic principles under the Constitution", the four respondents replied as follows. The democratic regime of government with the King as Head of State was a unique principle under all Thai Constitutions and had been in existence since the change of regime in B.E. 2475 (1932), regardless of whether or not there was an express constitutional provision. The royal institution was at the centre of all Thai spirits. Therefore, when referring to

the democratic regime of government under the Thai legal system, there could be no other meaning than the democratic regime of government with the King as Head of State. The monarch and all royalties were revered by the Thai people for eternity. This principle could not be violated or amended. Hence, the first respondent political party regulations which used the words "democratic principles under the Constitution" could only refer to the democratic regime of government with the King as Head of State.

In addition, on the applicant's claim that the first respondent political party regulations was consistent with the second respondent's ideas as evident in the press media that the second respondent was an investor in the "Fah Deaw Kan" website and magazine, the second respondent replied as follows. The second respondent had only invested in the initial capital for the editor of the Fah Deaw Kan Publishing House at its inception. The second respondent had never interfered or influenced the management and such publishing house had never been subject to a criminal investigation for an offence under section 112 of the Penal Code. As for the web board of Fah DeawKan, this was an online forum similar to other web boards which were controlled under the Computer Crimes Act B.E. 2550 (2017). At present, the said web board had already closed down. As regards the interview to Matichon Weekly Magazine and expression of opinion relating to the mission of the Khana Ratsadon (People's Party), those expressions did not constitute an act to overthrow the royal institution since the Khana Ratsadon's (People's Party) mission was to achieve a democratic regime of government with the King as Head of State.

3. On the applicant's allegations concerning the first respondent party's policies, all four respondents replied that the first respondent party's policies did not contain any words to convey that the four respondents were committed to an ideology to overthrow the democratic regime of government with the King as head of State. They were all imaginations of the applicant. As for the constitutional amendments, all four respondents affirmed that the revised constitution should not contain any amendment to the constitutional provisions in the chapter on the King.

Moreover, as regards the applicant's claim concerning the third respondent's expression of opinion on ratification of the Rome Statues, the first and third respondents replied that the Rome Statutes of the International Criminal Court was intended to prevent the exoneration of offenders of the most serious crimes. It was an instrument to deter serious crimes in the future, promoted justice at a universal level and enhanced justice of state parties. The instrument did not diminish the immunities of a head of state or change Thailand's form of government with the King as Head of State as alleged by the applicant.

4. On the applicant's claim regarding the first respondent's party logo, all four respondents replied that the first respondent was not a member of the alleged organisation and the applicant failed to show clear evidence of the existence of such an organisation. Also, the first respondent never had any of the alleged policies.

5. On the applicant's claim that the four respondents had circumstances, ideas, attitudes, infatuation with western philosophies, anti-royalist movement and ideology to change the structure of Thai society, all four respondents denied any action or circumstances of acting against the royal institution or a desire to overthrow the democratic regime of government with the King as Head of State. Those claims were merely imaginations of the applicant. As for the posting of message claimed by the applicant to be acts done by Miss Pannika Wanich, such facts occurred prior to the establishment of the first respondent as a political party. The actions were therefore not connected to the first respondent.

All four respondents therefore did not commit an act which constituted an exercise of rights or liberties to overthrow the democratic regime of government with the King as Head of State under section 49 of the Constitution as alleged by the applicant. It was thereby requested that the Court dismissed the application and expunged the case.

The applicant submitted an objection to the reply statements submitted by the four respondents along with supporting documents, which could be summarised as follows. The applicant's submission of application was in accordance with the law in all respects. The respondent's reply that the constitutional principles of democracy necessarily inferred the democratic regime of government with the King as Head of State was a claim unsubstantiated by plausible grounds. As for the ratification of the Rome Statutes of the International Criminal Court, the applicant claimed evidence to affirm the conclusion of the Senate Committee on Foreign Affairs on 1st October B.E. 2556 (2013) where it was concurred that Thailand had no need to ratify the Rome Statutes. Furthermore, the four respondents' confirmation that the revised Constitution would not amend the constitutional provisions in the chapter on monarch was inconsistent with circumstances pertaining to the acts of the four respondents. As regards membership of the Illuminati Society, this claim was merely a comparison of the circumstances of the four respondents with the ideologies and objectives of such society.

The Constitutional Court considered the application, supplemental application, reply statements, objection to reply statements and supporting documents and found that there were sufficient facts to reach a ruling. Therefore, an inquisitorial hearing was not conducted pursuant to section 58 paragraph one of the Organic Act on Constitutional Court B.E. 2561 (2018). It was determined that

there was only one issue to be decided, which was whether or not the actions of the four respondents constituted exercises of rights or liberties to overthrow the democratic regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution.

The facts in the application, supplemental application, reply statements, objection to reply statements and supporting documents revealed as follows. On 3rd October B.E. 2561 (2018), the Political Parties Registrar, by the approval of the Election Commission, registered the establishment of the first respondent as a political party under section 17 of the Organic Act on Political Parties B.E. 2560 (2017), published in the Government Gazette on 15th November B.E. 2561 (2018), with Mr. Thanathorn Juangroongruangkit, second respondent, as party leader, Mr. Piyabutr Saengkanokkul, third respondent, as party secretary-general, and fourth respondents as party executive committee.

Section 49 paragraph one of the Constitution provided that "a person may not exercise rights or liberties to overthrow the democratic regime of government with the King as Head of State." Paragraph two stated that "a person who is aware of an act under paragraph one has the right to petition to the Attorney-General to request a Constitutional Court order to restrain such act." Paragraph three stated that "in the case where the Attorney-General issues an order to dismiss the petition or does not take action within fifteen days of receiving the petition, the petitioner may submit a direct application to the Constitutional Court." Paragraph four stated that "proceedings under this section does not prejudice criminal proceedings against the committer of an act under paragraph one." Such provisions were intended to serve as a measure to preserve the democratic regime of government with the King as Head of State by providing a mechanism for proceedings in the event of a violation. In particular, the provisions in paragraph one was provided for the first time in section 35 of the Constitution of the Kingdom of Siam B.E. 2475 (1932) as amended in B.E. 2495 (1952), and similarly provided in all subsequent Constitutions. This provision laid down the principle of preserving the democratic regime of government with the King as Head of State. The provisions in other paragraphs were added in section 63 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and similarly provided in section 68 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). These provisions gave a right to a person who had knowledge of an act to overthrow the democratic regime of government with the King as Head of State to petition to the Attorney-General and to submit an application to the Constitutional Court to order the restraint of such act. Section 49 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) added further texts for greater clarification that in the event the Attorney-General dismissed a petition or did not

take action within fifteen days of receiving the petition, the petitioner could submit a direct application to the Constitutional Court without prejudice to criminal proceedings against the committer of the act under paragraph one. Therefore, section 49 of the Constitution was an important principle which aimed to involve all Thai people in the preservation and protection of the democratic regime of government with the King as Head of State to ensure stability, and to guard against overthrow or wrongful subversion. The Constitutional Court was charged with the duties of review and had the power to order the restraint of a wrongful act under section 49 paragraph one of the Constitution before the consequence of such act could be realised. The nature of this measure was therefore pre-emptive to allow an opportunity for review and issuance of an order to restrain any act which could be detrimental to the country's form of government. Nonetheless, for the Constitutional Court to issue an order to restrain an act which could constitute an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State, the act should not be too remote from the cause under the circumstances as apparent to most reasonable persons in Thai society. Also, the act should be continuing and had not yet concluded. In such a case, the Constitutional Court could order the restraint of the act. However, this did not include an order to dissolve a political party since the dissolution of a political party had to be done in accordance with section 92 paragraph one of the Organic Act on Political Parties B.E. 2560 (2017), which provided that "upon the Commission having credible evidence that a political party has committed any one of the following acts, an application shall be submitted to the Constitutional Court to order the dissolution of such political party: (1) an act to overthrow the democratic regime of government with the King as Head of State or to acquire national governing powers by means not provided in the Constitution; (2) an act which is detrimental to the democratic regime of government with the King as Head of State..."

Upon consideration of the application, supplemental application and supporting documents, it was found that this was a case where the applicant claimed that the issuance of political party regulations, policies and logo of the first respondent party constituted an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution because such issuance of political party regulations, policies and logo exhibited characteristics which were detrimental to the democratic regime of government with the King as Head of State, inconsistent with section 14(1) and section 15(2) and (3) of the Organic Act on Political Parties B.E. 2560 (2017). On this issue, the Constitutional Court found as follows. Such a case involved the applicant's claim that the first respondent political party regulations,

which included policies and logo, were wrongful under section 14 and section 15 of the Organic Act on Political Parties B.E. 2560 (2017). The issuance of political party regulations was part of the procedures for establishing a political party, being the duties and powers of the Election Commission under the Organic Act on Political Parties B.E. 2560 (2017). Section 13 provided that "documents and evidence that must be submitted together with an application for registration of political party establishment... at least must consist of... (3) political party regulations..." Section 14 provided that "political party regulations must not have the following characteristics: (1) being detrimental to the democratic regime of government with the King as Head of State and must not alter the form of the state..." Section 15 provided that "political party regulations must at least have the following items... (2) political party logo; (3) ... political party policies..." Section 17 paragraph one provided that "in the case where an application for registration of political party establishment and documents and evidence submitted together with the application for registration of political party establishment are correct and complete pursuant to... section 13, section 14, section 15... the Registrar, by the approval of the Commission, shall register the establishment of political party and announce the establishment of such political party in the Government Gazette." From these provisions of law, it was discernable that in the process for submission of application for registration of political party establishment, an applicant must also submit political party regulations together with the application. Thereafter, the Political Parties Registrar would examine the correctness and completeness of the submitted documents and evidence. If the submitted application for registration of political party establishment and documents and evidence were correct and complete, the Political Parties Registrar, by the approval of the Election Commission, would register the establishment of political party and then announce the establishment of the political party in the Government Gazette. Upon the second respondent submitting an application for registration of establishment of the first respondent party as a political party and the Political Parties Registrar, by the approval of the Election Commission, registered the establishment of the first respondent party as a political party pursuant to section 17 of the Organic Act on Political Parties B.E. 2560 (2017), and an announcement of establishment of the first respondent party in the Government Gazette was already made, it was preliminarily apparent that the regulations of the first respondent party did not have characteristics which were detrimental to the democratic regime of government with the King as Head of State, pursuant to section 14(1) of the Organic Act on Political Parties B.E. 2560 (2017), since the Political Parties Registrar had already conducted an examination and received the approval of the Election Commission to register the establishment of political party.

Nevertheless, if there were subsequent facts to indicate that the first respondent political party regulations submitted in the application to register the establishment of political party was not in accordance with the provisions of section 14 or section 15 of the Organic Act on Political Parties B.E. 2560 (2017), it was the duty and power of the Political Parties Registrar to report to the Election Commission for consideration and possible adoption of a resolution to revoke such regulations pursuant to section 17 paragraph three. The facts in this case did not show such an occurrence. All four respondents did not commit any subsequent act after the registration of the establishment of the first respondent political party. Hence, there was insufficient evidence to reach a finding that the actions of the four respondents constituted an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution.

Nonetheless, the submission of this application by the applicant was probably a concern which the applicant, in his capacity as a citizen, had for the royal institution and the national form of government due to the first respondent party's wording in the regulations "democratic principles under the Constitution." In particular, in clause 6 paragraph two of the manifesto which stated that "Future Forward Party is committed to democratic principles under the Constitution..." The use of such words in the political party regulations should be clear and unambiguous, which differed from the provisions of section 2 of the Constitution, wherein it was provided that "Thailand is governed under the democratic regime of government with the King as Head of State." Such difference could cause divisions between people in the nation pursuant to section 14(3) of the Organic Act on Political Parties B.E. 2560 (2017). The Election Commission had the duty and power to consider and adopt a resolution to revoke this regulation pursuant to section 17 paragraph three to prevent possible confusions and conflicts. It was therefore expedient that involved parties should cooperate in making amendments to align with the provisions of the Constitution.

As for the applicant's claim that the second, third and fourth respondents had circumstances, ideas, attitude, infatuation with western philosophy, being an anti-royalist movement, having ideas to change the structure of Thai society by expressing opinions at various times prior and subsequent to the registration of establishment of the first respondent party as evident in the mass and public media in the past, such as interviews to the mass media, expression of opinions in public, expression of opinions pertaining to amendments of the Constitution and expression of opinions in various channels, the Constitutional Court found as follows. In order to determine that a person exercised a right or liberty to overthrow the democratic

regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution, there had to be a finding of facts that was sufficiently clear to indicate such an aim and purpose to the extent that a reasonable person could foresee a probable outcome of exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State. Such an act had to be in progress and not too remote from the cause. However, the facts available in this case were only information from websites, printed media and internet media. There were no facts yet to show that all four respondents had circumstances or committed acts as stated in the claimed opinion of the applicant. Thus, the facts in this case were still insufficient for a finding that the actions of the four defendants constituted an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution. As for whether or not the other actions of the four defendants were offences under the Penal Code or other laws, those matters would be dealt with in separate proceedings under the relevant laws.

By virtue of the foregoing reasons, the Constitutional Court held that the actions of all four defendants as claimed by the applicant did not constitute an exercise of right or liberty to overthrow the democratic regime of government with the King as Head of State as provided under section 49 paragraph one of the Constitution.