

Constitutional Court Ruling No. 4/2564 (2021)

President of the National Assembly Applicant
- Respondent

Constitution, section 210 paragraph one (2), section 255 and section 256;
Draft Constitution of the Kingdom of Thailand Amendment (No. ..), B.E.

Section 210 paragraph one (2) of the Constitution provided that the Constitutional Court had the duties and powers to rule on questions pertaining to the duties and powers of the House of Representatives, Senate, National Assembly, Council of Ministers or Independent Organs.

As for constitutional amendments, section 255 provided an absolute prohibition against amendment. Other rules and procedures for amendments were in accordance with section 256(1) to (9), and could be done by a joint sitting of the National Assembly under section 156(15), which differed from the performance of functions under the regular legislative process. Therefore, any amendment must be subject to the condition of being bound by the original Constitution and connected to the fundamental principles, as well as being appropriate and consistent with the public opinion.

The formulation of a new Constitution by drafting a Constitutional Amendment to add Chapter 15/1 would result in the repeal of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017), being an amendment to the essential substance which the constituent power wished to safeguard. If the National Assembly wished to draft a new Constitution, a referendum must be held for the people, holders of the constituent power, to vote at the first instance on whether or not there should be a new Constitution. If the people were in agreement, then a new Constitution could be drafted. Thereafter, another referendum must be held to decide whether or not to approve the new Draft Constitution before presenting to the King for Royal Assent. Upon receiving Royal Assent, it would be promulgated as the Constitution of the Kingdom of Thailand. Such was the process for founding a Constitution under conventions on a democratic regime of government with the King as Head of State. The National Assembly had the duties and powers to formulate a new Constitution by referring to the people, as holders of the constituent power, in a referendum to decide whether or not the people desired a new Constitution, and upon completion of a new Draft Constitution, the people shall vote in another referendum to approve or disapprove the new Draft Constitution.