



# Office of the Constitutional Court



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(Unofficial Translation)

Press Release No. 9/2024

23 February B.E. 2567 (A.D. 2024)

Ruling No. 3/2567 (2024) (Summary)

Dated 31<sup>st</sup> January B.E. 2567 (A.D. 2024)

The Constitutional Court considered the case whereby Mr. Teerayut Suwankesorn (petitioner) requested the Constitutional Court for a ruling under section 49 of the Constitution (Case No. 19/2566).

Mr. Teerayut Suwankesorn (petitioner) submitted a petition to the Constitutional Court for a ruling under section 49 of the Constitution on whether or not the acts and behaviours of Mr. Pita Limjaroenrat, the leader of the Move Forward Party, (first respondent) and the Move Forward Party (second respondent) proposing the Bill to amend the Penal Code (No. ..), B.E. .... (defamation charge) with a view to repealing section 112 of the Penal Code and both respondents intend to continually pursue this repeal as their election campaign policy which was deemed as an exercise of the rights or liberties to overthrow the democratic regime of government with the King as Head of State under section 49 paragraph one of the Constitution. The Constitutional Court, thereby, accepted the case for consideration and ordered a submission of the reply statements, supporting documents, inquiries of witnesses and evidence from the persons and agencies concerned, including affidavits affirming facts and opinions of the six witnesses. Upon the conclusion of witness inquisition and the acceptance of closing statements of both respondents, the Constitutional Court was of opinion that there was sufficient evidence to render the ruling. Hence, the inquisitorial proceeding was ceased pursuant to section 58 paragraph one of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (A.D. 2018).

### **Ruling of the Constitutional Court**

The issue considered by the Constitutional Court was whether or not the acts and behaviours of both respondents constituted an exercise of the rights or liberties to overthrow the democratic regime of government with the King as Head of State under section 49 paragraph one of the Constitution.

Section 49 of the Constitution is intended to safeguard the democratic regime of government with the King as Head of State from a threat posed by those who exercise the rights and liberties as provided by the Constitution. This provision also aims to ensure that the exercise of the rights or liberties should not result in subverting and undermining the fundamental principle of the Constitution as well as deteriorating the coexisting foundation of the democratic regime of government with the King as Head of State to the extent of degradation and overthrow.

Preliminary findings suggest that a submission of a bill to the House of Representatives was regarded as a parliamentary process which the legislature shall dutifully exercise its powers by introducing and considering such bill. Even if it passed a legislative review process, the Constitutional Court still had duties and powers to adjudicate on the constitutionality of a law or a bill pursuant to section 210 paragraph one (1) of the Constitution. This could be deemed as the checks and balances procedure between the Court and the legislative branch. As section 49 of the Constitution duly empowers the Constitutional Court to review an act constituting a threat posed by an exercise of the rights and liberties to overthrow the democratic regime of government with the King as Head of State as there is no particular exemption of any act which is granted under this section, the proposed amendment of a bill by the legislature would be considered as an act requiring a constitutional review on whether or not it was an act or behaviour to overthrow the democratic regime of government with the King as Head of State.

The first respondent and forty-four Members of the House of Representatives, party members of the second respondent, submitted the Bill on the proposed amendment to the Penal Code (No. ...), B.E. .... (defamation charge) to the President of the House of Representatives for revising section 112 of the Penal Code on 25<sup>th</sup> March B.E. 2564 (A.D. 2021). A substance of

this proposed amendment was to exclude section 112 from Book I, Title I, Offences Relating to the Security of the Kingdom, and thereby add it to another i.e. Title I/II. Section 112 is a provision in Title I which aims at protecting the security of the Kingdom and preserving an honour of the Head of State as the Royal Institution is of importance in maintaining the national security. It could be deemed that the King and the Thai nation have coexisted as the fundamental integrity and the King receives esteemed reverence of the people, subsequently unifying the whole nation. An offence against the Royal Institution is regarded as an offence against the national security as enshrined in section 2 of the Constitution which states that "Thailand adopts a democratic regime of government with the King as Head of State." The proposal of the said bill had an underlying intent to exempt an offence under section 112 from the crucial and severe offences in the same manner as in Book I, Title I, and consequently could no longer be considered as an offence against the security of the nation. It was asserted that both respondents intentionally contemplated to segregate the Royal Institution from the nation which shall substantially endanger the national security. Moreover, the proposed addition provision provides exemption from offence and exemption from sentence. Furthermore, during the proceedings and cross examination, parties may directly or indirectly delve into matters concerning the monarchy, including accusations, which could become publicly available, potentially diminishing and demeaning the revered status of the institution. This was inconsistent with section 6 of the Constitution which stipulates that the King shall be enthroned in a position of revered worship and shall not be violated. Furthermore, the proposed amendment to effect that the Bureau of Royal Household could be a plaintiff or injured person in defamation case could prevent the State from becoming a directly injured party, causing the Royal Institution to be a party of dispute against the people.

Consequently, although the proposed amendment bill on amendment to section 112 of the Penal Code was under the duties and powers of Members of the House of Representatives pursuant to section 133 of the Constitution, and such bill was not included in any agenda of the sitting of the House of Representatives, it appeared that such proposal was brought forward only by the Members of the House of Representatives, party members of the respondent political party (second respondent). Likewise, even though no contents of the bill could be demonstrated obviously during the second respondent's campaign for amendment or revocation of section 112 of the Penal Code prior to the general election in B.E. 2566 (A.D. 2023), such policy appeared

on the second respondent's website continuously, making an attempt at amendment of section 112 of the Penal Code which was similar to the bill proposed to the House of Representatives on 25<sup>th</sup> March B.E. 2564 (A.D. 2021). It was deemed that the respondent political party (second respondent), in cooperation with the first respondent, proposed such bill. Both respondents' acts and behaviors intended to undermine the protection of the Royal Institution through a law-making process and legislative procedure in order to legitimate such action by parliamentary procedural concealment and allow expression of this position to the public through the political party's policy. Unless the common people knew both respondents' mere intention, they could misunderstand about such opinion and expression of draft law proposal and the political party's policy. The conduct that both respondents pushed through legal amendment to section 112 of the Penal Code to degrade the status of the Royal Institution by the political party's policy and campaign for the election and continued doing so was deemed to utilise such Institution to gain and win votes. Given the Royal Institution would be intentionally accorded as a party of dispute against the people, assailed, and criticised regardless of the fundamental principle that the monarchy shall exist above and be impartial in politics, such proposal for amendment to section 112 of the Penal Code and campaign of the political party's policy for the election intended to subvert and undermine the Royal Institution, which would be so wickedly ruined, degraded, or weakened that the democratic regime of government with the King as Head of State would be eventually overthrown.

Furthermore, it appeared that the former and current Political Party Executive Committee, the Members of the House of Representatives, and the past and present members of the respondent political party (second respondent) played a crucial role in shaping public opinion and addressing the sentiment of the electorate as well as various movements of political groups by means of campaigning, encouragement and agitation, provoking social trends to revoke section 112 of the Penal Code, i.e. "Stand, and Stop Imprisonment" and "People's Party, Revoke 112" Activities; Facebook posts of Mr. Rangsiman Rome and Mrs. Amarat Chokepamitkul supporting the repeal of such law; a public address of the respondent political party (second respondent) on 24<sup>th</sup> March B.E. 2566 (A.D. 2023) in Chon Buri; labeling a red sticker of the first respondent on a 'revocation of section 112' poll and also addressing on stage a speech expressing that unless the law was amended in the House of Representatives, he would be ready to do so by

other means beyond the legislative procedure; posting bail by the first respondent, Mr. Chaithawat Tulathon, Mr. Rangsiman Rome, Miss Suttawan Suban Na Ayuthaya, Mr. Thongdaeng Benjapak, Mrs. Amarat Chokepamitkul, and Mr. Teerajchai Phunthumas to bail out the release of the accused or defendants who were charged with an offence relating to section 112; and particularly the Members of the House of Representatives who belonged to the respondent political party (second respondent); namely Mr. Piyarat Chongthep, Miss Chonticha Jangrew, and Miss Rukchanok Srinork, as the accused or defendants relating to such offence, of which elements were pursuant to relevant law irrespective of conflicting opinion or political accusations.

On the point of fact, it was found that both respondents engaged in such conduct to exercise freedom of expression, encouraging demolition of the democratic regime of government with the King as Head of State by concealing the motives through such proposal of the bill on amendment to section 112 of the Penal Code and advocating it as the political party's policy. Even if such incidents mentioned in the application had passed by, both respondents' campaign for revocation or amendment to the Penal Code continued proceeding in form of uniformed movements; that is to say, they engaged in many aspects: rallies, political movements, social media campaigns, the proposal of the bill to the House of Representatives, and election policy. Were both respondents independently to carry on doing so, there is element of causation between both respondents' acts and behaviours and eventual consequences. So, it would not be beyond the cause of subverting the democratic regime of government with the King as Head of State. Such actions of both respondents, thus, exercised rights and liberties to overthrow the democratic regime of government with the King as Head of State pursuant to section 49 paragraph one, and section 49 paragraph two provided that the Constitutional Court shall have a power to order to cease such act that potentially took place again.

The Constitutional Court unanimously rendered its ruling that both respondents' acts were the exercise of rights and liberties to overthrow the democratic regime of government with the King as Head of State pursuant to section 49 paragraph one of the Constitution, and ordered that both respondents shall refrain from expressing any opinions, speaking, writing, publishing, advertising as well as any other means of expression to repeal section 112 of the Penal Code. In addition, further amendment to such law irrespective of legitimate legislative procedures shall

be prohibited in accordance with section 49 paragraph two of the Constitution, and section 74 of the Organic Act on Procedures of the Constitutional Court, B.E. 2561 (2018).

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