



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
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Seoul, Republic of Korea**

**Questionnaire
Reply by the Constitutional Court of Thailand**

A. Court description

Unless your Court has already provided a description for the CODICES database (www.CODICES.coe.int), we kindly invite you to prepare a short presentation of your Court. This will allow the member courts to get to know each other better. Please briefly set out your Court's composition and competences under the headings below:

- Introduction
- I. Basic texts
- II. Composition, procedure and organization
- III. Jurisdiction / Powers
- IV. Nature and effects of Judgments
- Conclusion

#Answer

Introduction

Thailand embraces a dual or parallel court system. The Constitution of the Kingdom of Thailand B.E. 2550 (**2007**) establishes four types of courts, namely the Constitutional Court, the Administrative Courts, the Courts of Justice and the Military Court. These courts are independent and vested with different powers and duties. The Constitutional Court of the Kingdom of Thailand is a specialized court, that is, a judicial organ whose jurisdiction is distinctive from those of the Courts of Justice, the Administrative Courts and the Military Courts, in order to adjudicate upon problematic issues of constitutionality of a law commonly known as "constitutional cases" to protect the principle of the constitution as the supreme law of the land and to recognize and safeguard the rights and liberties of the people.

I. Basic texts

The Constitution of the Kingdom of Thailand B.E. 2550 (**2007**)

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II. Composition, procedure and organization

Composition

Under the Constitution of the Kingdom of Thailand B.E. 2550 (**2007**), the Constitutional Court consists of the President of the Constitutional Court and 8 Justices of the Constitutional Court, appointed by the King upon the advice of the Senate.

1. *Justices of the Supreme Court of Justice*, **3** of whom are selected at a General Assembly of the Supreme Court of Justice by secret ballot.

2. *Justices of the Supreme Administrative Court*, **2** of whom are elected at a General Assembly of the Supreme Administrative Court by secret ballot.

3. *Qualified persons in the field of law*, **2** persons who genuinely possess knowledge and expertise in law.

4. *Qualified persons in the field of political science, public administration or other social sciences*, **2** persons who genuinely possess knowledge and expertise in the administration of State affairs.

The President and justices of the Constitutional Court hold office for 9 years as from the date of their appointment by the King and for only one term. In addition to the vacation of office upon the expiration of term, the President and justices of the Constitutional Court vacate office upon :

(1) death;

(2) being of seventy years of age;

(3) resignation;

(4) being disqualified or being under any of the prohibitions under section 205;

(5) having done an act in violation of section 207;

(6) the Senate passing a resolution under section 274 for the removal from office;

(7) being sentenced by a judgment to imprisonment notwithstanding the case not being final or the suspension of sentence, except for the case of an offence committed through negligence, a petty offence or a defamation offence that is not final.

Procedure

1. The procedure for consideration of cases of the Constitutional Court is an inquisitorial system. If the Court is of the opinion that the case has a fact or enough evidences for consideration, the Court might consider the case without hearing. Where the case has not enough evidences for the case's consideration, additional evidences must be sought. Hearing will then be needed.

2. The quorum of the Constitutional Court for hearing and rendering a decision consists of not less than 5 justices. The decision of the Constitutional Court will be made by a majority of votes, unless otherwise provided in the Constitution.

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Every justice of the Constitutional Court who constitutes a quorum shall give an opinion on his own part and make an oral statement to the meeting before passing a resolution.

The decisions of the Constitutional Court and the opinions of all justices shall be published in the Government Gazette.

The decision of the Constitutional Court must at least consist of the background or allegation, summary of facts obtained from hearings, reasons for the decision on questions of fact and questions of law and the provisions of the Constitution and the law invoked and resorted to.

Organization

The Constitutional Court has the autonomy to organize itself with regard to case management as well as the general administration of the Court. The Constitutional Court has an independent secretariat, with the Secretary-General of the Office of the Constitutional Court as the superior official directly responsible to the President of the Constitutional Court. The Office of the Constitutional Court has independence in personnel administration, budget and other activities as provided by law.

III. Jurisdiction / Powers

The Constitutional Court of Kingdom of Thailand vested with powers and duties of adjudicating over “constitutional cases” which may be divided into the following nine categories.

1. constitutionality review of bills and draft rules of procedure of the legislative branch prior to their promulgation so as to prevent any contrariness or inconsistencies with the Constitution.

2. constitutionality review of promulgated laws so as to prevent any contrariness or inconsistencies with the Constitution.

3. constitutionality review of the prerequisites for the enactment of an Emergency Decree to avoid any contrariness or inconsistencies with the Constitution.

4. ruling on whether or not members of the House of Representatives, senators or members of the committee are involved directly or indirectly in the use of the budgetary appropriations.

5. ruling on disputes regarding the powers and duties among the National Assembly, the Council of Ministers or Constitutional Organs other than the courts which arise between two or more of such organs.

6. review resolutions or regulations of political parties, consideration of appeals of members of the House of Representatives and ruling on cases concerning the unconstitutional exercise of political rights and liberties by a person or a political party.

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7. ruling on the membership or qualifications of members of the National Assembly, Ministers and Election Commissioners.

8. ruling on whether or not a treaty requires prior approval of the National Assembly.

9. powers and duties prescribed under the Organic Act on Political Parties, B.E. 2550 (2007).

IV. Nature and effects of Judgments

The decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs. The effect of its decisions is thus *erga omnes*.

Conclusion

The Constitutional Court is a supreme court regarding constitutional matters. As such, it performs the important function of safeguarding the supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translate into reality the protection of rights and liberties by the exercise of adjudicative power.

B. Social integration

As concerns the specific sub-topics for the 3rd Congress, please reply to the following questions in a succinct manner, in any of the languages of the conference - but if possible with a translation into English.

1. Challenges of social integration in a globalised world

1.1 What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law ?

Answer

In the past, there were no cases in the field of asylum law or social security law coming to the Constitutional Court. But there was a case concerning the issue of equality and non-unjust discrimination relating to taxation law. In its Ruling No.17/2555 (**2012**), the Constitutional Court held that the Revenue Code provisions whereby a wife's income (*except for income from employment*) had to be aggregated with that of her husband and declared in his tax return, resulting in higher tax burden for the husband and wife because of progressive tax rate, were discriminatory and contrary to the equality provision of the Constitution. Hence, these provisions were unenforceable. Each spouse has a right to file his/her own tax return.

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1.2 How were issues of social integration or conflict transformed into legal issues?

Answer

Issues of social integration or conflict usually transformed into legal or constitutional issues as claims that provisions of laws or legislations were contrary to or inconsistent with the provisions on rights and liberties of the Thai people in the Constitution.

1.3 Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before you Court in the past and what are they at present?

Answer

Yes, it is expected that legal issues relating to social integration will increase in the future.

Dominant questions, as in the past, are expected to be cases that invoke the constitutional provisions on human dignity, rights, liberties and equality of the people as provisions to which provisions of law are alleged to be contrary or with which provisions of law are alleged to be inconsistent. Outstanding among them are expected to be cases concerning claims of violations of the principle of equality and non-unjust discrimination.

2. International standards for social integration

2.1 What are the international influences on the Constitution regarding issues of social integration/social issues ?

Answer

Generally accepted principles provided in international instruments on human rights were taken into consideration during the drafting of every Thai Constitution, including the current Constitution - The Constitution of the Kingdom of Thailand, B.E. 2550 (**2007**).

2.2 Does your Court apply specific provisions on social integration that have an international source or background ?

Answer

The Constitutional Court applies provisions of the Constitution to cases. These provisions normally contain internationally accepted principles, for example, the principle of equality and non-unjust discrimination.

2.3 Does your Court directly apply international instruments in the field of social integration ?

Answer

No. The Constitutional Court applies only provisions of the Constitution.

2.4 Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law ?

Answer

Not exactly. Sometimes, mention may be made to international instruments on human rights when the issue is about rights and liberties of the people.

2.5 Has your Court ever encountered conflicts between the standards applicable on the national and on the international level ? If so, how were these conflicts solved ?

Answer

No. Usually, national standards will be in compliance with international ones.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1 What kind of constitutional law does your Court apply in cases of social integration-e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, *Staatszielbestimmungen*, ...?

#Answer

The Constitution and constitutional principles.

3.2 In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals ?

#Answer

These are cases of individual constitutional complaints. The Constitution of the Kingdom of Thailand, B.E. 2550 (**2007**) section 212 stipulates:

“A person whose rights and liberties recognised by this constitution are violated, has the right to submit a motion to the Constitutional Court for its decision as to whether the provisions of the law are contrary to or inconsistent with the Constitution.

The exercise of rights under paragraph one must be a case of an inability to exercise the right by other means as provided in the Organic Act on Procedures of the Constitutional Court.”

It can be seen that constitutional law provisions to be invoked by individuals must, by a nature of thing, be provisions concerning rights and liberties of the people.

3.3 Does your Court have direct competence to deal with social groups in conflicts (possibly mediated by individuals as claimants/applicants) ?

#Answer

No. The Constitutional Court has no direct competence to deal with social groups in conflicts. Those who can start the proceedings before the Constitutional Court (those who have *locus standi*) are rather limited. The Constitution specifies the person who will have *locus standi* in each type of cases. For example, in a case of constitutional review of a bill, President of the House of Representatives, President of the Senate or President of the National Assembly at the instance of no fewer than one - tenth of existing members of each House or the Prime Minister can start the proceedings.

3.4 How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination) ?

#Answer

Cases relating to social integration or social disintegration that appear before the Constitutional Court are usually cases of constitutional review of promulgated laws. If the Constitutional Court finds that a provision of law is contrary to or inconsistent with the Constitution, such a provision is no longer enforceable. It is as if there is no such a provision at all.

3.5 Can your court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies ?

#Answer

The Constitution provides in section 216 paragraph 5 that the decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other state organs. Thus, the decisions or interpretation of the Constitutional Court will serve as standards for further cases. However, it can hardly be said that the Court can act preventively to avoid social conflict since the Constitutional Court, as a court, can not start the proceeding by itself at its own initiative.

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3.6 Has your Court ever encountered difficulties in applying this tools ?

#Answer

No, because the Constitutional Court is not in a position to act preventively to avoid social conflict as described in your question.

3.7 Are there limitations in the access to your Court (for example only by State powers), which prevent it from setting social conflicts ?

#Answer

In cases of constitutional review of promulgated laws, it can be said that individuals have access to the Constitutional Court *indirectly* or *directly*.

He has indirect access when he as a party to a case in the Court of Justice or the Administrative Court or the Military Court requests that Court to refer the constitutionality of provisions of law to be applied to his case for consideration of the Constitutional Court. He also

has indirect access when he submits a complaint to the Ombudsmen or the National Human Rights Commission and those bodies agree to submit the case to the Constitutional Court for decision.

He has direct access when he considers that his rights and liberties are violated by a provision of law and he requests the Constitutional Court to rule that such a provision of law is contrary to or inconsistent with the Constitution. However, before doing so, all legal remedies must have been exhausted, namely the case must have gone through the Courts, the Ombudsmen and the National Human Rights Commission. The complaint to the Constitutional Court must be a last resort remedy sought for.

4. The Role of constitutional justice in social integration

4.1 Does your Constitution enable your Court to act effectively in setting or avoiding social conflicts ?

#Answer

Main jurisdiction of the Constitutional Court is constitutional review of law *a priori* and a *posteriori*. Social integration issues as contained in the provision of law will be reviewed as to whether that provision of law is contrary to or inconsistent with the Constitution or not. The decisions of the Constitutional Court will become standards for future cases. Unlike the Courts of Justice or the Administrative Courts, the Constitutional Court is not a trial court in settling social conflicts.

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4.2 Does your Court de facto act as “a social mediator”, or/and has such a role been attributed to it ?

#Answer

No, the Constitutional Court does not act as “social mediator”; nor has such a role been attributed to it.

4.3 Have there been cases, when social actors, political parties could not find any agreement, they would “send” the issue to your Court which had to find a “legal” solution, which normally should have been found in the political arena ?

#Answer

No, there is not such a case regarding social integration issues. Of course, the Constitutional Court has powers and duties to rule on disputes as to the powers and duties among the National Assembly, the Council of Ministers or the Constitutional organs other than the Courts which arise between two or more of such organs. The substance of disputes always concerns conflicting views about the powers and duties of such organs.