

Judicial Independence: Constitutional Court of the Kingdom of Thailand

Separation of power in the legislature, the executive, and the judiciary is a crucial principle to modern democracy. The separation of these three authorities established the mutual checks and balances between them, which ensured the limitation of any over usage of power by another power. One of the essential indications of a state that abided by this principle is the independence of the judiciary. The independence of the judiciary is a logical result of the principle of separation of powers in the sense that the vesting of judicial functions in a body separated from the legislature and the executive can only be meaningful if that body is truly independent.

The one aspect of sovereign powers, the judicial powers are resided in the Courts. This is asserted in the Constitution which provides that the trial and adjudication of cases are the powers that belonged to the Courts, that must be carried out with due regard to justice and following with the Constitution, laws, and in the name of the King. Judges are independent in the proper, swift, and fair trial and adjudication of cases per the Constitution and laws.

It can be interpreted that only the Courts can exercise judicial powers to ensure justice. The Constitutional Court, just like other Courts in the system, is independent and has to consider constitutional cases following the Constitution and laws.

1. The independence of the Constitutional Court as an institution

In constitutional democracy, the constitution is determined to be supreme. This principle is reflected through the constitution, which enacted that the provision of any law, rule, and regulation contrary to or inconsistent with the constitution will be voided. The Constitutional Court then performed the important function of safeguarding the supremacy of the Constitution. Also, served as a judicial body, which recognizes and protects the rights and liberties of people through the exercise of adjudicative power.

The Constitutional Court was established under the Constitution. It consists of the President and eight judges, appointed by the King upon the advice of the Senate. “Justices of the Constitutional Court” was the name of the Judges of the Constitutional Court.

The Constitution provides for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties can be divided into the following:

- A case involving the constitutionality of laws or bills
- A case in which a person suffering a violation of right or liberty constitutionally protect alleges that the conduct concerned is contrary to or inconsistent with the Constitution (constitutional complaint)
- Any other case provided by the Constitution, an Organic Act, or any law to be within the jurisdiction of the Court

Autonomy in regulatory and administration.

The Constitutional Court has the autonomy to organize itself in the aspect of case management and general administration of the Court. The Court has an independent secretariat body, with the Secretary-General of the Office of the Constitutional Court as the executive, directly responsible to the President of the Constitutional Court. Secretary-General of the Office of the Constitutional Court was nominated by the President of the Constitutional Court with the approval of the Justices of the Constitutional Court collectively. The Office of the Constitutional Court also has independence in personnel administration, budget, and other activities as provided by law.

In addition, the Office of the Constitutional Court Act, B.E. 2542 (1999) was enacted to realize the above-mentioned provision of the Constitution. Based on this Act, the justices of the Constitutional Court have the authority to issue regulations, budget, finance, and other business related to the Office of the Constitutional Court. Such regulations or notifications will be signed by the President of the Constitutional Court and come into effect upon their publication in the Government Gazette.

Budgetary independence

The Constitutional Court planned its budget, which is a part of the State budget. The Constitution provides that the State will allocate sufficient budgets for the autonomous administration of the Constitutional Court and in consideration of expenditure estimates for the Constitutional Court. In addition, if the Court believes that the allocated budget is insufficient, it will

submit a motion to the committee (National Assembly's Budgetary Committee) directly.

As regards the submission of budget estimates, the Office of the Constitutional Court Act, B.E. 2542 (1999) stipulates that the Office will submit to the Council of Ministers. Its estimates of the budget are under the resolution of the Justices of the Constitutional Court collectively to incorporate it in the annual appropriations bill or the supplementary appropriations bill. As the case may be, to set it aside as subsidies of the Justices of the Constitutional Court and the Office of the Constitutional Court.

One special feature of the budgetary management of the Office of the Constitutional Court is that the unspent budget left over from the previous fiscal years could be carried over to the current fiscal year without the need to return it to the Government's central budgetary pool. However, a report regarding the amount unspent has to be submitted to the Council of Ministers at the end of each fiscal year.

Compliance with the Constitutional Court ruling

The Constitution implemented that the ruling of the Constitutional Court is final, and has the binding power over the National Assembly, the Council of Ministers, the Courts, and other state organizations. It is final in the sense that the parties are unable to file an appeal to any Court; it is binding that the ruling of the Constitutional Court will bind not only the parties involved in the cases but also the third parties. Thus, once the Constitutional Court passes a ruling, that ruling will instantly bind other state agencies, the law's enactment and its application, and interpretation.

2. The constitutional independence of the individual judge

While it is undeniable that in one sense the individual independence of the judge depends on "the legal mind" of that particular judge, it is still important that there should be guarantees of independence of individual judges provided in either the Constitution or laws. In the case of the Constitutional Court of Thailand, a certain number of guarantees that support the independence of individual judges are provided in the Constitution.

Selection process

Since the Constitutional Court is a special judicial organization, the selection for the 9 Justices of the Constitutional Court is different from judges of

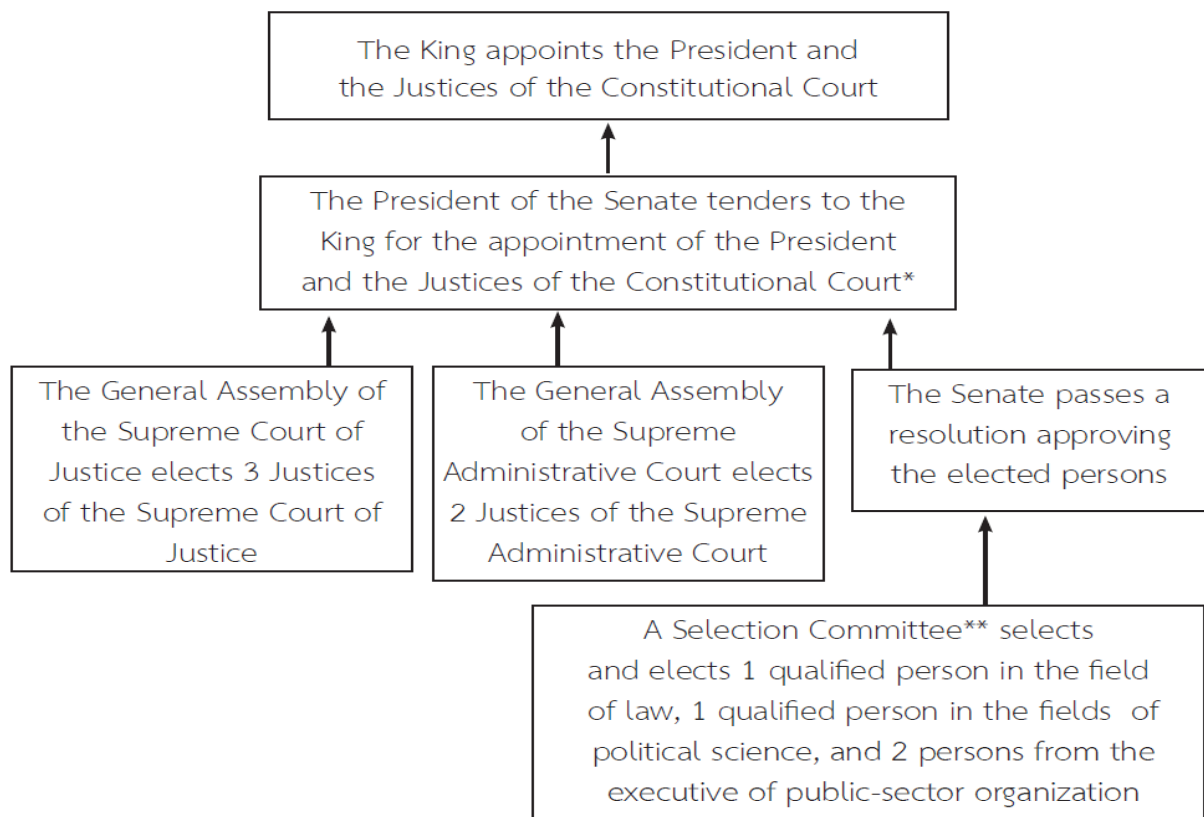
other courts. The Constitution of the Kingdom of Thailand B.E. 2560 (2017) stipulated that the Justices of the Constitutional Court came from four different fields of expertise.

(a) Justices of the Supreme Court of Justices, 3 of whom are selected at a General Assembly of the Supreme Court of Justices by secret ballot.

(b) Justices of the Supreme Administrative Court, 2 of whom are selected at a General Assembly of the Supreme Administrative Court by secret ballot.

(c) Qualified 2 persons from the academic field; 1 from the field of law who genuinely possess knowledge and expertise in law with the academic qualification not less than professor level. And, 1 person from the field of political science who genuinely possess knowledge and expertise in political science with an academic qualification not less than professor level

(d) Qualified 2 persons from government organization; 2 (current/former) executive level officers from any government or public-sector organization.



The 9 elected justices shall hold a meeting and elect one among them to be the President of the Constitutional Court and notify the result to the President of the Senate accordingly.

The minimum age for a qualified person to be Justices of the Constitutional Court is 45 years, and the maximum age is 68 years. The term of office for the Justices of the Constitutional Court is 7 years, and they will hold office for only one term.

3. Operating procedures of the Constitutional Court

The Constitutional Court, as a court, is unable to initiate the proceeding by itself at its initiative. The parties who have legal standing according to the constitution have to file an application with the Constitutional Court to start the case for a ruling or order. The list of eligible parties to file an application is as follows:

- Courts of Justice
- Administrative Courts
- Military Courts
- Constitutional Organs
- Attorney-General
- Members of the House of representative, senators
- A person whose rights and liberties have been infringed.

The filing of an application has to be in accordance with the procedure and conditions provided in the Constitution.

The Constitution provides that the quorum of Justices of the Constitutional Court for hearing and ruling a decision will consist of not less than 5 Justices. A majority of votes will make the decision unless otherwise provided in the Constitution. Every Justice of the Constitutional Court who constitutes a quorum will give an opinion of his part and make an oral statement to the meeting before passing a resolution. Moreover, the decisions of the Constitutional Court and the opinions of all Justices will be published in the Government Gazette.

The above procedure ensured that the Justices are free to have separate opinions, or dissenting opinions; transparency will be realized since the Court's decisions, as well as each Justice's opinion will be published. This, surely enhance the independence of individual Justices.

Process of deliberation of the Court

The Justices of the Constitutional Court collectively will consider a case after accepting it for consideration and ruling. However, once the application has been filed to the Constitutional Court, the President usually appointed no fewer

than 3 Justices to take charge of the case. The duties of Justices in charge are; considering whether to accept the application for consideration and ruling or not, taking charge of the case files, and issuing any order, which does not constitute a ruling of the case. An order of Justices in charge of a case will be made by majority vote.

The Justices of the Court will consider the case with utmost confidentiality, in the deliberation; the Justices are free to state their opinions on the case. The decision of the Court will be taken by votes on each issue of the case, no abstention is allowed

4. Conclusion

Independence is a very important tenet of the judiciary, including the Constitutional Court. It is a mean, which enable judges to decide cases impartially, without fear or favor, affection or ill will. The guarantees of independence of the Constitutional Court of the Kingdom of Thailand as an institution as well as the constitutional independence of individual justices as provided in the Constitution and related laws are crucial toward the ideal of justice.

Now, the Constitutional Court is faced with the diverse challenge to the Court's transparency and judicial independence. It is undeniable that the challenges toward transparency and judicial independence call for a diverse answer to how the Constitutional Court can defend its independence and ensure the public of its transparency, both toward the people and the related parties of the cases.

In facing these challenges, the "state of mind" of the Justices of the Constitutional Court becomes all the more important. The Justices must stand firm in their own decision while giving out the ruling strictly in line with the provision of the laws. Moreover, having great fortitude and maintaining a high level of resilience in the discharge of their judicial duties with transparency and impartiality. Also, abiding by the oath they took at the time of taking the office solemnly declared before His Majesty the King.