THE POWERS OF THE JUDICIARY :

THE NEW COMPOSITION TOWARD SOCIAL JUSTICE

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Introduction

According to Article 197 paragraph 1 and paragraph 2 under the Constitution of the Kingdom of Thailand,

"The trial and adjudication of cases are the powers of the Courts, which must proceed justly in accordance with the Constitution and the law and in the name of the King"

A judge is free and independent to adjudicate correctly, quickly, and justly in accordance with the Constitution and law."

Whether it is a normal time or critical, the Courts receive the complete confidence and credit for exercising its powers independently in the name of the King to ensure that primarily legal, that is, judicial processes are engaged to resolve disputes in accordance with the Constitution and the law for the protection of the public and individuals such that justice is seen to be done. The Courts of today therefore are not only the organizations to end social conflict but must help to solve social problems as well, particularly in the case that other institutions are made impotent and unable to solve them with any efficiency. The importance of the powers of the Courts in society and politics has become a normal feature in a democracy, known increasingly as the judicialization of politics, by which is meant the expansion of the jurisdiction of the Courts or judiciary in general to handle political or administrative disputes. On

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the Other hand, in the opinion of some analysts, the expansion of the adjudication duty of the Courts beyond the normal confines of the judicial powers is not tantamount to the enlargement of the judicial powers at all, but is already within its own jurisdiction. Nevertheless, under the first opinion, judicialization represents a stage of progress for the Courts. [1]

The emergence of the phenomenon is one significant step in a long process of democratization, indicating that the judicialization of politics is not inconsistent with or runs counter to democratic values. There is no doubt that a democratic country whose judiciary can function to the full capacity of its powers will be strengthened in the process even, for the rights of its citizens will come under due protection of the law. Nevertheless, the judicialization of politics varies from country to country. The trend itself is not new in the United States but quite a recent phenomenon in Europe, for example in Great Britain and Germany, and particularly in France, Portugal, Spain, and Italy.

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[1] Carlo Guamieri & Patsizia Pederzoli, **The Power of Judges** (Great Britain: Oxford University Press, 2003), p.1

The Powers of the Courts under the 1997 Constitution

Montesquieu, the French jurist and political philosopher, advocates the separation of powers into the legislative, the executive, and the judiciary. The three departments are independently distinct from one another in duty and exercise of state powers. That is to say, the legislative has the duty of legislation, the executive has the duty of national administration and implementing of the laws, and the judiciary has the duty of adjudication according the letter of the law. [2]

The separation of powers, as framed above, aims at preventing power abuse presumably committed by the executive, which explains why the boundary line of division between the legislative and the executive must be clear-cut while the judiciary is given full independence. The executive therefore can only exercise its powers within the limits set by the legislative and the judiciary is empowered to examine if the executive's exercise of state powers is within the limits imposed by the law, including deciding if the legislative has made enactment correctly and in accordance with the provisions of the Constitution. Only in this scenario will the checks and balances mechanism is in place, bringing about the counter-balancing of powers against each other to prevent power abuse and that there is in practical reality the rule of law and true democracy functioning. [3]

Prior to 1997, there had been several constraints against the checks and balances mechanism. Firstly, the organization instituted under the separation of powers principle

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[2] Montesquieu, **The Spirit of Laws** (1750), Vol I, Book II, C6, P.215.

3 "Directions of the New Constitution," **Proceedings of the Sixth National Legal Science Conference,** 2006, 28-29 March 2007, p.3

could not perform their duties with efficiency, for the executive controlled the majority in the National Assembly, while the legislative could check only major policy issues and the judiciary was hampered by a knotty and sluggish bureaucracy, largely inflexible and unresponsive to changing circumstances. Although attempts were made to create several more monitoring organizations, for example the National Anti Corruption Commission (NACC), the Office of the Auditor General of Thailand, and the Constitutional Tribunal. These organizations, however, carried no real clout and lacked true independence in monitoring the executive. For this reason, the 1997 Constitution gives a whole chapter to the checking of the exercise of state powers in which the existing organizations are to be revamped and hitherto non-existing organizations created in order to institute comprehensive checking of the exercise of state powers that is independent, transparent and free from interference from the executive and the legislative. The investing of the independent organizations with independent powers is based on the 5 principles :

1. Guarantee of independence, especially with the appointment of long tenure and only one term of office-holding, independence of personnel, finance, and budget administration, including an independent secretariat which lays down its own rules, regulations, and restrictions;
2. All aspects of the Government affairs must be subject to non-repetitive checking by organizations;
3. They must have real power to achieve working effectiveness;
4. Checking can be targeted at the politicians as well as the bureaucrats in connection with the politicians;

5. No organization (s) holds absolute power and is subject to mutual checks and balances. [4]

The pre-existing organizations that have been revamped and the newly-created organization having the duty to control and check the exercise of state powers under the above principles, to be called collectively **"Constitutional Organizations under the Constitution of the Kingdom of Thailand"**, B.E. 2540 (A.D.1997), comprise [5]:

1. Courts of Justice
2. Constitutional Court
3. Administrative Courts
4. Election Commission
5. The National Anti Corruption Commission
6. State Audit Commission
7. Ombudsmen
8. The National Human Rights Commission.

Of the eight independent organizations, only three are judicial organizations with real judicial powers. They are:

1. Courts of Justice
2. Constitutional Court
3. Administrative Courts.

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[4] Chalat Chongsuephan, "Analysis of the Independence of Constitutional Organizations of the Kingdom of Thailand, B.E. 2540," **Summary of the Eighth Academic Conference of King Prajadhipok's Institute** B.E. 2549, p.285.

[5] Ibid, p.286.

The three organizations are grouped under the chapter on the Courts. Previously, there were only the Courts of Justice, which try and adjudicate cases under the Constitution and the law in the name of the King, making it a unitary court system, like that in those countries which use the common law system, for example England and the United States of America, including some of the countries that have a system of codified written laws, for example Japan and South Korea. In the course of drafting the 1997 Constitution, however, studies had been made on checking of the exercise of state powers, to produce an opinion that the Courts of Justice, the Constitutional Tribunal, and the Commission for Consideration of Complaints, all of which were regarded as judicial and semi-judicial organizations, faced the problem of being deprived of a true mechanism and efficiency to really check the exercise of state powers. This is all the more apparent, due to the fact that the Courts of Justice were faced with an overload of impending cases and the public therefore were not receiving its due of the justice process while the Constitutional Tribunal lacked true independence and had a very limited role, for it had to await cases referred from the Courts of Justice, the Parliament, or the Prime Minister. Likewise for the Commission for Consideration of Complaints, it had no real authority to enforce its decisions on the complaints lodged, as it was up to the Prime Minister to issue an order, as the case may be, rendering the organization's role impotent and devoid of true independence. [6] The impasse convinced the Constitution-Drafting Assembly to decide on

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[6] Yuwarat Kamolwet, "Summary of the Study on the Checking of the Exercise of state Powers," **Report of the Workshop of the National Research Council of Thailand for Political Science and Public Administration,** 25-26 February 1997, 11-12 and 25-26 March 1997, pp.2-7 and 2-8.

reorganizing the judicial organization into a binary court system in which the Criminal Division for Holders of Political Positions was created and included in the Supreme Court; the Constitutional Tribunal was made the Constitution Court, and the Commission for Consideration of Complaints was reformed to have the duty to try administrative cases in the form of Administrative Courts. The revamped system closely parallels the binary court system found in European countries, for example France and Germany.

Although there was a refutation of the claim that the majority of countries in the world have a binary court system and in its place strong insistence that most countries have a unitary court system, citing the fact that the binary court system belongs in the minority, which are found in Europe only, being a historical incidence originating in France, and despite the argument that should a binary court system be instituted, there should be established vertical uniformity in the country's judicial system, the argument, however, received no support in any way.[7] The 1991 Judicial Crisis, involving the controversial appointment of the president of the Supreme Court, was cited to back up the insistence that the entire judicial system be made independent. In the incident, the Minister of Justice interfered in the appointment of the president of the Supreme Court, as the Supreme Court at the time was still under the jurisdiction of the Ministry of Justice, in which the Justice Minister was empowered to nominate a name-list of candidates for judges appointed to the Judicial Commission, and had the power to veto the decisions of the Judicial Commission as well as to carry out an investigation and punishment of wayward judges. In view of the considerations, the

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[7] Charan Phakdithanakun, "Constitution Court, Courts of Justice, Administrative Courts," **Report of the Workshop of the National Research Council of Thailand for Political Science and Public Administration,** 25-26 February 1997, 11-12 and 25-26 March 1997.

constitution drafters insisted on liberating the Courts of Justice from the yoke of the Ministry of Justice, which is part of the executive. The Office of the Judiciary was to be created and put under the president of the supreme Court. The composition of the Judicial Commission was also overhauled, which consisted, in the old arrangement, of only the Chief Justices of the Supreme Court; instead, the new arrangement incorporates justice representatives from the three tiers of the Courts of Justice, namely the Court of First Instance, the Court of Appeal, and the Supreme Court, the exact same number of 4 representatives from each tier of which are to be nominated. Two additional independent judicial organizations are also created separately, namely the Constitutional Court and the Administrative Courts, whose organizational structure is similar to the Courts of Justice. On the surface, these courts gained independence in terms of judicial power; but in reality, an ominous amount of complications ensued to result in a coup d'etat in September 2006 and the drafting of a new constitution in 2007, to be discussed in due order.

In summary, the 1997 Constitution changed the composition of the judicial organization from a unitary system, established from the first constitution in 1932, to a binary system, comprising altogether 3 courts with different adjudicating functions. The Constitutional Court gives decisions on the possible contradiction or opposition of clauses and provisions of laws to the Constitution and questions on the powers and duties of constitutional organizations, including the false declaration of assets and debts

by political office-holders. Administrative courts adjudicate cases involving government agencies, agencies of the State, state enterprises, or local administrations, and disputes between state officials and private citizens, or between government agencies, agencies of the State, state enterprises, or local administrations, or between state officials under the command or jurisdiction of the Government itself, all of which stem from actions or non-actions in fulfillment of the law or being the responsibilities according to the law. The Courts of Justice try and adjudicate all cases excepting those which, as stated by the provisions of the Constitution or the law, come under the jurisdiction of other courts. The Supreme Court itself has been assigned the Criminal Division for Holders of Political Positions.

The Military Courts, which have jurisdiction over criminal cases involving soldiers, have been retained exactly as in all the constitutions in use.

The Powers of the Courts under the 2007 Constitution

As said above, the 1997 Constitution gives extensive power of checking of the exercise of state powers in the form of independent organizations and through the separation of judicial power into 3 organizations, that is the Courts of Justice, the Constitutional Court, and Administrative Courts. But after only 8 years of implementation, the constitution was abolished through a coup by the Council for Democratic Reform under the Constitutional Monarchy (CDRM) and replaced by the 2006 Interim Constitution, paving the way for the drafting of a new charter within a period of 6 months. The following reasons are given for the coup d'etat [8]:

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[8] Council of Democratic Reform under the Constitutional Monarchy, **Facts on Administrative Reform in Thailand on 19 September 2006,** 2006.

1. Corruption and conflict of interest,
2. Policy blunders leading to the violation of human rights and liberty,
3. Inefficiency of organizations in supervising national administration and checking the exercise of state powers,
4. Serious rifts in society that infringe on almost all institutions in the country,
5. Continued controversies involving general election,
6. Political gap widening for more than a half year without the Government, National Assembly and Senate fully functioning,
7. Acts bordering on lese-majeste,
8. Tendency of the incitement of anarchical disturbance and serious conflict reaching its extreme.

This unprecedented national crisis led inexorably to the **"Administrative Reform"** incidence. Some provisions of the 1997 Constitution, as was alleged, were misinterpreted or abused or overexploited beyond the proper bounds to the point of a certain finger-pointing that **"The Constitution is dead."** [9] Incidents cited in support of the assertion in connection with the Constitution Court overextending its power and contravening the constitutional provisions involve as many as 10 cases. [10] Among the most notable cases is the court decision concerning the case of alleged assets and debts concealment by the Prime Minister, popularly know as the **"Share Concealment case,"** in which Pol Col Thaksin Shinawatra, the Prime Minister, was acquitted and therefore not liable to offense under the constitutional article 295; he was not required to leave his prime ministerial post and not barred from politics. The case is highly controversial, arousing widespread suspicion and tarnishing the confidence in the judicial organization among the

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[9] Khanin Bunsuwan, **The Constitution Is Dead** (Bangkok: Kho Khid Duai Khon Publishing, B.E. 2548)

[10] Ibid, pp. 107-132.

public. On 25 April 2006, His Majesty the King addressed a gathering of administrative judges : **"If you cannot fulfill your pledge to work for the furtherance of democracy, you may have to resign and the problem remains unsolved. Still, it must be solved somehow. You may turn to the Constitution Court for advice, but the Constitution Court says it is not in its jurisdiction, claiming the matter originated with the drafting of the constitution, and once the constitution was completed, it is no longer of its concern."** On the same day, the King addressed the President of the Supreme Court and his entourage, **"The justices of the Supreme Court hold important duties commensurate with their court. We have other courts, that is the Administrative Courts and the Constitution Court. But no other court holds more important duties than the Supreme Court, which has [final] jurisdiction to adjudicate. I therefore ask that you give it your utmost deliberation, perhaps in consultation with justices of any other courts, the Administrative Courts and the Constitution Court, concerning a possible course of action to take, and you must act in a hurry. Or else the country stands in peril of going down. This time is among the worst crises in the world."** [11]

In drafting the 2007 Constitution, the drafters retain the same composition of the judiciary as in the 1997 Constitution : Constitutional Court, Courts of Justice, and Administrative Courts. But, the justice recruitment process of the Constitutional Court, on account of its past flaws, has been modified, in which representatives from political parties and universities, who had been shown to be the weak points susceptible to

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[11] Vicha Mahakhun, **Legal Reasoning** (Bangkok : Nitibannakan Publishing, B.E. 2549, fifth printing) , pp.252-254.

political interference, were omitted and replaced by representatives of those five institutions tied closely to the sovereign power itself: President of the Supreme Court, President of the Supreme Administrative Court, one, chosen among themselves, from the presidents of constitutional organizations, President of the National Legislative Assembly, and the Opposition Leader. Furthermore, the Constitutional Court consists of the following justice appointments: three must be selected by a general meeting of the Supreme Court justices, two by a general meeting of the Supreme Administrative Court, two legal experts with highest qualifications to be selected by a special selection panel, and two distinguished specialists in political science, public administration, or other social sciences who truly are expertly knowledgeable in national administration to be selected by a special selection panel, making up a total of 9 justices.

To sidestep the objection that all the confirmation voting in the Senate is severely interfered with by politics, a modification of the procedure was put in place, in which a name-list of nominees is submitted to the Senate for a confirmation ballot. In the case of Senate confirmation, the President of the Senate shall submit the name (s) to the King for his signature in approval. In the case of the Senate rejecting the name-list in toto or in part, it must send the list back to the selection committee. If the selection committee still insists on its original decision with a unanimous vote, the list is resubmitted to the President of the Senate for forwarding to the King for appointment. But if the decision of the selection committee is divided, a new selection process is to start anew, to be completed within 30 days. (Article 206)

Since the majority of the courts tend to give too much importance to the letter of the law and interpret its meaning strictly by the letter so as to violate the spirit of the law, which is not so apparent in the letter, but as every law is created in that spirit always, it therefore may be said that "**justice**" is the spirit of the law. For this reason, the drafters of the 2007 Constitution stress the importance of the courts delivering just decisions in addition to carrying out the trial and adjudication of cases in accordance with the law and in the name of the King, as well as to so act correctly and justly. According to Article 197,

"The trial and adjudication of cases are the powers of the Courts, which must proceed with justice in accordance with the Constitution and the law and in the name of the King.

A judge is free and independent to adjudicate correctly, justly, and quickly in accordance with the Constitution and the law."

In addition, whereas Article 3 of the 1997 Constitution states in one paragraph only:

"The sovereign power belongs to the Thai people. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution,"

the 2007 constitution adds a new principle of supreme importance concerning **"the rule of law"** in **Paragraph 2** of **Article 3** thus:

"The performance of duties of the National Assembly, the Council of Ministers, the Courts, the constitutional organizations and state agencies shall proceed under the rule of law."

The **"Rule of Law"** is no vogue word but is grounded in the belief that law is an essential device for building society, originally conceived in England and becoming a most influential legal theory in the world. Under the rule of law principle, a supreme government must be government by law. As A V Dicey, the renowned British legalist explains in his book *The Law of Constitution,* under the rule of law everyone is equal under the law: no man is above the law or enjoys any privileges whatsoever and everyone, regardless of rank, is subject to the ordinary law of the land, whether they are government officials or common people. Human rights and liberty must be respected, and man shall commit offence only in breaches of law and therefore be punished for it, as authorized by law, or else the authorities cannot lawfully interfere with his actions. And his case shall be tried in a court of law, which is empowered and independent in adjudicating in accordance with the laws of the land. [12]

The 2007 Constitution further has provisions for the rights and liberty of Thai citizens under Articles 26, 27 and 28, Paragraphs 2 and 3, namely:

Article 26 In exercising their authority, all State agencies must show regard for human dignity, rights and liberty under the provisions of this Constitution.

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[12] P.G. Osborn, **A Concise Law Dictionary** (London : Sweet & Maxwell, 1964), p.285.

Article 27 The rights and liberties, recognized by this Constitution expressly, by implication or by decisions of the Constitutional Court, shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, and other State organs in enacting, applying and interpreting laws.

Article 28 (Paragraph 2) A person whose rights and liberties recognized by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself in the Courts.

(Paragraph 3) A person shall be able to directly exercise his or her judicial right to bring a lawsuit to cause the State to comply with the provisions of this paragraph. However, where there already exists a law detailing the exercise of such rights and liberties as enshrined in this Constitution, the exercise of the rights and liberties shall be in compliance with the provisions of the said law.

In conclusion, the 2007 Constitution lays down the principle of protection for the independent exercise of judicial power, without arbitrariness and in recognition of the rights and liberties of citizens to bring a lawsuit in a court of law completely under the rule of law.

Constitutional Court

The 1997 Constitution, in being implemented, caused the following three problems: [13]

1. Structure of the Constitutional Court, for example the composition of the Constitutional Court, qualifications and forbidden qualities of the constitutional judges, the quorum at court sessions, and issuance of directives of the Constitutional Court;
2. Selection process for constitutional judges, accused of being dominated by the executive;
3. Relations and status of organizations, for example the manner of bringing cases to the Constitutional Court for decision, which has yet to be resolved.

For this reason, the 2007 Constitution determines the following principles as a basis for resolving the above problems, including removing other obstacles that can render the Constitutional Court impotent in its operation:

1. Composition and Terms of Office-holding of Constitutional Judges

1.1 Composition (Article 204)

The Constitutional Court consists of the President and eight judges of the Constitutional Court to be appointed by the King upon advice of the Senate from the following persons:

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[13] Banjerd Singkhaneti, "Political Reform: Case Study on Constitutional Organizations," paper presented at the 6th National Legal Science, B.E.2549 on "Directions of the New Constitution," 28-29 March 2007.

1.1.1 three judges of the Supreme Court of Justice holding a position of not lower than judge of the Supreme Court of Justice and elected at a general meeting of the Supreme Court of Justice by secret ballot;

1.1.2 two judges of the Supreme Administrative Court elected at a general meeting of the Supreme Administrative Court by secret ballot;

1.1.3 two qualified persons in law with thorough knowledge and expertise in this field, to be selected under Article 206;

1.1.4 two qualified persons in political science, public administration or other social sciences with thorough knowledge and expertise in public administration, to be selected under Article 206.

In the case where no judge of the Supreme Court of Justice or judge of the Supreme Administrative Court has been elected under 1.1.1 or 1.1.2, the Supreme Court of Justice or the Supreme Administrative Court, as the case may be, shall elect, at its general meeting, other qualified candidates who are without prohibited characteristics, and who have thorough knowledge and expertise in law fit for the performance of duties as judges of the Constitutional Court to be judges of the Constitutional Court under 1.1.1 or 1.1.2, as the case may be.

Those selected shall hold a meeting and select one among themselves to be the President of the constitutional Court and notify the result to the President of the Senate accordingly.

The President of the Senate shall countersign the Royal Command appointing the President and judges of the Constitutional Court.

1.2 Terms of office-holding (Articles 208, 209)

The President and judges of the Constitutional Court shall hold office for nine years as from the date of their appointment by the King and shall hold office for only one term.

In addition to the vacation of office upon the expiration of term, the President and judges 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 Article 205;

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

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

(7) Being sentenced by a judgment to imprisonment even if the judgment is not final or the sentence is suspended except for negligence, minor offences, or defamation.

2. *Competence of and Opening Proceedings in the constitutional Court*

2.1 The Case of the Provisions of Any which are Contrary to or Inconsistent with this Constitution (Article 6)

2.1.1 In applying the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within Article 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall submit its opinion in the course of official service, to the Constitutional Court for consideration and decision. Meanwhile, the Court can continue deliberation, but hold the judgment pending the decision from the Constitutional Court.

2.1.2 As for the control of enactment that contravenes the Constitution (Article 154), before the Prime Minister submits a Bill passed by the National Assembly to the King for his signature, or before re-submitting a Bill that the National Assembly has reaffirmed to the King for his signature, and if members of the House of Representatives, of the Senate, or the two Houses combined numbering not less than one-tenth of the existing numbering of the two Houses combined find anything contradicting the Constitution in the Bill, or if its passage is procedurally unconstitutional, they shall express their opinion to the President of the House of Representatives, the President of the Senate, or the President of the National Assembly, thereby

causing the said President who have received the opinion to submit that opinion to the Constitutional Court for consideration. Or if the Prime Minister thinks the said Bill contains any statement that is in conflict with this Constitution or is procedurally unconstitutional, he shall submit such opinion to the Constitutional Court for consideration.

2.2 The case of Suspension of a Bill under Article 147

The Cabinet or members of the House of Representatives are forbidden to submit another Bill with similar substance. Should a Bill be submitted that the House of Representatives or the Senate considers the said Bill to have the self-same or similar substance to the one suspended previously, the President of the House of Representatives of the President of the Senate shall submit it to the Constitutional Court for review (Article 149).

2.3 The Case of Violation of Personal Rights or Freedoms Provided by the Constitution

That person is entitled to petition to the Constitutional Court for decision whether the provisions of the law contradict the Constitution. (Article 212)

2.4 The Case of Arising of a Dispute as to the Powers and Duties of the National Assembly, the Cabinet, or Two or More Non-court Constitutional Organizations under the Constitution

The President of the National Assembly, the Prime Minister, or such organization shall submit the matter together with an opinion to the Constitutional Court for decision. (Article 214)

2.5 The Case of Deciding Whether an Emergency Decree Is Consistent with Article 184, Paragraphs 1 or 2

Before the House of Representatives or the Senate approves such an Emergency Decree, members of the Representatives or senators of not less than one-fifth of the total number of the existing members of each House have the right to submit an opinion on the impending question to the President of the House of which they are members for the respective President (s) to refer the matter to the Constitutional Court for decision. (Article 185)

2.6 The Case of Whether a Peace Treaty, Armistice and Other Treatises with Other Countries or International Organizations Must Be Approved by the National Assembly

The case arises out of the treaty providing for a change in the Thai territories, the extraterritorial areas in which the Kingdom has a sovereign right, or any jurisdictional area the Kingdom has acquired through treaty, or which has extensive impacts on the country's economic and social stability, or which has significant bindings on trade, investment, or national budget. The question, if and when arising, as to whether it must be approved by the National Assembly shall be decided by the

Constitutional Court. (Article 190, Last Paragraph) The matter shall be submitted following the same procedure as determined in Article 154, as shown in 2.1.2 of this article.

2.7 The Case of Not Less Than One-tenth of the Total Number of the Existing Number of Members of the House of Representatives or of the Senate Petitioning to the Their Respective President to Have the Membership of Any of Their Members or the Ministership of the Member Terminated (Articles 91, 92 and 182, Last Paragraph)

The President of the House concerned must forward the petition to the Constitutional Court for decision.

Courts of Justice

The Courts of Justice has the powers to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other courts. (Article 218)

1. Composition and Competence of the Courts of Justice (Article 219)

1.1 There shall be three levels of Courts of Justice, namely: Courts of First Instance, Courts of Appeal, and the Supreme Court of Justice, except otherwise provided by this Constitution or other laws. (Article 219, Paragraph 1)

1.2 The Supreme Court of Justice shall have powers as provided by the Constitution or the law to consider and adjudicate cases brought before it directly, appeal cases, or review the decisions or orders of the Courts of First Instance or the Courts of Appeal except in cases in which the Supreme Court of Justice thinks that the legal point and facts presented for appeal are not sufficiently substantive. In such cases, the Supreme Court shall have the powers not to accept the case subject to the procedure of its general meeting. (Article 219, Paragraph 2)

1.3 The Supreme Court shall have the power to consider and adjudicate a case connected with elections and revocation of the right to stand in the election of members of the House of Representatives. And the Appellate Court shall have the power to consider and adjudicate cases connected with elections and revocation of the right to stand in local elections and election of local administrators. The court proceedings shall be in accordance with that laid down by the general meeting of the Supreme Court, using the inquisitorial procedure and acting quickly. (Article 219, Paragraph 3)

1.4 There shall be in the Supreme Court of Justice a Criminal Division for Persons Holding political Positions, which quorum in court consists of nine Judges of the Supreme Court of Justice holding a position of not lower than Judge of the Supreme Court of Justice and elected at a general meeting of the Supreme Court of Justice by secret ballot and on a case-by-case basis. (Article 219, Paragraph 4)

2. *Judicial Commission of the Courts of Justice (Articles 220,221)*

2.1 The appointment and removal from office of a Judge of a Court of Justice must be approved by the Judicial Commission of the Courts of Justice. (Article 220, Paragraph 1)

2.2 The promotion, salary increase, and punishment of judges of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice. For this purpose, the Judicial Commission of the Courts of Justice shall appoint a sub-committee in each level of Courts for preparing and presenting its opinion on such matter for consideration. (Article 220, Paragraph Two) In the act of approval, the Judicial Commission of the Courts of Justice under paragraph 1 and paragraph 2, has to significantly take into consideration the erudition, performance and ethics of the person, (Article 220, Paragraph 3)

2.3 The Judicial Commission of the Courts of Justice consists of the following persons:

2.3.1 President of the Supreme Court of Justice as Chairman;

2.3.2 Qualified members of all levels of Courts: six from the Supreme Court, four from the Appellate Courts, and two from the Courts of First Instance, who are judges of each level of Courts and elected by judicial officials of all level of Courts;

2.3.3 Two qualified members who are not or were not judicial officials and who are elected by the Senate.

Administrative Courts

1. Jurisdiction of Administrative Courts

1.1 Administrative Courts have the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization, Constitutional organization, or State official (s) on one part and private individual on the other, or between a State agency, State enterprise, local government organization, Constitutional organization, or among State officials themselves, which dispute is a consequence of the exercise of the administrative power under the law, or the performance of and administrative act by such State agency, State enterprise, local government organization, Constitutional organization, or State official, as provided by law, as well as to try and adjudicate matters prescribed by the Constitution or the law to be under the jurisdiction of the Administrative Courts, but excluding decisions made by Constitutional organization which exercises its competence directly as accorded to it under the Constitution

1.2 There shall the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.

2. Judicial Commission of the Administrative Courts (Articles 224, 225,226)

2.1 The appointment and removal from office of an administrative judge must be approved by the Judicial Commission of the Administrative Courts before they are tendered to the King.

2.2 Qualified persons in the field of law and in the administration of State affairs may be appointed as judges of the Supreme Administrative Court. Such appointment

shall be made in the number of not less than one-third of the total number of judges of the Supreme Administrative Court and must be approved by the Judicial Commission of the Administrative Courts and by the Senate before it is tendered to the King.

2.3 The Promotion, increase of salaries, and punishment of administrative judges must be approved by the Judicial Commission of the Administrative Courts.

2.4 Number of administrative judges in each Administrative Court shall be determined by the Judicial Commission of the Administrative Courts.

2.5 The appointment of the President of the Supreme Administrative Court shall, when already approved by the Judicial Commission of the Administrative Courts and the Senate, be tendered by the Prime Minister to the King for appointment.

2.6 The Judicial Commission of the Administrative Courts consists of the following persons :

2.6.1 President of the Supreme Administrative Court as Chairman;

2.6.2 Nine qualified members who are administrative judges and elected by administrative judges among themselves;

2.6.3 Three qualified members, two of whom are elected by the Senate and the other by the Council of Ministers (Cabinet).

Conclusion

The powers of the judiciary in Thailand had always been played out cleanly, away from the meddling of politics. Alas, the designers of the 1997 Constitution have joined the powers of the judiciary with politics. From its previous status as a unitary court system, whose principal task was tied with dealings with the laws, there has arisen a binary court system to include the Courts of Justice, the Constitutional Court, and Administrative Courts, with the three Courts invested with political power. For instance, the general meeting of the Supreme Court has the power to select the Election Commission, and the Criminal Division for Holders of Political Positions was established in the Supreme Court while the Constitutional Court is empowered to adjudicate cases concerning assets concealment or false announcement of assets (the so-called "share concealment case") and the Administrative Courts are empowered to try and adjudicate wrongful acts committed by the executive. For this reason, it is unavoidable for the three Courts to interfere with political powers. And then, the powerful executive started to interfere with constitutional organizations to result in the agencies going astray and lacking in credibility in the end. The situation was worsened by the widespread graft and abuse of power supposedly committed by politicians, as was widely publicized, that no one or any organization could do to contain the damage or halt the crisis until strong street protests and movements were mobilized against the Government. The political problems went from bad to worse to result in another general election being held, which was branded undemocratic. On 25 April 2006, the King addressed a gathering of the judges of the Supreme Administrative Court : **"The Court itself has**

the right to speak out on election, particularly an election in which the vote count is less than 20 percent and there is only one candidate. This is important because it shows that that kind of election is incomplete... I ask that you study if there is connection, that is, how and in what way are you involved ? If you are not, you had better resign." On yet another occasion, the King addressed the President of the Supreme Court and the Supreme Court Bench: "**The time now is [one of] the world's worst crises. You therefore have a duty to perform...**" Eventually, the Courts of Justice, the Administrative Courts and the Constitutional Court have joined hands in resolving the political problems and breaking the deadlock, as allowed by their competence and duties. And yet, the supreme objectives could not be reached. In the end, a coup was staged by the military, like many such coups in the past, and a stage was set for the re-drafting of a new constitution, the 2007 Constitution, in which the old principle of instituting the Constitutional Court, the Courts of Justice, the Administrative Courts, and the Military Courts, constituting the judiciary and connected to independent Constitutional organizations in that the Courts are involved in the selection of key operators of those organizations, similar to the 1997 Constitution, but revised in such a way as to make it tough for politics to get a hand in, is maintained. There is therefore a strong suspicion if the judiciary is being dragged too far into politics. In my opinion, so long as the State continues to hold threats of violation of human rights and freedom, and the executive and the legislative are still without moral compunctions and liable to abuse of power, that involvement is a necessary evil and even a kind of legitimacy in that the judiciary must expand its powers to monitor the

other two powers and thereby provide the necessary checks and balances. The ultimate goal is of course to have a guarantee for the protection of the citizens' human rights and freedom and to create justice for society with equity. The expansion of the judiciary into politics is thus unavoidable.