



Part (B): Judiciary

The Issue on the Stability of Society in Thailand: Judicial Review and the Role of Courts

Mr. Bowornsak Uwanno, the former Dean of the Chulalongkorn University Faculty of Law selected to serve as Secretary of the Constitution Drafting Committee for the 1997 Constitution of Thailand (“1997 Constitution”), described the primary deficiencies of the then existing Thai political system: “Politics were dominated by the politicians rather than the people, who enjoyed only few rights and liberties. Politics were rife with dishonesty and corruption, resulting in politicians being commonly perceived as lacking legitimacy in their exercise of authority.”¹ To rectify these deficiencies, the 1997 Constitution explicitly granted an unprecedented number of rights and liberties to Thai citizens, opened new avenues for them to participate in politics, and supported efforts to combat vote buying.² Despite these provisions, however, vote buying continued to take place:

Vote buying was occurring in many rural areas, and the police were unable to prevent it. The practice of vote buying is illegal, but in Thailand, only the buying is criminalized, while vote selling is not (Appendix II, Sections 44, 45 of Thai Election Law). Observers in northeastern Thailand (i.e, Khon Kaen, Sisaket, Buriram, and Surin provinces) heard that vote buying was a major concern and problem during the election. . . . Because the northeast is the poorest region in Thailand, vote buying there is very likely an effective tool in political campaigning.³



"The intention of the Constitution has thus been foiled, as most of the independent watchdog agencies have been co-opted, emasculated, or circumvented, leaving Thaksin's government with almost absolute authority."⁴ Thaksin Shinawatra's regime, which came to power among allegations of election fraud and vote buying in particular, ruled Thailand from 2001 to 2006. Under the façade of democracy, Thaksin's Thai Rak Thai party was able to control parliament with an overwhelming electoral majority, establishing the strongest government in the history of modern Thailand since 1932.

Although Thaksin was ousted from his position as prime minister in the aftermath of the military coup in 2006, the army was not able to resolve Thailand's underlying political issues. Subsequently, not only the middle class, NGOs, educated and royalists, but also majority leaders of the army relied on the judiciary, as an independent institution, to be the final arbiter in resolving challenging societal disputes. General Anupong Paochinda, the Army Commander-in-Chief, stated that the judiciary was one of the three pillars of government that everyone must respect to ensure that society continues to function properly.⁵ Former Prime Minister Chavalit Yongchaiyudh also portrayed the judiciary as the chair umpire that has been keeping the balance in society.⁶ Thai media constantly showed its support for the judiciary, particularly in the aftermath of the military coup of 2006. Since then, the judiciary has consolidated its power step by step.

Adjudication of Political Disputes

In May 2007, the Thai Rak Thai party was dissolved by the Constitutional Court, and its executives, including ousted Prime Minister Thaksin Shinawatra, were banned from politics after being found guilty of electoral fraud.⁷ Surprisingly, Thai Rak Thai leader Chaturon Chaisang urged party loyalists not to fight the Court's decision or protest the ruling.⁸ Similarly, in response to the ruling Thaksin himself mentioned that if the rule of law is observed, the ruling is to be respected.⁹ As a consequence of the above decision, the Court solidified its authority as an independent arbiter capable of imposing checks on the other branches of the government. Then, the Thai Rak Thai transformed itself into the People's Power Party, led by Samak Sundaravej and former allies of Thaksin.



Unfortunately, not much has changed in Thai politics in terms of election fraud since the previous elections. The new elections, held at the end of 2007, were again fraught with instances of vote buying. The People's Power Party, including Thaksin's brother-in-law and eventual prime minister Somchai Wongsawat, assumed power by proxy on behalf of former members of the Thai Rak Thai and Thaksin.¹⁰ Courts came under increased pressure of the government after Samak Sundaravej assumed the post of prime minister. In June 2008, Prime Minister Samak Sundaravej criticized the judiciary, alleging that courts wielded excessive power and meddled in politics.¹¹ Similar criticism was also made by deposed Prime Minister Thaksin, who contended that Thailand's judicial system suffered from political interference.¹² The Supreme Court later rejected these criticisms,¹³ and the courts continued to exercise their power without fear or favor.¹⁴

On June 25, 2008, the Supreme Court sentenced three of former Prime Minister Thaksin's lawyers found guilty on charges of attempting to bribe court officials with 2 million baht stashed in a snack bag.¹⁵ On July 8, 2008, the Supreme Court ruled unconstitutional the government's signing of the Preah Vihear Joint Communiqué with Cambodia on June 18, citing Article 190 of the 2007 Constitution, because the communiqué was a kind of international treaty.¹⁶ It was one of the landmark judgments of the Supreme Court which checked the power of the government by exercising judicial review. Furthermore, on July 10, 2008, the Constitutional Court disqualified Public Health Minister Chaiya Sasomsap from holding office for failing to declare some of his wife's assets within a specified deadline.¹⁷ Finally, on July 31, 2008, the Criminal Court delivered another landmark verdict that marked a crucial step towards the restoration of the rule of law and sentenced Khunying Pojaman, Thaksin's wife, to three years of imprisonment on charges of tax avoidance in the alleged amount of 546 million baht arising out of a stock transfer in 1997.¹⁸ According to *The Nation*, "the court cited moral shortcomings in its ruling, saying Khunying Pojaman, while being Thailand's first lady, failed to act as a good example for society."¹⁹

The courts continued to solidify their reputation as an institution capable of independently adjudicating politically motivated cases, notwithstanding the constant pressure created by politicians who garnered the support of a majority of the



Thai people by means of election fraud. In another such case adjudicated on September 9, 2008, as described in *The Nation*, "the Constitutional Court made a historic ruling by ordering Prime Minister Samak Sundaravej to stand down immediately over the scandal surrounding his TV cooking show."²⁰

On December 2, 2008, the Constitutional Court ruled that Prime Minister Somchai Wongsawat, Samak's successor, must step down over election fraud, that his governing People Power Party and two of its coalition partners must be dissolved, and that the parties' leaders must be barred from politics for five years.²¹

The foregoing rulings of the courts have had a far-reaching impact and effect on Thai society and Thai politics, despite the fact that some of those rulings have been met with harsh popular criticism.²² The Constitutional Court reached the apex of its power by courageously pronouncing controversial, historical decisions while facing pressure from often unruly supporters of three political parties, which are no longer legal:

Although the mob prevented Constitutional Court justices and officials from entering the courthouse and forced the change of venue of the hearing and decision, the ruling of the Constitutional Court is in accordance with the provisions of the Constitution, thus upholding the rule of law without yielding to the pressure from any group.²³

Anti-government protesters terminating their crippling, week-long occupation of Thailand's airports after the courts' foregoing rulings is further evidence of the judicial power.²⁴

(The abovementioned part is extracted from a legal and judicial analysis paper entitled "Seeking Judicial Power" compiled by Aung Htoo, General Secretary of the Burma Lawyers' Council, on June 9, 2010.)

(Footnotes)

1 ANFREL Report on Thai Elections in 2005, Published by Asian Network for Free Elections (ANFREL), p.12; website: www.anfrel.org

2 Ibid



- 3 Ibid. at p. 44
- 4 Ibid. at p. 33
- 5 The Nation, August 15, 2008.
- 6 Ibid.
- 7 <http://newsinfo.inquirer.net/breakingnews/world/view/20070531->
- 8 Ibid.
- 9 http://en.wikinews.org/wiki/Thai_Rak_Thai_dissolved,_ex-premier_Thaksin_banned_from_politics
- 10 <http://news.bbc.co.uk/2/hi/7759960.stm>
- 11 “The Nation,” July 23, 2008.
- 12 “The Nation,” August 15, 2008.
- 13 The First World Conference on Constitutional Justice, Cape Town, South Africa, 22-24 January 2009.
- 14 Ibid.
- 15 “The Nation,” June 26 and July 7, 2008.
- 16 “Bangkok Post,” July 9, 2008; “The Nation,” July 9, 2008.
- 17 “The Nation,” July 10, 2008.
- 18 “The Nation,” August 1, 2008.
- 19 Ibid.
- 20 “The Nation,” September 10, 2008.
- 21 <http://news.bbc.co.uk/2/hi/7759960.stm>
- 22 Statement made by Mr. Chat Chonlaworn, President of the Constitutional Court of Thailand, The First World Conference on Constitutional Justice, Cape Town, South Africa, 22-24 January 2009. <http://www.constitutionalcourt.or.th/download/twccjth.pdf>
- 23 Ibid.
- 24 <http://www.capitalequitypartners.com/cep/news/Constitutional-Court-of-Thailand.html>

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