

1995

# Kingdom of Thailand

Sompong Sucharitkul

*Golden Gate University School of Law*, [ssucharitkul@ggu.edu](mailto:ssucharitkul@ggu.edu)

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>



Part of the [Comparative and Foreign Law Commons](#)

---

## Recommended Citation

Sucharitkul, Sompong, "Kingdom of Thailand" (1995). *Publications*. Paper 671.  
<http://digitalcommons.law.ggu.edu/pubs/671>

This Book Chapter is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact [jfischer@ggu.edu](mailto:jfischer@ggu.edu).

**CONSTITUTIONS  
OF THE COUNTRIES OF THE WORLD**

---

**Editors**

**GISBERT H. FLANZ & JEFRI JAY RUCHTI**

***KINGDOM OF THAILAND***

**by**

**SOMPONG SUCHARITKUL**

*Oceana Publications, Inc.*

*Dobbs Ferry, New York*

# TABLE OF CONTENTS

## ABOUT THE AUTHOR

## INTRODUCTION

by *SOMPONG SUCHARITKUL*

## THAILAND : CONSTITUTIONAL DEVELOPMENTS SINCE AMENDMENT NO. 4 OF 12 SEPTEMBER 1992 TO THE CONSTITUTION OF 9 DECEMBER 1991

- Preliminary Observations
- The FIFTH AMENDMENT of 10 February 1995
- Notes and Commentaries

by *SOMPONG SUCHARITKUL*

Text of Amendment No. 5 to the Constitution of the KINGDOM  
OF THAILAND B.E.2534 (A.D. 1991).

Constitution of the KINGDOM OF THAILAND B.E. 2534 (A.D.  
1991) : 9 December 1991, as amended by Amendments Nos. 1-3  
of 30 June 1992; Amendment No. 4 of 12 September 1992; and  
Amendment No. 5 of 10 February 1995.

- English Translation
- Thai Text

## BIBLIOGRAPHY

by *SOMPONG SUCHARITKUL*

## INTRODUCTION

The Editors of *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* have published with care and consistency the succeeding written Constitutions of the Kingdom of Thailand from the Constitution of 20 June 1968 up to and including the Constitution of the Kingdom of Thailand of 9 December 1991 as amended by Amendment Nos 1, 2 and 3 of 30 June 1992 and Amendment No. 4 of 12 September 1992, (previous dates of publication were : February 1973; May 1973; June 1975; July 1977; September 1978; October 1979; November 1990; May 1991; and November 1993).

The current edition continues the editorial tradition in prefacing the most recently enacted Constitution of the Kingdom of Thailand of 9 December 1991 in both the Thai language and English translation (as prepared by the Office of the Juridical Council and revised by the author), and with a chronology of events since the last publication in Release 93-7, issued November 1993. In current issue : "*THAILAND : Constitutional Developments since Amendment No. 4 of 12 September 1992*" begins with Preliminary Observations followed by Notes and Commentaries on the text of Amendment No. 5 of 10 February 1995 to the Constitution of the Kingdom of Thailand B.E. 2434 (A.D.1991) by the author.

SOMPONG SUCHARITKUL

# THAILAND

## CONSTITUTIONAL DEVELOPMENTS SINCE AMENDMENT NO. 4 OF 12 SEPTEMBER 1992 TO THE CONSTITUTION OF 9 DECEMBER 1991

### PRELIMINARY OBSERVATIONS

For constitutional developments of the Kingdom of Thailand in historical perspective, readers are referred to the introductory pages ix to xvii of Release 93-7. It is to be recalled (*ibid.* at page xx) that the Constitution of 9 December 1991, which was originally intended to be a New Years's gift to the people of Thailand, was truly the product of a highly unsatisfactory compromise. The people of the Kingdom acquiesced in its promulgation on the understanding that 'half a loaf is better than none', and that the draft constitution, albeit defective and imperfect, from the perspective of the Thais who had long endured the agony of an undemocratic form of government and had hoped to see the restoration of peaceful conditions conducive to the maintenance and growth of democratic institutions, was a far less intolerable alternative than the prolongation of the endless sufferings by the people at the hands of the military under the interim constitution of the National Peace-Keeping Council, pending inevitable delay in the review process of further revision and amendment of the Constitution.

In the last publication, release 93-7, issued in November 1993, already four amendments were adopted, of which the fourth amendment adding a second paragraph to Section 159, requiring the Prime Minister to be a member of the House of Representatives. That amendment was promulgated on 12 September 1992, the day before the general election which resulted in the return of Chuan Leekbhai, leader of the Democratic Party, as Prime Minister of Thailand, succeeding to our otherwise unconstitutional interim Government of Anand Punyarachun, a caretaker government to supervise the good order of the general election.

The application of Section 159, paragraph 2, was suspended as its promulgation was delayed to allow the unelected Government of 'Anand II' to function in direct contravention of the acquired principle that no unelected person could constitutionally serve as Prime Minister of Thailand, against the wish of the Thai people. As noted, the people acquiesced in the appointment of an unelected person on the understanding that this would be the very last time ever and only for an extraordinarily brief duration to oversee the birth of a new democracy with a popularly elected government, as the Thai people used to enjoy under the Sukhothai Kingdom and intermittently since the first written Constitution of 1932.

## THE FIFTH AMENDMENT OF 10 FEBRUARY 1995

### NOTES AND COMMENTARIES

The Constitution of 9 December 1991 as amended by the Fifth Amendment is hardly an amendment. It can be stated with greater accuracy that after the Fifth Amendment of 10 February 1995, Thailand almost obtained a Constitution the Thai people had more than deservedly earned and fought for with untold sufferings and immeasurable sacrifices.

In essence, the Fifth Amendment has done much to bring the Constitution of the Kingdom into line with the current trends in favor of democratic principles.

Several areas of progressive constitutional reforms and developments have been introduced at the initiation of the popularly elected House of Representatives, although much still need to be revised and improved owing to the opposition of certain members of different political affiliations, particularly the pre-existing members of the Upper House, appointed by 'the ancien military régime' and grandfathered by the Constitution of 1991, still unrecused for lack of democratic spirits.

As noted in the previous issue, Prime Minister Chuan Leekbhai's Administration passed two important bills through the House : one requiring Cabinet consent before using troops to suppress public demonstrations; and another abrogating the Internal Peace-Keeping Directorate Act of 1976, thus dismantling the ruthless military control and suppression of democratic expressions of the wishes of the Thai people.

In the present issue, it is noteworthy to focus on particular areas in which improvements have been achieved on behalf of the people as against possible future despotic governance.

## A. CONSTITUTIONAL GUARANTEES AND SAFEGUARDS OF THE CIVIL AND POLITICAL RIGHTS OF THE THAI PEOPLE

### I. AFFIRMATIVE ACTIONS :

For the first time in contemporary Thai constitutional developments, the concept of affirmative actions have been embraced in the Fifth Amendment

#### 1) The Right to Good Health : Section 41, as amended, provides :

*"Every person shall have the right to adequate public health service in accordance with generally accepted standards, and the poor shall have the right to medical care without charge as provided by law."*

In effect, this means that everyone is entitled to a reasonably acceptable standard of public health care including the poor who cannot otherwise afford private medical services. The State is under an obligation to provide free medical care for every Thai citizen. The target is clearly stated and the means to achieve the target is at the hands of the Government through improved public health service. New law has to be enacted to provide more public hospitals and health care centers for the poor, especially in rural and remote areas. Although this provision is subject to legislative enactment and budgetary allocation, it contains no loopholes or escape clause for any elected Government to deny or delay affirmative actions. At least, progressively the target must be attained.

- 2) The Right to Information : Section 48 bis, of the Fifth Amendment, runs :

*"Every person shall have the right to be informed or to obtain information from all Government Services, Public Offices or State Enterprises to monitor the performance of civil servants or State officials in as much as their functions affect or may affect the welfare of the people to the extent and as provided by law."*

Until the Amendment of 10 February 1995 came into force, civil servants and government officials had maintained a different attitude, inaccessible to the public. Instead of realizing their true position as servants of the people, they were invariably able to hide behind the wall of bureaucracy, unapproachable by any member of the public. That was conducive to bribery and corruption, especially when government officials and public servants were not answerable to the public, and continued to treat the public as their inferiors or undesirable elements in their midst. With this die-hard attitude of government officials and civil servants in Thailand, it would take more than constitutional reforms to eradicate the misgivings of the people, especially the grass-roots and the populace of the country.

Section 48 *bis* is like a gentle rain that more or less drops from heaven for the common people of Thailand, long ill-treated by the bureaucrats. To have this enacted as an avowed principle in the Constitution is in itself a giant step in the right direction. At least, it will afford ample opportunities for the successive democratic governments to adopt actual affirmative actions to convert constitutional ideology into living reality. The possibilities of affirmative actions may afford a dream for those who have long wished to see Thailand as a true democracy with a popularly elected Government working for the people, and not at their expenses or treating the people as their subservients or serviles.

Transparency of Government offices and public knowledge and evaluation of the performance of their functions will afford constitutional guarantees for freedom of information apart from promoting better public relations for the Government in power. An enquiry from a member of the public should be attentively responded by every Government department subject to the requirement of national security. This limitation must be restrictively construed,



otherwise it would deprive Section 48 *bis* of any meaningful effect. Clear affirmative actions by way of legislative enactment are expected to boost public morale. Without enforcing a fundamental change in the attitude of public functionaries, now that the people are far better educated, the Thai public will no longer tolerate total black-outs from the Government, which clearly violate their constitutional freedom of information or the right to be adequately informed.

As at present advised, official information is generally regarded as confidential or secret and disclosure may entail reprehension on the part of the official concerned. Regulations such as those of Prime Minister's Office of B.E. 2517 (A.D. 1974) and the Regulations on the National Security in Communications B.E. 2525 (A.D. 1981) tend to restrict freedom of information. There is as yet no legislation requiring disclosure of information of interest to the public. New laws will need to be passed. Meanwhile, Section 24, last paragraph, provides that any restriction of basic rights and fundamental freedoms of the people shall be void for incompatibility with the object and purpose and indeed the spirit of the Constitution.

## II. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

As Thailand has recently ratified the United Nations Covenant on Civil and Political Rights of 1966, it is not unnatural that some measures of constitutional reforms are necessary to bring the current state of Thai legal system in full compliance with minimum international standards as enshrined in the International Bill of Rights. Several amendments deserve mention, which are designed to achieve this avowed purpose.

### 1) EQUAL PROTECTION CLAUSE :

Section 24 : as amended, contains a significant addition. The old Section 24 merely states that "*All persons shall enjoy rights and liberties under the provisions of the Constitution*". The new Section 24 adds :

*"Men and women shall have equal rights. All restrictions on rights and liberties inconsistent with the spirit of Constitutional Provisions shall be prohibited."*

The Fifth Amendment thus reaffirms in no uncertain terms the equal protection of men and women alike. Section 25 is non-specific on the equal protection of all persons in accordance with the law and equality before the law. The amended Section 24 completes what under the United States Constitution is better known as the Equal Protection Clause. The Constitution as amended prohibits all forms of gender-based discrimination. All statutes permitting different treatment of men and women must be repealed or be declared unconstitutional. This amended Section 24 has far-reaching consequences beyond the affirmation of equal rights and privileges between men and women in the Civil Code, especially in family relations, labor relations and eligibility for military or defence services. It remains to be seen how by way of affirmative actions women will catch up and overtake men in certain professions and career services. In the liberal professions, such as all branches of the legal and medical services, women are recognized as equally competent. In some hardship careers, such as construction and engineering, women outnumber men by four to one, at any rate in the menial construction work. In the judicial and foreign services, women and men share equal opportunities, although in some hardship posts in remote areas or countries not recommended for women, only men will be assigned without forbidding voluntary services by women of the same rank and status.

However, there is room for improvement in the labor sectors, for instance, the rule : 'equal pay for equal work' need to be more fully implemented. Some further affirmative actions need to be taken by the Government to protect abuse of child labor and to allow necessary fringe benefits for pregnant women, such as leave with pay before and after delivery, to protect the health and welfare of the child and the mother. In this respect, men cannot demand equal rights as they are not physically capable of child-bearing.

2) Freedom of Opinion and Expression : Section 39 further reinforces former Section 37 on freedom of speech and expression, by adding freedom of opinion and expression in any form whatsoever, by word of mouth or in written communication or publication through

the media.

Paragraph 2 provides that :

*" The freedom enshrined in paragraph 1 of Section 39 cannot be curtailed or in any way restricted except under the specific provisions of the law to maintain national security or to protect civil rights and liberties, the dignity, reputation and family or privacy of others, to preserve the peace and good morals of the public, to prevent or stop deterioration in the morale or physical health of the people. "*

This second paragraph affords an opportunity for endless abuses by the Government, as it provides an open-ended or escape clause for the executive to restrict or curtail freedom of opinion and expression under any of these broad pretexts.

An important qualification is introduced in the new Section 39 paragraph 3 which *"prohibits executive order to close down a printing press or publishing house or to forbid publication curtailing freedom of opinion and expression under this Section without a final judgement or order of the Court".*

This paragraph 3 is not without significance in the light of past experience of former military dictatorship or police-State. As an inevitable result, the press of Thailand is really free for the first time in its history of a somewhat checkered career. Never has the press been so vocal and outspoken in its critical commentaries on the general election and the performance of official functions by members of the executive and the legislative branches of the Government. Politicians are fighting shy of suggesting any curtailment or suppression of freedom of opinion through the press. It is only hoped that, unlike in western democracies, the press will be more responsible and answerable if not accountable to the people and the public at large, and not exclusively or even primarily to further its own self-interest and advantages.

The people have the right to be accurately informed, and freedom of the press should not be enjoyed or exercised at the sacrifice or expense of freedom of information, or to the detriment of the right of the people to be informed of the whole truth and nothing but the truth in the dissemination of information to the public by the press as well as by the government.

3) The Right to Privacy : The new Section 47 reiterates constitutional protection of the right of every person to be free from interference with his/her family, honor or reputation and private life, and add another specific provision to former Section 44 on the same topic.

The second paragraph of Section 47 provides :

*"Any mention or publication of information, containing statement or picture in any form of dissemination to the public tending to prejudice the right of a person related to his/her family, honor, reputation and private life, cannot be permitted, except in the interest and for the benefit of the public."*

The right to privacy is thus constitutionally protected to the extent that the individual concerned does not seek election to a public position, such as membership in the House of Representatives. It is apparent from the experience of the general elections, especially post Fifth Amendment of 10 February 1995, that hardly any restraint is observed in regard to the private life, reputation, honor or family of the candidates for election. This exception which affords a guarantee of democracy in the interest and for the longer term benefit of the public at large and, if confined to those who themselves are seeking to serve the public and prepared to waive their rights to privacy in pursuit of the public lime-light, would appear to provide an adequate balance, while upholding always the right of every person to complete privacy in respect of his/her family, honor and reputation.

4) Procedural Due Process : Freedom from arrest, detention and exile or the right to procedural due process in relation to the administration of criminal justice has found further endorsement and additional reinforcement in the new Sections 29, 30, 31, 32 and 33.

(a) The Presumption of Innocence, which was incorporated in the old Section 29, merely states that *"In criminal cases, the accused shall be presumed innocent"*, without further elaboration. In adversarial system of criminal justice as in most common law countries, it is sufficient to presume the innocence of the accused, while the prosecution has to prove that the accused is guilty as charged, and the general burden of proof is

placed on the prosecution. On the other hand, in Thailand as in other legal systems which adopt the inquisitorial method, it is all the more necessary for further elaboration and ramification of this basic principle, known as the presumption of innocence.

In the Fifth Amendment, the new Section 29 contains a fuller and more detailed elaboration of this presumption of innocence. It reads :

*"In criminal cases, the accused shall be presumed innocent. Pending final judicial determination of the guilt of any person accused of a crime, that person shall not be treated as a criminal offender.*

*"A petition for release on bail for the accused or defendant in a criminal case shall be considered speedily. No excessive condition for bail or security for appearance shall be imposed. Refusal of bail shall be based on reasonable ground as specifically provided by law and shall forthwith be notified to the accused or defendant.*

*"The right to appeal against refusal of bail shall be protected as provided by law.*

*"Persons detained or imprisoned shall have the right to receive visitors as and when appropriate."*

The first paragraph has received ample explanation and clarification, while paragraphs 2, 3 and 4 clearly strengthen the rights of the accused or defendant in a criminal case in support of the presumption of innocence.

(b) Personal Freedoms and the New HABEAS CORPUS : The new Section 30 expands the notion of personal freedoms and liberties to comply with Thailand's obligations under the International Covenant on Civil and Political Rights 1966. Thus,

the old Section 30 provides :

*"Every person shall enjoy personal liberties. The arrest, detention or search of any person, in any circumstance, may not be effected, except in conformity with the law."*

The new Section 30 adds the following provisions :

*"Provided always that the person under arrest, detention or search shall be promptly notified of the charge or the ground together with appropriate details for the arrest, detention or search, and the person so detained shall have the right to seek the advice of a legal counsel in person."*

*"Preferment of a charge against any person shall be substantiated by appropriate document providing prima facie evidence of the likelihood that the detainee may be guilty as charged."*

*"In the event of detention, the detainee him/herself, the public prosecutor or any one on his/her behalf, shall have the right to petition the Court with competent criminal jurisdiction to determine whether the detention is unlawful. The Court shall have the power to order the detaining authority to bring forth the detainee promptly before the Court, and upon finding to the satisfaction of the Court that detention was unlawful, the Court shall order the immediate release of the person detained."*

This is the first constitutional guarantee of personal freedoms and liberties in the nature of *Habeas Corpus* and is worded almost in that fashion. Bring forth the body of the person before the Court to determine the legality of the ground or validity of the cause of detention. Should detention be without a legitimate cause or groundless in law, immediate release shall be ordered by the Court.

(c) Fair Trial and Prompt Investigation : the new Section 31 requires promptness in all criminal investigations and swiftness in the trial of criminal proceedings designed to ensure a fair trial. This new Section runs :

*"In criminal cases, the accused or defendant shall have the right to an investigation or a trial that is speedy and fair."*

(d) Legal Aid in Litigation : Section 32 adds a new dimension to the assistance to be provided by the State in the form of legal aid for an accused person or alleged offender, both in criminal and civil cases. In civil cases, legal aid is stated to be available in conformity with the provisions of relevant law. In the latter instances, the assistance of a legal counsel should be available for an oppressed plaintiff as well as a defendant in similar situation. However limited, legal aid constitutes a novel area in which *pro bono* activities of the Law Society or the Bar Association of Thailand may play an increasingly useful role in coming to the rescue of the deserving populace and without encouraging malicious prosecution or vexatious litigations, since contingency fees are illegal and unethical in the practice of civil law countries as well as in most common law countries other than the United States of America.

(e) The Right to Remain Silent : Section 33 reformulates the right to remain silent in relation to criminal investigation and trial. Section 33 provides :

*"Every person has the right not to give evidence which is self-incriminating or which may lead to criminal prosecution against him/herself."*

*"A statement made by a person as a result of torture, duress, or physical coercion or any statement made as a result of any involuntary action shall be inadmissible as evidence."*

5) The Right to Education : the new Section 40 adds a hint of possible affirmative actions in the field of freedom of education. The old Section 38 was highly restrictive :

*"All persons shall enjoy the freedom of education and training, so long as it is not inconsistent with their civil duties under the Constitution, nor contrary to the law relating to compulsory education or the law relating to the establishment of educational institutions."*

The extent of freedom of education in Thailand is realistically circumscribed by the availability of educational institutions. The proviso or limitation on freedom of education as prescribed by the Constitution clearly subjects the enjoyment of freedom of education to the undeviating performance of civic duties under the Constitution as well as to the restrictions on the establishment of educational institutions. In the first place, freedom of education, as a matter of right of individual, is conceived with the lowest priority, compared to the civic duties. This is putting the cart before the horse, as observance of civic duties may well depend on the quality of the education and training citizens are given the opportunities to pursue.

On the other hand, State control over the establishment of new educational institutions at the level of elementary or basic education has been very tight, owing to the 'assimilation policy' which succeeded in assimilating citizens of Chinese descent with the aboriginal population of the Golden Peninsula characterized as ethnic 'Thais', with traditional 'Thai' culture and ancestry. The assimilation policy was a success, not as a cleansing detergent to purify 'Thai' blood, but as a precautionary measure to resist the continuing influx of immigrants from China. The resulting policy of containment of elementary Chinese schools, in practice for over a hundred years, is paying off. The results have been salutary. The so-called 'Chinese problem' is the least troublesome in Thailand, compared to the situation in other surrounding Asian countries.

This point may be raised as to the consistency of this 'assimilation policy' in the light of new commitment of the Government of Thailand to a greater freedom of education and a better treatment of minorities. Thailand could argue that as the so-called Chinese 'minorities' have long been assimilated to the 'Thais' and are treated for all practical purposes as 'Thais' with



equal rights and protection under the Constitution, a measure of restraint on the further expansion of basic education among the Chinese-speaking Thais is not altogether an unwelcome initiative with far-reaching peaceful repercussions. Besides, the Chinese 'minorities', if any, have made no real complaint in this regard. In any event, Chinese as a foreign modern or classical language is not prohibited in university education. It has not been discouraged. As it happened, one respectable high school in Thailand once used the system of putting students of highest grades in classes A, B and C, and the rest in class D, E and F, when there used to be so many students in each class. As it turned out, the students in top classes, A and B, were talking to themselves in Chinese, so that the assimilation policy dictated an inter-mingling of students of different academic standards in each class, instead of isolating the best or better classes from the average classes. While the population of Thailand has remained more or less homogeneous, with the combination of various hill tribes, Chinese, Indian, Vietnamese, Malay and others, Thailand has become a pluralistic society without a serious 'Chinese problem', thanks in no small measure to the 'assimilation policy', which constitutes an exception to the complete freedom of education.

It is against this salient background that the new Section 40 has now been amended to read as follows :

*"All persons shall have equal rights to basic education in accordance with the law on compulsory education.*

*"all persons shall have the freedom of education and training, so long as it is not inconsistent with their civic duties under the Constitution, nor contrary to the law relating to compulsory education or the law relating to the establishment of educational institutions.*

*"Academic freedoms shall be protected to the extent consistent with civic duties."*

The first paragraph is a new opening provision underscoring the existence of equality of

all persons in the free choice of their basic education within the framework of the applicable law on compulsory education. The final paragraph pays lip service to academic freedoms while subjecting them to the supremacy of the civic duties required of all citizens.

## B. NEW DUTY OF THE THAI PEOPLE

Section 57 in the Fifth Amendment adds another duty for the Thai people *'to preserve and defend its national heritage and culture'*.

## C. NEW DIRECTIVES AND NATIONAL POLICIES

Chapter V of the newly amended Constitution contains further specification and precision in the directives and national policies of the Kingdom.

### 1) DEMOCRATIC GOVERNMENT

The new Section 60 contains a new element in addition to the old Section 61 prescribing the requirement that

*"The armed forces shall be employed in an armed conflict or a war, for the protection of the institution of the monarchy, for the suppression and containment of a rebellion or a riot, for the maintenance of national security and for national development."*

This new assignment can be found in the employment of the armed forces "for the protection of the democratic form of Government under a constitutional monarchy".

This addition is vital since the armed forces have in the past been employed to sustain military dictatorship to the detriment of any notion of democratic institutions with popularly elected parliament, a popularly elected head of government, and an independent judiciary; all the three branches of the Government acting in the name of the King as Constitutional Head of State with a democratic form of government.

## 2) POLITICAL DEVELOPMENT PLAN

Section 70 of the amended constitution provides for the adoption of a national political development plan consistent with the directives and national policies and the democratic system of government under the King as Head of State.

## 3) ELECTION OF THE HOUSE OF REPRESENTATIVES AND SEARCH FOR SENATORS

Section 71 provides for affirmative actions by the State

*"in support of free election of members of the House of Representatives and the local government as well as a search for members of the Senate based on the principle of honesty and fairness in accordance with the spirit of a democratic government with the King as Head of State."*

## 4) EXPANSION OF INFRASTRUCTURE

Section 73 provides that

*"The State shall organize the expansion of infrastructure into rural areas efficiently, continuously and fairly."*

## 5) DECENTRALIZATION

Section 74 provides for

*"a fair and effective distribution of income to the rural areas."*

## 6) RESERVATION OF IMPORTANT PROFESSIONS FOR THAI NATIONALS

Section 75 enunciates the policy of reserving certain categories of important professions for Thai nationals.

## 7) AGRICULTURAL SECTOR AND LAND REFORM

Section 80 promotes, supports and protects the system of cooperative, while Section 81 envisages the use and ownership of land holding for residential, agricultural, industrial, commercial or other purposes, and requiring land owners to make appropriate use of the land in accordance with its conditions.

Section 82 upholds the principle that

*"Farmers should acquire ownership or the right to use the land for agricultural purposes through the process of land reform, land consolidation or other means. The State shall provide and regulate adequate water supply for agricultural uses."*

## 8) ECONOMIC AND SOCIAL DEVELOPMENT

Section 87 calls for the adoption of a demographic policy consistent with natural resources, economic and social condition and technological progress *"for the purpose of economic and social development and national security."* (New provisions underlined).

This directives and policies are statements of national aspirations and are not in themselves self-executing in character. They afford guidelines that cannot provide a legal basis for any one to institute proceedings against the Government for failure to attain any of the objectives set in the policies and directives enunciated in the Constitution.

## D. THE NATIONAL ASSEMBLY

### 1) THE RIGHT TO VOTE FOR PERSONS OF EIGHTEEN YEARS OF AGE

The most far-reaching amendment is Section 109 (2), according the right to vote to all persons of eighteen years of age or older. Thai youth had long struggled to obtain recognition of their political maturity at the age of 18 and not having to wait till they beame 20 before they ccould have the right to vote.

A brief survey of statistics in 132 countries shows that in 96 countries the age of discretion is 18 while only in 8 countries a person has to be 20 to be able to exercise the right to vote. This amendment has been difficult, but its results have been rewarding. In the last general elections of July 1995, young persons between the ages of 18 and 20 were allowed to vote for the first time in Thai constitutional history. Although in olden days before the advent of written constitutions, all able bodied persons in the Kingdom enjoyed the freedom of speech and expression and could participate in any form of referendum or plebiscite.

## 2) THE ELECTION COMMITTEE

Section 115 of the amended constitution provides for the appointment of the Election Committee with necessary authority as provided by law to direct and supervise the election of members of the House of Representatives to ensure honesty and fairness. The primary responsibility for the organization of a general elections, including zoning arrangements and proportional representation, still rests with the Ministry of Interiors. This amendment merely adds a national authority to direct, control, monitor and oversee the good order in the transparency to ensure honesty and fairness in the general elections.

## 3) NATIONAL ASSEMBLY INSPECTORS OR OMBUDSMEN

Section 162 bis. provides :

*"The King shall appoint no more than five National Assembly Inspectors (OMBUDSMEN) on the recommendation of the National Assembly by Royal Proclamation to be countersigned by the Speaker of the National Assembly.*

*"Qualifications, regulations and methods of appointment, removal and the power and functions [of the Inspectors] shall be as prsscribed by law"*

These inspectors are not responsible to the National Assembly but operate as an independent State organ in close cooperation with the National Assembly. This newly appointed body is a complaint receiving organ from the people seeking relief for hardships, damages or injustices suffered by the aggrieved members of the public. The inspectors have the power and the duty to inform the National Assembly and the public of the grievances of the complainants. Thus the inspectors may function as the 'OMBUDSMEN' in certain parliamentary democracies, without duplicating the authority of other administrative or executive organs of the Government.

4) NEW OBLIGATIONS FOR MEMBERS OF THE NATIONAL ASSEMBLY

Section 95 requires all elected Members of the House of Representatives and all appointed Members of the Senate to make a declaration of their assets.

5) OTHER SIGNIFICANT CHANGES

The amended constitution has introduced a number of significant changes by further reducing the power of the Senate and number of Senators. The following provisions deserve attention :

(a) Section 100 reduces the number of Senators from 270 to two thirds of the number of members of the House of Representatives, which is in turn modified by Sections 105-106 from a fixed figure of 360 to a possible increase proportional to the size of population in the electorate zone, i.e, one member for 150,000 population.

(b) Section 101 reduces the mandate of the Senators to 4 years and Senators are due to retire at the same time, although they will remain in office until new Senators are appointed to replace them.

(c) Section 102 prohibits Senators to retain any concession acquired before senatorial appointment.

Section 114 also prohibits members of the House of Representatives to retain previous concessions.

(d) Section 112 reduces the number of candidates for election to be presented by a political

party from the minimum of 120 (or one third) to one quarter.

(e) Sections 117, 118 and 121 shorten the time-limits for holding general elections from 60 to 45 days (Section 117); in the event of dissolution from 90 to 60 days (Section 118); and for bye-elections from 90 to 45 days.

### E. ADMINISTRATIVE TRIBUNALS

Section 195 of the amended constitution may be viewed as a time bomb or a new opening. It reads :

*"Administrative Tribunals shall have the jurisdiction to determine cases as provided by law."*

Section 195 bis. :

*"The King shall appoint and remove members of the Administrative Tribunal."*

*"Upon first assumption of duties, members of the Administrative Tribunals shall take an oath of loyalty to the King in the wording provided by law."*

Section 195 ter :

*"The appointment and removal of members of the Administrative Tribunals shall be made with the approval of the Adjudicative Committee of the Administrative Tribunals as provided by law before making appropriate recommendation to the King."*



*"The promotion, salary increment and punishment of members of the Administrative Tribunal shall be approved by the Adjudicative Committee of the Administrative Tribunal as provided by law."*

Section 195 quarto :

*"The appointment and removal of judges and adjudicators in any Court other than the Courts of Justice, the Administrative Tribunals, and Military Tribunals, including the jurisdiction and procedures of the said Courts shall be in accordance with the law relating to the organization of that Court."*

Section 195 quinto :

*"In case of any conflict between the jurisdiction of the Courts of Justice and that of other Tribunals or among other Tribunals, it shall be for the Constitutional Council to determine."*

The Fifth Amendment has introduced several constitutional improvements in favor of progressive democratic development. Section 195 and its sequences have led to varying interpretations culminating in structural controversies far beyond the imagination of its framers. Utter confusion was created by equating the status of the Courts of Justice with that of other special tribunals such as the Military Tribunals and by upgrading Administrative Tribunals, hitherto unestablished, with other specialized courts within the national judicial system of the Kingdom.

While it is clear that Military Tribunals with very limited disciplinary and supervisory jurisdiction are not a necessary part of the Courts of Law, and the Constitutional Council at the top level has limited original jurisdiction in constitutional matters as well as in the conflict of jurisdiction between the various national tribunals, the advent of Administrative Tribunals has come as a surprise, not altogether without apprehension. As Section 195 is non-self-executing,

it may have created merely a false alarm.

While the real danger may still be remote and is not yet imminent, it is necessary to lodge a '*Caveat*' to avoid futile and wasteful controversies.

The legal system of Thailand has not had the same experience as that of France, where the dual régime of two independent judicial systems coexisted side by side. The Administrative Courts were created by the necessity of the Government's mistrust of the common or ordinary Courts of Justice, which did not appreciate the bureaucratic complexities of the executive branch of the French Government.

As a result, Administrative Courts were set up to adjudicate administrative litigations between various organs of the executive and the legislature, as well as receiving complaints against government agencies and officials. With two centuries of divided duality of judicial hierarchy, the administrative bench and the justice bench have been totally separated; the former with no written code and the latter with a flexible system of codes. To achieve and maintain the distinct duality of adjudicatory system as accomplished in France, a national institution had to be set up called ENA (Ecole Nationale d'Administration) to train officials to staff the various offices of the Administrative Department of Government called the 'Conseil d'Etat' and other subordinate organs, both in the administrative, legislative and adjudicative sections.

The French system of Administrative Courts cannot be transplanted to any other country without the basic infra-structure of trained personnel of the highest caliber and qualifications to sustain its operation. To suggest such transplantation to Thailand by the stroke of a pen is to impose chaos, disorder and disastrous disruption in the internal structural administration of the Kingdom, notwithstanding the wishful thinking of those who may benefit from this divisive transposition.

On the other hand, in other legal systems such as the United States, the United Kingdom and Scandinavian countries, administrative tribunals have functioned well in specialized areas of disputes and they may be expected to operate to relieve the Courts of Justice of unnecessary case load. There is no danger of lack of judicial experience on the part of the adjudicators or members of administrative tribunals, since in the ultimate analysis, their decisions are subject to judicial review by a higher Court of Justice, as an assurance of fairness and justice. The independent Courts of Justice, and no other Tribunals forming integral part of the executive,

could ensure the necessary balance of powers between the judiciary and the legislature on the one hand, and between the executives and the legislature on the other. Those who attempted unsuccessfully to introduce an imbalance of power in Thailand by subjecting the independent judiciary to the whims of the executive have attracted their own terminal sanction.

Constitutional developments in Thailand are proceeding in full swing. It is hoped in the ultimate analysis, that democracy and the unfettered will of the enlightened Thai people will prevail.

*Sompong Sucharitkul*

*San Francisco, 4 December 1995*