

# Thailand's Politicized Courts Fuel Protests

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**A questionable decision gives Thailand's opposition a reason to go to the streets.**

Last Wednesday, Thailand's Constitutional Court declared that Prime Minister Yingluck Shinawatra's ruling Pheu Thai Party government had, by seeking to make the upper house Senate a fully-elected body, engaged in unconstitutional acts.

Remarkably, the verdict was based on complaints that referred to Section 68 of the 2007 constitution, which implies that the government sought to "overthrow the democratic regime of government with the King as Head of State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this [2007] Constitution."

That a parliamentary effort to amend a contested constitution should be deemed either treasonous or to be usurping power is nonsensical. It would have been greeted with quizzical disbelief if it had not been a decision by one of Thailand's highest courts. Because the country's judiciary has become so highly politicized, decisions that defy legal logic now seem the norm.

The story of the politicization of Thailand's judiciary is a remarkable account of how independent institutions, meant to underpin a deepening of democracy, have undermined the very processes they were supposed to deepen and protect.

In last Wednesday's case, the bias of the Constitutional Court saw legal absurdities piled high and deep. Most obviously, the constitution at the center of the controversy is itself a result of an illegal act - the 2006 military coup that overthrew Prime Minister Thaksin Shinawatra. Many of those petitioning the court were appointed senators who owed their position to the military and to judges who, under the constitution, help select the senators.

The conflict of interest involved is stark. As the constitution decrees that parliament may change the constitution by a vote of more than one-half of the number of the existing members of both the Assembly and Senate, and the proposed amendment achieved this, the Constitutional Court was required to contort itself to strike down the amendment and protect the 2007 charter.

The Constitutional Court and its judges sometimes declare their neutrality, claiming to be maintaining the rule of law, protecting "minorities" and checking the power of politicians. No one believes them. Since the military coup in September 2006, one of the few agreements among the contending forces in Thailand's bitter and colour-coded political struggle is that the judiciary is a reliable ally of the yellow-shirted, conservative and royalist side. Pro-Thaksin red shirts identify the judiciary with brazen "double standards."

The judiciary had been accused of corruption and political bias before the coup, and Thaksin certainly tried to influence it when in power. Yet it was the 2006 coup and the 2007 constitution that institutionalized the Constitutional Court's political bias.

Immediately following the coup, the military junta set about drafting a constitution to replace the one it had thrown out. While it established a complex selection system for members of the Constitutional Drafting Assembly and Committee, the result was bodies intent on a charter that would prevent another Thaksin-dominated government.

The outcome has been seen in several striking interventions by the Constitutional Court, dissolving political parties in 2007 and 2008 and throwing out an elected government in 2008. Most recently, the court has ridden roughshod over parliament's mandate to prevent any changes to the junta's constitution.

The 2007 charter was born of both coup and stern military supervision. It was a mammoth 309-article draft that weakened the executive branch, removed considerable decision-making power to the bureaucracy and judiciary, transformed the senate from an elected body to one that was half-appointed, and enhanced the military's political role and budget.

Stung by international criticism of the coup, the junta stumbled upon the idea of a constitutional referendum. Ignoring the fact that a single question referendum was absurd, the junta and its government reckoned that a referendum would signal Thailand's return to democracy.

What surprised the generals and their elite backers was a campaign to reject the draft. Their response was characteristically heavy-handed, suppressing opponents and pouring funds into a "yes" campaign that usually restrained commentators said was a blatantly and coercive "facade of being a democratic choice...".

Responding to opposition, and fearing the charter's rejection, it was explained that the 2007 document was not permanent. National Legislative Assembly president and royalist ideologue Meechai Ruchupan said the charter could easily be amended and an army spokesman proclaimed, "People can amend it later." The draft was approved in a narrow referendum victory, mostly because voters wanted to move on to the promised elections.

When electioneering, the pro-Thaksin People's Power Party (PPP) was clear that it sought a mandate to change the "undemocratic charter." At the time, a PPP victory seemed improbable, and the conciliatory line on constitutional amendment was maintained. But win they did, and when the new government established a committee to review the constitution, the conciliatory conservative assurances were quickly forgotten. Most significantly, these groups were soon rejecting the parliamentary route to constitutional amendment.

The Constitutional Court evidenced its deepening bias as it ruled against the PPP several times before finally dissolving the party in late 2008 amid demonstrations by the yellow-shirted People's Alliance for Democracy which demanded just this outcome. Seen as a judicial coup, this was the second dissolution of pro-Thaksin party, firmly establishing the Constitutional Court as an ally of the royalist and elite interests.

Following the political violence of 2010, the 2011 election produced a fifth landslide victory for a pro-Thaksin party. Apparently voters agreed with the Pheu Thai Party, led by Yingluck, when it again campaigned to "democratize" the junta's constitution.

Despite the Pheu Thai government's strong mandate for constitutional change, the opposition Democrat Party and its allies in various royalist ginger groups and among the country's elite vehemently opposed change. When the government passed its bill to change the Senate, the cacophony of elite outrage saw street protests led by the Democrat Party, with its MPs brawling in parliament. But these were noisy sideshows, with the real action being a shower of anti-amendment

petitions to the Constitutional Court.

Now that the court has ruled against the government, it paves the way for other actions that will seek to unseat yet another elected government. Street demonstrators, led by the Democrat Party and its yellow-shirt allies, have been emboldened against an “illegitimate government.” Raising the political temperature, the demonstrations are meant to show “popular” support for ridding the country of the “Thaksin regime.”

Using other “independent agencies” that have proven to be as politicized as the judiciary, the anti-Thaksin coalition, including those who petitioned the Constitutional Court, have demanded that the National Anti-Corruption Commission impeach all MPs and senators who voted for the “treasonous” bill.

The government will contest the court’s decision and seek to manage its fallout but its options are limited. It will pursue legal avenues against the Constitutional Court judges, but this is unlikely to be more than grandstanding. Ignoring the court’s ruling is only possible until a constitutional crisis results, demanding action from the king who previously promoted the judiciary in solving political impasses. Counter demonstrations that mobilize the red shirts to oppose a “judicial coup” could result in conflict. In a constitutional crisis, the army loyalty will be with the monarchy.

Thailand’s “interesting times” are set to continue. The biased judiciary may be required to intervene again, but it is probably content to have provided legitimacy for those seeking to bring down the elected government.

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<http://www.asiasentinel.com/politics/thailand-judiciary-politicized/>

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