

Constitutional Court Ruling No. 7/2559 (2016)

Council of Ministers

Applicant

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Respondent

Constitution (Interim), B.E. 2557 (2014), section 5.

Section 5 paragraph one of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) provided that whenever no provision under this Constitution is applicable to any case, an act shall be performed or a decision shall be made in accordance with the constitutional conventions of Thailand under the democratic regime of government with the King as Head of State. In any case, the governing convention should not be contrary to or inconsistent with this Constitution. Upon finding that during the Prime Minister's revision of the Draft Constitution to align with the outcome of the referendum and presentation to the King for Royal Assent, King Bhumibol Adulyadej passed away, resulting in the preamble to the Draft Constitution being inconsistent with actual facts. Since such an event was unprecedented and there was no provision of the Constitution which specifically addressed such case, the actions had to be in accordance with Thailand's governing conventions under the democratic regime of government with the King as Head of State pursuant to section 5 paragraph one. As all constitutions were promulgated upon Royal Assent of the King and publication in the Government Gazette, such process constituted a convention. A revision of the preamble to the Constitution in line with actual facts was permissible and the Constitutional Drafting Committee had the duty of properly revising the preamble to the Draft Constitution prior to the Prime Minister's presentation to the King for Royal Assent.