

Freedom of Party Formation through the Constitutions of Thailand

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Abstract

The freedom of party formation is fundamental to democratic values but is often overlooked in Thailand. Contrary to its intended purpose of safeguarding rights and freedoms, the Thai constitution inadvertently impedes these very principles. By imposing stringent requirements for party formation and facilitating easier dissolution, the constitution not only imposes burdens on political parties but also restricts the freedom to establish them. Such constraints significantly undermine Thai citizens' political participation and representation. Furthermore, the ease of party dissolution manipulates Thailand's political context, and is often used as a strategic chess piece in the broader political game. This dynamic further complicates the political landscape in Thailand and highlights the need for constitutional reform to truly reflect the voice of the people.

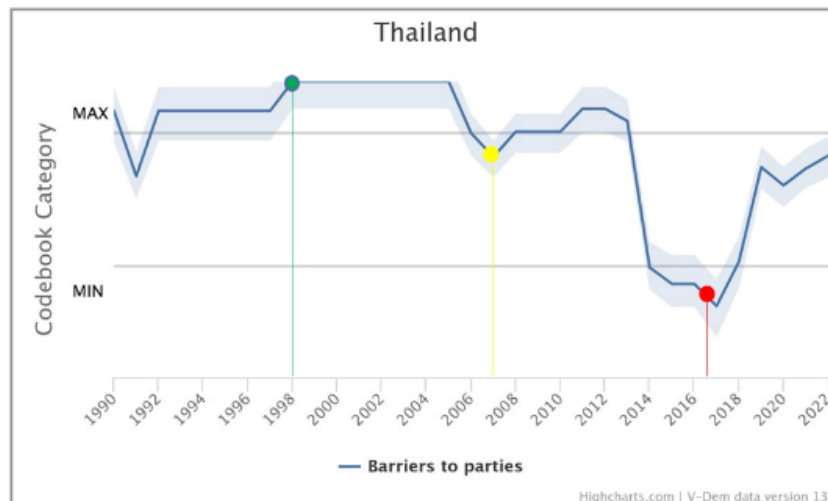
Introduction

When discussing freedom, one usually thinks of the freedom of expression, freedom of property, freedom of assembly, and other various types of freedom that one's respective country would allow through rights. Nonetheless, one of the most important freedoms, in a democratic country, is the freedom of party formation. Since modern democracy is characterized by the selection of people's representatives through an election, party formation plays a crucial role in the modern democratic system. It can also be seen that political parties not only allow people to participate in politics but also allow people to communicate between the government and society – expressing their needs through representatives.¹ Thus, the freedom of party formation must be granted and respected in order for the people to have someone, or a certain party, that represents their political beliefs – and this includes minorities being represented as well.

In Thailand, the freedom of party formation plays a crucial role as, in this author's view, it is among the initial rules determining the “playing field” that affects each and every political party. By using the constitutions (or the game manual, in this metaphor), the constitution drafters have gradually excluded the people by limiting their method of expressing political will and creating a high barrier to party formation. Data from the Varieties of Democracy (V-Dem) shows that Barriers to Party formation, which is one of the indicators of Vertical Accountability and describes the extent to which parties have the freedom to form a party, has decreased throughout the years as a new constitution is enacted.

¹ Yigal Mersel, “The dissolution of political parties: The problem of internal democracy”, *International Journal of Constitutional Law*, 4:1 (2006), pp. 84-113.

Graph 1: Freedom to Party Formation



Source: Michael Coppedge, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, Nazifa Alizada, David Altman, Michael Bernhard, Agnes Cornell, M. Steven Fish, Lisa Gastaldi, Haakon Gjerløw, Adam Glynn, Sandra Grahn, Allen Hicken, Garry Hindle, Nina Ilchenko, Katrin Kinzelbach, Joshua Krusell, Kyle L. Marquardt, Kelly McMann, Valeriya Mechkova, Juraj Medzihorsky, Pamela Paxton, Daniel Pemstein, Josefine Pernes, Oskar Rydén, Johannes von Römer, Brigitte Seim, Rachel Sigman, Svend-Erik Skaaning, Jeffrey Staton, Aksel Sundström, Eitan Tzelgov, Yi-ting Wang, Tore Wig, Steven Wilson and Daniel Ziblatt, "V-Dem [Thailand 1990-2022] Dataset v12", Varieties of Democracy (V-Dem) Project (2022). (<https://v-dem.net/data/analysis/CountryGraph/> Accessed on 2024-01-31)

In this context, this paper will analyze the reasons for such decline, where the minimum number of initiators has been increased and the requirement for party dissolution has been raised. This creates a huge burden for political parties and also poses a question of whether the freedom of party formation has been respected if parties are easily dissolved.

The Rights and Freedom Stipulated under the Constitution

Rights and freedom are two words that have their own meaning. The word rights can mean that one has the ability or entitlement to perform or *not* perform certain actions or to be or *not* to be in a certain state. In other words, rights can allow their holders freedom - meaning one can be free to do or *not* to do a certain action. With that said, although the words are different, there is a connection between them. A legal system is set in place in order to distribute the various types of freedom, and a country's

constitution stipulates the rules of who and what shall be free.²

Constitutional rights and freedom in Thailand can be seen in Article 25 of the 2017 Constitution which states that:

“...a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws... Any right or liberty stipulated by the Constitution to be as provided by law, or to be in accordance with the rules and procedures prescribed by law, can be exercised by a person or community, despite the absence of such law, in accordance with the spirit of the Constitution...”

It should be noted that the 2017 Constitution retains the main idea of rights and freedom of the 2007 Constitution, which itself amended the 1997 Constitution, allowing rights and freedom to be exercised despite the absence of law (The 1997 Constitution only stipulates that rights and freedom shall be in accordance with the law).

Nonetheless, it can be seen in the 2017 Constitution, as in other constitutions, that various rights have been stipulated, such as the right to life and personal liberty, personal rights, freedom of expression, academic freedom, freedom of property, freedom of assembly, and other various types of freedom, including the freedom of party formation.³

Freedom of Party Formation

Freedom of party formation is based on the principles of freedom of association, freedom of expression, and freedom of assembly. These three principles were stipulated in the 1948 Universal Declaration of Human Rights which binds the country to be obligated to comply with the Declaration legally.⁴

With that said, we shall examine the freedom of party formation stipulated in the Thai constitutions and the related law called the Organic

² Leif Wenar, “Rights,” *The Stanford Encyclopedia of Philosophy* (2023).

(<https://plato.stanford.edu/archives/spr2023/entries/rights/>; Accessed on 2024-01-31)

³ Pongtawat Boonpitak, “Sitti seriparb kong puangchon chow thai tam rattatammanoon hang ratcha-anajak thai puttasakarat 2560 [The Rights and Freedom of Thai people according to the Constitution of the Kingdom of Thailand B.E. 2560],” *Law Department of the Secretariat of the House of Representatives* (N.D.).

⁴ Gianni Buquicchio and Janez Lenarcic, “Guidelines on Political Party Regulation,” *OSCE Office for Democratic Institutions and Human Rights* (2010).

Act re. Political Party.

Table 1: Each Constitution and Organic Act Re. Political Parties Comparison

Constitution			1997	2007	2017
			A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfillment of such will through the democratic regime of government with the King as Head of the State as provided in this Constitution... ⁵		A person shall enjoy the liberty to unite and form a political party under the democratic regime of government with the King as Head of State, as provided by law... ⁶
Organic Act Re. Political Parties			1998	2007	2017
	Establishment	Number of Initiators	At least 15 people ⁷	At least 15 people ⁸	At least 500 people ⁹
	Dissolution	Number of Members and Branches	The number of members becomes less than 15 ¹⁰ And Within 180 days from the date the Registrar has acknowledged the formation of a political party, such political party shall	The number of members becomes less than 5,000 for one entire year ¹² And Within 180 days from the date the Registrar has acknowledged the formation of a political party, such	The number of members becomes less than 5,000 for more than ninety days consecutively since the date it had been registered as a political party ¹⁴ And

⁵ Article 47 of the 1997 Constitution and Article 65 of the 2007 Constitution

⁶ Article 45 of the 2017 Constitution

⁷ Article 8 of the Organic Act Re. Political Parties 1998

⁸ Article 8 of the Organic Act Re. Political Parties 2007

⁹ Article 9 of the Organic Act Re. Political Parties 2017

¹⁰ Article 65 of the Organic Act Re. Political Parties 1998

¹² Article 91 of the Organic Act Re. Political Parties 2007

¹⁴ Article 90 of the Organic Act Re. Political Parties 2017

			prepare to have not less than 5,000 members... and shall have at least one branch of the political party in each Region. ¹¹	political party shall prepare to have not less than 5,000 members... and the political party shall have at least one branch in each region. ¹³	Within one year from the date the political party is registered by the Registrar, the political party shall... gather at least 5,000 members, and shall have at least ten thousand members within four years from the date the political party is registered by the Registrar... and arrange political party branches in each and every region under the regions and provinces list specified by the Commission ¹⁵
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Source: Created by the author.

It can be seen that there are two huge problems that are highly visible in these laws. First is the problem of requirements for party formation. The minimum number of initiators has increased significantly, from 15 to 500 individuals. Moreover, there has been a change in the number of members as well. This results in a heavy burden on a political party or even people who share the same political ideology, and who would like to form a political party. The intention of the 2007 Organic Act, which has increased the number of

¹¹ Article 29 of the Organic Act Re: Political Parties 1998

¹³ Article 26 of the Organic Act Re: Political Parties 2007

¹⁵ Article 33 of the Organic Act Re: Political Parties 2017

members, was to support large parties by dissolving and preventing the formation of minor parties; therefore, the threshold of party members has been increased.¹⁶ This amendment has also remained and, in fact, increased in the 2017 Organic Act. Speculations on the reasons such a threshold remains high suggest that Thailand still requires a candidate for member of parliament (MP) to be a member of a party, that there are still political party subsidies, and that there is a lack of trust in independent MPs because they may betray stakeholders easily if they are not a member of a party.¹⁷

Second is the problem of proportionality. The result of not complying with the stipulated minimum number of members and branches is the dissolution of the party. The question is, whether such an act shall result in the dissolution of a party and whether conditions pose a high threat to democracy to the degree that a party shall be dissolved. By considering Article 11 of the European Convention on Human Rights which includes dissolution or prohibition of political parties, it can be seen that the Court has dealt with only a handful of cases, in which the Court has been very strict with the dissolution of political parties. This may be due to the criteria developed by the Court which highlights the importance of political parties. This is because political parties play a crucial role in providing pluralism, through freedom of expression and freedom of association to function, in a democratic society. Thus, dissolving a political party, if not done reasonably, could prevent democracy. This brings us to the second question, that is, what is considered as appropriate dissolution of a political party? According to Article 11(2) of the European Convention on Human Rights, no restriction shall be placed on the exercise of such rights, unless prescribed by law and such dissolution is necessary in a democratic society.¹⁸ This has also been reflected in the Guidelines on Prohibition and Dissolution of Political Parties

¹⁶ iLaw, “Yorn doo godmai pakgarnmeung tung pak yoob pak gun yang rai? [Looking back to past Organic Acts, how party has been established and dissolved?]” (September 2016). <https://www.ilaw.or.th/articles/16600> Accessed on 2024-02-01

¹⁷ Chaiyan Chaiyaphorn, “Kuan mee garn gumnod jumnuan samachik nai garn tung pakgarnmeung rue jodtabian pakgarnmeung rue mai? [Should there be requirements in regards to the number of member in establishing a political party or in registering a political party or not?]” (August 2023). <https://www.thaipost.net/columnist/people/434421/> Accessed on 2024-02-01

¹⁸ Sungjin Kim, “Dissolution of Political Party: Criteria adopted by the Korean Constitutional Court and Lessons from the European Court of Human Rights,” *Journal of Korean Law*, 15 (June 2016), pp.297-323.

and Analogous Measures adopted by the Venice Commission at its 41st plenary session that 1) dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, and that 2) dissolution of political parties should be used with utmost restraint.¹⁹ A Thai scholar has also shared the same view that the dissolution of political parties should only occur in two circumstances: a political party acts against the Constitutional Monarchy (in which case another measure, i.e., ordering to quit the act, shall be taken prior to dissolving the party); or the party decides to terminate itself in accordance to the regulations.²⁰

In this author's view, answering the first question, the requirement stipulated in the Organic Act setting out the minimum number of members and branches, is not against or related to any democratic principle; therefore, dissolving a party based on such requirement is not proportionate, nor the last resort to solving the problem (if the number of members really is a problem to the lawmaker). Although one may argue that the dissolution is in accordance with the law, there is a difference between legality and legitimacy. On further speculation, an MP who has won an election is forced to remain in a political party; in other words, if a party is dissolved due to not having enough members from the date the party is registered and the MP cannot join other party within 60 days, from the date the party has been dissolved, such MP will lose their status. In other words, this would mean that an MP who is already a representative voted by the people will lose their status simply because they do not have a party, although they represent the people. With that said, the validity of their status depends not only on the people who have elected them but also the conditions made by the lawmakers. It is worth highlighting that the 2017 Organic Act re. Political Party was enacted by His Majesty the King according to the advice of the National Legislative Assembly (Parliament). The Act was enacted on September 30, 2017 and the National Legislative Assembly at the time was appointed on the advice of the National Council of Peace and Order according to Article 6 of the 2014 Constitution (Interim).

It should be noted that the condition for a party to be dissolved in

¹⁹ European Commission for Democracy through Law (Venice Commission), *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures* (Strasbourg: Council of Europe, 10 January 2000).

²⁰ Kittisak Noochaikaew, "Garn yoob pakgarnmeung tam rabob godmai thai (Dissolution of Political Parties According to the Thai Legal System)," Bot Bandit *(Scholar's Articles)* 78.4 (2022).

Thailand, as stipulated in this article, does not touch upon other conditions of party dissolution under the 2017 Constitution, the Organic Act re. Political Parties, and the Organic Act re. Election of Members of the House of Representative, which has a total of 23 causes that can dissolve a political party. This leads to another problem, dissolution of a political party by the Constitutional Court.

Conclusion

As mentioned earlier in this paper, the freedom of party formation is essential to the democratic system; however, such freedom can be easily overlooked. This means that the laws and regulations in regard to party formation can be amended without the mass public noticing. Moreover, not only is such freedom crucial to a democratic society, as it allows all to be represented, but it also plays a vital role in the “political game” as it is the first rule every player must follow.

Examining the Thai constitutions shows that the minimum number of members and the conditions stipulated by the law, which, if not met, may result in party dissolution, have been raised higher than ever before.

These conditions, which are not about a party posing a high threat to democracy, can reduce political pluralism, as it will be hard for minorities to form a party due to the number of members, and an individual cannot run for an election independently but must be affiliated with a party. By contrast, the laws and regulations should only be a tool that supports and allows people to form a party conveniently, and party dissolution should only be used for cases against the constitution or against democracy, because such law relates to the rights and freedom of the people directly.²¹

We must remember that democracy combines the words people (*demos*) and rule (*kratos*); therefore, in a democratic society, people are able to have a voice and take an active role in ruling their own country.²² With that said, the freedom to be able to represent one's political will and beliefs is a freedom that must not escape notice because not only does it combine a person's freedom of expression and freedom of assembly, it is also essential

²¹ Kachen Pannuma, “Panha tang godmai nai garn judtung sinsparb lae yoob pakgarnmeung (Legal Problems in Establishment, Termination, and Dissolution of Political Parties),” *Warasarn rajabhat krunggao (ARU Research Journal)* 8-2 (2021), p. 115-124.

²² National Geographic, “Democracy (Ancient Greece),” National Geographic (N.D.) (<https://education.nationalgeographic.org/resource/democracy-ancient-greece/> Accessed on 2024.02.05)

to the democratic system as a whole.

Parin Jaruthavee profile

Parin Jaruthavee is a young scholar who is passionate about developing her country further with Asian values. She is currently working at King Prajadhipok's Institute, which is the think-tank of the Thai parliament. Her main focus lies within the realm of blending philosophical concepts with practical practices, e.g., the concept of legitimacy and the Constitutional Court, accountability and the electoral management body, and others. Parin has completed her LL.B. from Chulalongkorn University, Thailand, and pursued her LL.M. at Peking University, China.