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Trouble in paradise

Thailand's elites are exploiting judicial power to undermine democratic institutions, thereby entrenching the country's authoritarianism

Once again, Thai politics finds itself in a state of upheaval.

On 7 August 2024, the Constitutional Court dissolved the Move Forward Party (MFP), which had won the most votes in the 2023 election. A mere seven days later, the court removed the sitting prime minister representing the ruling party, Pheu Thai, the second most popular party. In just two weeks, the highest judicial body of the country has managed to singlehandedly undermine both the legislative and executive branches. While these developments may not come as a surprise to seasoned observers of Thai politics, they have sparked fresh concerns.

Thailand's political landscape has long been characterised by recurring waves of authoritarianism. Political and economic power remains concentrated in the hands of the monarchy, the military, bureaucrats and wealthy corporates. The country has a lengthy history of military coups, with each junta systematically replacing the old constitution with a new one.

There have, however, been brief moments of democratic hope, such as the 1932 revolution that ousted absolute monarchy and the two democratic movements in the 1970s and 1990s. The 1997 constitution, hailed as the most democratic constitution, was a product of this latter period.

Nonetheless, this hope was short-lived.

Among other defects, the 1997 constitution gave birth to so-called 'independent organisations' such as the Election Commission and the Constitutional Court. Rather than serving as mechanisms of checks and balances, these organisations have morphed into powerful tools for the establishment to preserve the status quo in the face of elected politicians and popular demands for change.

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Since the 2006 coup, that ended the 1990s democratic experiment, the Constitutional Court has dissolved 34 political parties, including four winning parties that posed a threat to royalist dominance. The court has also annulled four premierships in 2008, 2014 and most recently in August 2024. All these premierships were held by parties associated with Thaksin Shinawatra who once led the anti-establishment camp. The court's impartiality has been widely questioned, as these actions have never been taken against pro-establishment governments similarly alleged of violating regulations. Criticism intensified when, shortly after disbanding the MFP, a court judge made partisan personal remarks against the party.

However, the court's rulings are not simply driven by personal animosity. Instead, they often align with Thailand's 'cultural constitution', which prioritises royal sovereignty over the principles found in the written constitution, such as citizens' rights. For example, when a military coup is carried out, the court may implicitly endorse it as (culturally) constitutional. Conversely, the court ruled that the MFP's proposal to reform Article 112 of the Criminal Code – which punishes vaguely defined offenses against the monarchy – was unconstitutional.

Divergent Patterns

Is this latest round of judicial conundrum a déjà vu? In some ways, yes. But there are at least three alarming patterns that diverge from previous instances.

First, the court's rulings from its inception in 1997 until 2014 occurred during the reign of King Rama IX. His greatest achievement was consolidating power in a way that effectively contained challengers. Thaksin and his network were seen as rivals to Rama IX's influence, and the court played a crucial role in quelling Thaksin's rise.

However, the 2014 coup – led by military figures like Prayut Chanocha and Prawit Wongsuwan – alongside the ascension of the new king following Rama IX's passing in 2016, signalled shifts in the balance of elite power. While Rama IX established 'royal hegemony' primarily through ideological means, the current environment signifies a lack of such hegemony. Without this ideological compass the question arises: what, or who, now guides the political instrumentalisation of the

Constitutional Court and other unelected bodies that once served the previous reign?

Beyond the elite power struggle, the latest court rulings represent an unprecedented level of judicial overreach.

This brings us to the second pattern: elite fragmentation in the absence of a dominant political force. This trend has worsened since the 2023 election, where the MFP defeated Thaksin's Pheu Thai Party, both of which were once in the opposition camp. This outcome was unsettling for Pheu Thai. Eventually, Thaksin struck a deal to form a 'grand' coalition with pro-establishment and coup leaders' parties, particularly Prawit's Palang Prachatrat Party. However, mistrust lingers between Thaksin and Prawit. Rumours suggest that Prawit aspired to the premiership but was disappointed in his failure to secure it. As this political drama unfolded, each player sought to use the Constitutional Court to weaken their opponents. Prawit's allies in the Senate filed a complaint to sack Pheu Thai's Prime Minister. Meanwhile, Pheu Thai refrained from challenging the court's ruling against the MFP. The party, in fact, benefitted from the demise of the MFP who is its electoral competitor.

There is much to say about this messy world of party and faction politics in Thailand, but the most concerning development is that these factions can now wield their power struggle by weaponising the unchecked power of the court.

Lastly, beyond the elite power struggle, the latest court rulings represent an unprecedented level of judicial overreach. Although this pattern has persisted since 2006, recent verdicts illustrate how just nine judges of the court could interpret culturally loaded allegations. The MFP repeatedly requested the court to consider the legality of the Election Commission's complaint against it, but these requested had minimal impact. The court ultimately ruled that the party's election campaign to amend Article 112 demonstrated its intention to 'erode' political power - equating this with its potential overthrow. Strikingly, the court linked a policy proposal, which had not even been implemented, with institutional erosion and then synonymised erosion with eradication.

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The case against Pheu Thai's PM concerned his appointment of a minister who was once

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Thaksin's aide and had been alleged of violating criminal law. However, the prosecutor had dropped the case some time ago. Similar to the MFP case, the legality of the complaint was questioned, as it was submitted by outgoing junta-appointed senators. It also remains debatable whether appointing an individual who might be accused but not convicted is unconstitutional. Despite these ambiguities, five out of the nine judges ruled that the former PM 'knew' about the individual's criminal case, but still appointed him. This, they argued, demonstrated the PM's 'dishonesty' and intentional violation of the ethical code outlined in the current constitution.

In both cases, beyond questions of complaints' legality, the court interpreted highly contested terms like 'erosion', 'overthrow', and 'dishonesty', all of which had little practical basis. The court then connected its specific interpretations to the intentions of the accused and ruled against them. In so doing, the two rulings nearly wiped out electoral gains made in 2023.

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The three trends described here share a common trait: both unelected and elected elites are exploiting judicial power to undermine democratic institutions – the government and the parliament – which are elected by the people. The law is not only weaponised but also personalised as the elites' weapon of choice. This development in entrenching Thailand's authoritarianism in a way that makes reversing it increasingly difficult.

Despite these downward trends and projections of popular political apathy, there is still reason for hope. Unlike in the past, when ideological clout held sway, today's autocrats stand exposed. Thais have learned to punish them at the polls. Dissolved parties are making quick comeback, gaining increasingly electoral traction. As long as elections continue, the thinking goes, there are always opportunities for incremental structural change, even if that could take generations. Time is on the side of those seeking change.



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