

To: The Venice Commission of the Council of Europe

Subject: Request to Reconsider Participation in Meetings with the Constitutional Court of the Kingdom of Thailand

Dear Members of the Venice Commission,

We are writing to respectfully request that the Venice Commission reconsider its participation in the upcoming meeting with the Constitutional Court of the Kingdom of Thailand. As announced by the Constitutional Court of Thailand, the Court will host the meeting of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) in September 2024, where your Commission representatives will join, despite Thailand not being a member state of the Venice Commission. This raises grave concerns among many Thai people and civil society organizations.

iLaw, a civil society organization monitoring the legacy of laws from the coup era, wishes to bring to your attention that the appointment of the current judges of the Constitutional Court of Thailand is dictated by the 2017 Constitution of Thailand, which was drafted by the regime installed by the military coup. The selection process for the Constitutional Court judges is thus still heavily influenced by the military dictatorship. Specifically, two of the nine current judges were approved by the military-handpicked National Legislative Assembly – and the other seven were appointed by the previous Senate – which was appointed by the coup leaders.

In subsequent elections, the Constitutional Court continues to play a political role in maintaining the coup regime's order. Notable instances include the dissolution of many military-opponent political parties, such as the Thai Raksa Chart Party one month before the 2018 elections, the Future Forward Party in 2020, and the pending decision on the Move Forward Party scheduled for August 7, 2024. The Court has also disqualified numerous anti-coup politicians from running in elections, while its rulings have frequently favored the coup regime. For example, the Court ruled that General Prayut Chan-o-cha, head of the coup, was eligible to serve as Prime Minister even while holding the position of Head of the National Council for Peace and Order during the elections, and that he could continue as Prime Minister beyond the eight-year term limit set by the Constitution.

Furthermore, one of the current Constitutional Court judges, Udom Ratararit, who was appointed by the coup-appointed Senate, faces conflicts of interest as he was a member of the committee that drafted the 2017 Constitution. This dual role as both drafter and interpreter of the Constitution undermines judicial independence.

The Thai public is acutely aware that the Constitutional Court of Thailand does not function as a neutral judicial body protecting citizens' rights against state overreach. Instead, it operates as a political entity perpetuating the coup regime's power structure. The Court's attempt to engage with the international community is seen as an effort to legitimize the coup regime's mechanisms. The Commission's involvement with them would be perceived as a signal of support for the coup-legacy regime. This could, in turn, call into question the credibility of the Commission itself, as such action would violate the Commission's declared missions – to support democracy, human rights, and the rule of law across Europe and beyond.

In light of these concerns, iLaw urges the Venice Commission to reconsider its participation in the upcoming and future meetings with the Constitutional Court of Thailand until reforms are enacted to ensure the independence of the Constitutional Court, free from coup influence and interference, in alignment with the values of the Commission.

Sincerely,

iLaw