

## Ruling of the People's Court



In the Name of the People  
The People's Court

**Ruling No. 1/2565**

Matter No. 1/2565

17 May 2022

Puangpetch Hemkham, Petitioner No. 1  
Permsap Sae-ung, Petitioner No. 2

Re: Does Article 1448 of the Civil and Commercial Code contravene Sections 25, 26, or 27, paragraphs one, two and three, of the 2017 Constitution of the Kingdom of Thailand?

The Central Juvenile and Family Court referred a petition by the petitioners (Puangpetch Hengkam, No. 1 and Permsap Sae-ung, No. 2) in Civil Black Case No. YorChorPor 1056/2563 to the Constitutional Court, requesting that it rule on whether or not Article 1448 of the Civil and Commercial Code contradicts the 2017 Constitution of the Kingdom of Thailand. The Constitutional Court issued Ruling No. 20/2564 that Article 1448 of the Civil and Commercial Code does not contradict the Constitution. The People's Court sees that the aforementioned case impacts the liberties of the people and has significant impact on sexual and gender equality, and therefore accepted applications for People's Court justices in order to write a new ruling in line with the intentions of the people and with respect for sexual diversity. The facts in the case according to the petition, accompanying documents, and the social, political and historical context are as follows.

Permsap Sae-ung and Puangpetch Hemkham, the petitioners, submitted a petition to the Central Juvenile and Family Court requesting a court order allowing them to register their marriage, since they are a sexually diverse couple who were both assigned female at birth and have been living together for over 10

years. The couple would like to receive legal protection through the registration of their marriage. On 14 February 2020, the petitioners submitted an application for marriage registration, along with supporting documentation, at the Bangkok Yai district office in Bangkok, but the registrar denied their application since the law only allows marriage to be contracted between a man and a woman. This was due to the 1998 Rule of the Ministry of Interior on Family Registration stipulating that individuals applying for marriage registration must complete an application for marriage and family registration (Form KorRor 1) in a system in which marriage must be between an individual who was assigned male at birth and another individual who was assigned female at birth. Subsequently, on 25 February 2020, the petitioners submitted an appeal against the order denying their application to register their marriage and record the Family Register and requested the officials to register their marriage. On 17 March 2020, the Bangkok Yai district office notified them that they had submitted a written notification regarding the appeal with the Registrar of Bangkok for consideration and had received the result of the appeal in Notice No. KorTor 5700/2699, dated 24 June 2020. The result stated that the registrar of Bangkok Yai district refused to register the marriage as the petitioners were of same gender and so the marriage was therefore not in accordance with Article 1448 of the Civil and Commercial Code. Their appeal was without weight and therefore dismissed.

The view of the petitioners, Permsap Sae-ung and Puangpetch Hemkham, was that the denial of their marriage registration request on the basis that they were born the same sex and are therefore unable to be married under Article 1448 of the Civil and Commercial Code, the 1934 Family Registration Act and the Ministerial Notification prescribed under the 1934 Family Registration Act, prevented same-sex couples, transgender couples, and sexually diverse couples from being protected under the law, violating their human dignity, rights, liberties, and equality, and discriminating against them on the basis of sex and gender. The setting of qualifications in the aforementioned laws contradicts Section 4 (human dignity, equality), Section 5 (the primary status of the Constitution over other laws), Section 25 (general provisions on rights and liberties), Section 26 (instances for limiting guaranteed rights and liberties) and Section 27 (equality) of the Constitution for the following reasons:

1. Section 30 of the 2007 Constitution of the Kingdom of Thailand defines “gender” with respect to the spirit of the Constitution as “Individuals are equal before the law and shall be protected equally under the law” and discrimination on the basis of differences in “sex” shall be prohibited, including on the basis of differences in gender identity or sexual and gender diversity. “Sex” in Section 27, Paragraph 3 of the 2017 Constitution therefore includes prohibition against discrimination on the basis of differences in sexual or gender identity and sexual diversity that differs from an individual sex as assigned at birth.

2. Article 1448 of the Civil and Commercial Code is not in line with the general principle of the limitation of rights and liberties of individuals in Section 26 of the Constitution and contravenes the rule of law, under which the enactment of laws restricting rights and liberties of individuals shall not unreasonably impose burden on the rights and liberties of individuals. However, Article 1448 of the Civil and Commercial Code provides state officials to control legality pertaining to formality, which impacts legality pertaining to substantiality. This affects the right to establish a family, which is a basic right to which all Thai people are entitled, and same-sex couple are entitled to the same protection as heterosexual couple. The spirit of the Constitution aims to protect human dignity, rights, liberties, and equality, and makes it the duty of the state to protect the people so they can live in the state with dignity, pride, and value for both themselves and in living together with others. In addition, the provision in Article 1448 stipulating that, “A marriage can take place only when the man and woman have completed their seventeenth year of age...” was enacted in 1934. At present, Thailand has enacted the 2015 Gender Equality Act, which is a law that protects the rights, liberties, and equality of people with sexual diversity in Article 3 and Article 17. The refusal of the registrar of Bangkok Yai District to register the marriage of the petitioners, citing Article 1448 of the Civil and Commercial Code, is therefore a discriminatory act against the people and those with sexual diversity. It goes against the 2015 Gender Equality and international covenants which Thailand has signed and ratified, such as the International Covenant on Civil and Political Rights (ICCPR), Convention on Ending All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).
3. Marriage is the establishment of a social institution which is the long-standing basis of the existence of the human race called the family. In other countries, the rights of LGBTQIA+ people are protected, such as by laws protecting their right to marriage, or the right to access reproductive health services as equally as married heterosexual couples. When it comes to the right to marriage, a person’s sex cannot be decided on the basis of the body. Specifying that there are only two human sexes, which are male and female, impacts the guarantee of rights and status of individuals under laws that only account for gender and do not afford importance to the emotions, feelings, desires, tastes, or differences within the state of mind of each individual.

The Central Juvenile and Family Court forwarded the petition of the petitioners to the Constitutional Court. But the Constitutional Court chose not to protect human rights and ruled that Article 1448 does not contradict the Constitution.

The People's Court wishes to examine the matter anew in line with the Constitution.

Before beginning the examination, the People's Court wishes to note that this case must be examined both for the benefit of Permsap Sae-ung and Puangpetch Hemkham, the two petitioners, and the collective benefit of all Thai people. The petitioners experienced injustice, which is also experienced by other same-sex, transgender, and sexually diverse couples. Furthermore, the People's Court sees that, if an individual's human dignity, rights, freedom, and equality are not protected, then those of all other people are also not protected. The People's Court therefore sees that this matter must be re-examined for the following five reasons, with respect to history, society, international relations, and humanity:

First, the People's Court wishes to question whether the law and the state should have an appropriate role in the people's love and their right to establish a family. The two petitioners, Permsap Sae-ung and Puangpetch Hemkham, have shared their lives together, shared their joys and sorrows, and looked after one another for more than ten years. The reason they petitioned the Constitutional Court was due to an instance in which Puangpetch needed surgery, but the hospital insisted that Puangpetch's mother must consent to the surgery and that Permsap, Puangpetch's partner, could not provide her consent. Puangpetch's mother is elderly and lives in the mountains and traveling to Bangkok is difficult for her. The lack of a law that recognized the relationship between the two petitioners caused them hardship. The law is therefore an obstacle because the petitioners, as a couple, do not have the rights and legal authority to consent to allow surgery and other processes of life, for example, financial transactions and life insurance. The view of the People's Court is that law should reflect the reality in the country and should be an instrument in promoting the quality of the life of the people. It should not be an instrument in dispossessing the people of their rights, freedom and equality.

Second, the view of the People's Court is that there have been LGBTQIA+ people in the area known today as Thailand from the distant past up to the present, including the history of the Sukhothai Kingdom, the Ayutthaya Kingdom, or the Rattanakosin Kingdom, and including the various kingdoms colonized by Siam, including the Lanna Kingdom, the Lan Xaan Kingdom, and the Patani Sultanate, among others. LGBTQIA+ people have existed in every era. They appear in various documents, such as the Three Seals Law, which stipulated that "kathoe" or "bantho" were unable to be witnesses in legal cases. Paintings of instances of "len phuan" and "len sawat," which appeared on temple walls, and the Jataka

Tales also contain accounts of same-sex love. It can be seen that sexual diversity did not only arise in the present or as a transformation in line with trends.

The view of the People's Court is that a significant number of people in Thailand want to see transformation of the institutions and laws related to marriage, but the Thai state and judiciary remain unmoved by the voices of the people and have not sanctioned such transformation. Marriage in Thailand has long-existed and been based on traditions passed on from generation to generation. In 1804, marriage was mentioned in the Spouse Law during the reign of Rama I. In 1934, the Civil and Commercial Code, Chapter 5 on the family, was first promulgated. It was subsequently revised in 1976, and remains in force until the present (46 years). It has not been changed to bring it in line with the times or transform in line with the changes and progress made by people in the country. The People's Court wishes to share evidence that reflects what the people would like to see. The civil society organization, "สมรสเท่าเทียม Marriage Equality," created the website, [www.support1448.org](http://www.support1448.org), on 28 May 2021 for the Thai people to sign a petition for the amendment of Article 1448 of the Civil and Commercial Code. It received over 100,000 signatures within less than 24 hours. At present (Thursday, 12 May), the petition has 304,280 signatures. It can therefore be seen that the Thai people want marriage equality just as in the litigation of this case. It is not enough to have a wedding without legal recognition. Same-sex marriage should be accepted; there should be no limits or divisions. LGBTQIA+ couples should have the same rights as heterosexual and cisgender couples.

The struggle for marriage equality is part of the struggle for LGBTQIA+ rights, which has been going on in Thailand for the past forty years, as seen in the images in various media, whether it is in the name of an individual, in the name of various organizations, or even in the parliament, or the struggle against the prejudice that arises in families, educational institutions, and the workplaces. There are demands for various rights and liberties in society, including the right to establish a family. Accessing various state benefits should be for everyone. Those who struggle maintain that the law should not be selective on the basis of sex, such as reduction in taxes, access to healthcare benefits, adoption, and other legal protections offered to married couples.

Third, the People's Court notes that at present, there are 31 countries which have laws permitting and guaranteeing same-sex marriage, including Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Taiwan, the United Kingdom, the United States of America and Uruguay. Among these, Taiwan is the only Asian country. In 2017, a pair of co-petitioners, Chia-Wei Chi, a gay Taiwanese citizen who had fought for LGBTQIA+ rights for more than 40 years, and the Taipei City Government,

petitioned the Constitutional Court that the fourth part (marriage) of the second chapter (family) of the Civil Code, which did not allow same-sex couples to get married, violates the Constitution of Taiwan. In particular, it was in violation of Article 22 (freedom of marriage) and Article 7 (equality). On 24 May 2017, the Constitutional Court of Taiwan issued Ruling No. 748, in which they examined the petition of the two co-petitioners and ruled that not allowing same-sex couples to marry was unconstitutional. The court wrote that, “Furthermore, the freedom of marriage for two persons of the same sex, once legally recognized, will constitute the bedrock of a stable society, together with opposite-sex marriage. The need, capability, willingness, and longing, in both physical and psychological senses, for creating such permanent unions of intimate and exclusive nature are equally essential to homosexuals and heterosexuals, given the importance of the the freedom of marriage to the sound development of personality and safeguarding of human dignity.” The Constitutional Court of Taiwan ordered the legislature to amend the law within 2 years to allow same-sex couples to marry. While awaiting the change of law to become official, the Constitutional Court ordered the district offices around the country to allow same-sex couples to register their marriages and to receive the same benefits and duties as heterosexual couples. Subsequently, on 24 May 2019, the Taiwanese legislature promulgated a law to make Ruling No. 748 of the Constitutional Court law. The view of the People’s Court is that the original law present in Taiwan was not very different to the current law in Thailand that the couple-petitioners have petitioned as unjust. If Thailand becomes the second country in Asia to protect same-sex marriage, it will be of benefit to the Thai people and will cause Thailand to be seen as a leading and progressive country in the eyes of the global community.

Fourth, the view of the People’s Court is that the institution of the family has already taken many forms, but the law has yet to reflect this reality. It is everyone’s right to build a family by choosing to register their marriage with whoever they want without limitations on the basis of sex. It is everyone’s right to choose freely, and the state is only responsible for facilitating the protection of the founding of the family.

Fifth, the People’s Court wishes to reiterate that the failure to protect the rights and freedom of one person or one group of people in society is bad for everyone. The People’s Court sees that not changing the law does not only impact the life of the petitioners or other couples, but creates inequality in society. It leads to negative speech, such as “Loving someone of the same sex is a sin and against good morals” as we have long heard in Thai society. This is a patriarchal interpretation, but at present, we should not decide based on patriarchy or traditional customs. Oppressing people who are different is not good morals, no matter how one defines good morals. Neither sexual or gender bias should be a factor in deciding who can marry and nor should fears that extending the right to marry will increase the burden on the state or that people will be exploiting public

benefit and impact state security. Equality in this country has never been a gift from the state but is the result of a long struggle.

The People's Court has examined the case and views that the 2017 Constitution of the Kingdom of Thailand guarantees human dignity and rights and liberties in Section 4, which stipulates that, "Human dignity, rights, liberties and equality of the people shall be protected. The Thai people shall enjoy equal protection under this Constitution."

Section 25 stipulates that, "As regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons."

The second paragraph stipulates that, "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 intent of the Constitution."

The third paragraph stipulates that, "Any person whose rights or liberties protected under the Constitution are violated, can invoke the provisions of the Constitution to exercise his or her right to bring a lawsuit or to defend himself or herself in the Court."

And the fourth paragraph stipulates that, "Any person injured from the violation of his or her rights or liberties or from the commission of a criminal offense by another person, shall have the right to remedy or assistance from the State, as prescribed by law."

Section 26 stipulates that, "The enactment of a law resulting in the restriction of rights or liberties of a person shall be in accordance with the conditions provided by the Constitution. In the case where the Constitution does not provide the conditions thereon, such law shall not be contrary to the rule of law, shall not unreasonably impose burden on or restrict the rights or liberties of a person and shall not affect the human dignity of a person, and the justification and necessity for the restriction of the rights or liberties shall also be specified.

The law under paragraph one shall be of general application, and shall not be intended to apply to any particular case or person."

Section 27 stipulates that, "All persons are equal before the law, and shall have rights and liberties and be protected equally under the law."

Paragraph two stipulates that, “Men and women shall enjoy equal rights.”

Paragraph three stipulates that, “Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution, or on any other grounds shall not be permitted.”

Paragraph four stipulates that, “Measures determined by the State in order to eliminate an obstacle to or to promote persons’ ability to exercise their rights or liberties on the same basis as other person or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.”

The People’s Court sees that marriage according to Thai traditional norms, which is limited to that of a man and a woman, as stated in Article 1448 of the Civil and Commercial Code, which stipulates that, “A marriage can take place only when the man and woman have completed their seventeenth year of age, but the Court may, in case of having appropriate reason, allow them to marry before attaining such age,” reflects a law that has not changed in accordance with the society and the times, and limits individual liberty within the confines of a law which has not been revised since 1976.

In the present, building a family is not only limited to a man and a woman. Living a life as a couple with another individual is a matter of the intention of creating a sustainable relationship. The two individuals willingly decided to share their lives with each other and care for one another within an equal society and law, no matter their sex. This cannot be controlled by the frame of values, legitimacy, or the expectations of the society or other individuals, such as the approval or disapproval of the relationship, the expectation that they must procreate, or that they must be on good terms with one or the other or both families.

The view of the People’s Court is that the family is held to be the fundamental institution of Thai society. Building a strong family will lead to the creation of strong citizens and quality individuals, and the creation of individuals who will not discriminate and who will understand difference and equality in society. The right and liberty to establish a family therefore should not be denied to individuals of the same sex or individuals who are sexually diverse. No matter an individual’s sexual orientation, they are able to build delicate relationships within families. Families do not exist only for procreation of the species. In addition, in the present, the creation of new life can be facilitated by the use of medical technology to assist individuals with physical limitations, regardless of



gender. The law must protect and guarantee the rights of all individuals, no matter what kind of family they have.

Section 5 of the 2017 Constitution of the Kingdom of Thailand guarantees the human dignity, rights, liberties and equality of individuals. The word “individual” is not limited by gender or sexual identity in any way. In addition, Section 27 of the 2017 Constitution of Thailand further guarantees that individuals are equal under the law and have rights and liberties and are equally protected under the law. Unfair discrimination on the basis of sex therefore cannot occur under the Constitution.

The aforementioned provisions of the Constitution provide protection for the rights and equality of men and women with the intention that “having a different sex” will not be a basis for discrimination. At the same time, the Constitutional Court states that both the Thai and international societies accepted sexual diversity, indicating that, in the present time, “having a different sex” is more diverse than just men and women. The law should therefore not discriminate on the basis of sex and gender.

In addition, Thailand still must respect the principles of international human rights, included in the Universal Declaration of Human Rights, and in the conventions to which Thailand is a state party, namely the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantee the right to marriage and the right to gender equality.

The right of every individual to access marriage equally should not be enacted as a specific law. The oppression of LGBTQIA+ people can be seen clearly through the attempt to push for the Civil Partnership bill, which provides different rights and duties than those stipulated for spouses in Article 1448 of the Civil and Commercial Code.

The intention of drafting a law for a specific group is to protect and provide rights to a specific group whose difference causes them to be disadvantaged, for example, laws to provide equality for disabled people or for women, who face disadvantages arising from their bodies. However, marriage is a matter of relationships. “Sexual diversity” is not a difference that has an important impact on how one carries out one’s life. A group-specific law therefore does not need to be drafted to recognize the relationship of two people who share their life together as a “married couple.”

The way the Civil Partnership bill is written can be considered confining a group of people that the state does not accept, and limiting their rights to those that the state has decided to provide. This is a violation and a devaluation of the human dignity and equality of individuals in the country, which they should receive no matter their sex. Equal access to the law is a duty of the state, which must lead society out of the cultural frame that violates the human dignity of other individuals and must not discriminate against citizens on the basis of sex.

Marriage in the legal sense brings rights, duties, and benefits that one should receive as a married couple, such as the right to access to medical treatment, the right to bring a case, the right to adopt a child, without division on the basis of sex, ethnicity, religion, or economic status, according to the fundamental principles of human rights which cannot be derogated. Marriage is different from living other forms of a shared life and therefore must be recognized by law in order to make it possible to solve the unequal access to the aforementioned rights. LGBTQIA+ people cannot be abandoned to slip out of the system. Therefore, for the security of the nation, the state should resolve the problem that has arisen, as the resolution of such problems is the duty of the state. It should not be pushed on to the shoulders to be a burden of those who are denied rights. The state should also embrace those who are sexually diverse to be a part of society in the status of citizens who should be treated equally.

The view of the People's Court is that law that is related to the status and various rights of married couples intends to guarantee and protect the rights of individuals who live a shared life as a couple. As the purpose of law is to function as a pact for all in society to live together, law cannot be made on a case-by-case basis or only in some situations that do not arise equally with everyone or on the basis of conjecture. For example, the matter of using marriage registration to aid in graft or abusing the right to access to public health services is a different matter than marriage equality, which concerns guaranteeing the status of a relationship.

In addition, the instance of marriage between two individuals who do not have a true intention to be married arises among those of all sexual orientations. In those cases, the marriage can be annulled, if Article 1458 and Article 1495 of the Civil and Commercial Code are taken into consideration.

The view of the People's Court is Article 1448 of the Civil and Commercial Code contravenes Section 4, Section 25, Section 26, and Section 27 of the Constitution as at present, LGBTQIA+ people are unable to be married as it is limited to only a man and a woman. Marriage is one of the foundations of creating a family, and that Article 1448 of the Civil and Commercial Code only allows a man and a woman to be married means that the law is no longer in line with present-day reality.

Even though Section 27 stipulates that men and women have equal rights, it does not mean that individuals with sexual orientation or identity that is different do not have equal rights. Not discriminating on the basis of sex includes all individuals, no matter their gender identity or sexual orientation. Limiting marriage to a man and a woman according to the sex assigned at birth is discriminating against one part of the society on the basis of sex, disrespecting human dignity.

For the aforementioned reasons, the People's Court therefore rules that Article 1448 of the Civil and Commercial Code contradicts Sections 4, 25, 26, and 27 of the 2017 Constitution of the Kingdom of Thailand, and issues the following orders:

1. Article 1448 of the Civil and Commercial Code and all articles that only recognize marriage between a man and a woman contradict the Constitution, as they are in conflict with the principle of equality because they do not apply to all individuals. This designation does not have any impact on existing marriages between men and women.
2. Within one year, the legislative branch and related agencies should engage in comprehensive education in order to amend Article 1448 and related articles in the Civil and Commercial Code, and all laws related to marriage in order to expand the right to marriage to everyone in order to be in line with the Constitution as well as justice and equality among the sexes.
3. While the law is being amended, LGBTQIA+ couples can register their marriages in order to guarantee their individual rights, and the Civil and Commercial Code and related laws *mutatis mutandis*.
4. Within one year, existing laws and regulations referring to the existing marriage law by both state and private entities must be studied and amended, or new laws and regulations must be issued in line with the changes noted above, such as laws regarding the use of reproductive technology and adoption, among others.