



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 2/2541*

Dated 25th June B.E. 2541 (1998)

Re : The Minister of Interior submitted an application to the Constitutional Court for a ruling on the powers and duties of a superior police official under the Criminal Procedure Code

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The Minister of Interior submitted the letter very urgent No. MI 0606.6/8028 dated 10th June B.E. 2541 (1998) to the Constitutional Court for a ruling on the powers and duties of a superior police official under section 92 paragraph two of the Criminal Procedure Code.

The Ministry of Interior stated that due to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) of which section 238 provided that “In a criminal case, a search in a private place shall not be made except where an order or a warrant of the Court is obtained or there is a reasonable ground to search without an order or a warrant of the Court as provided by law,” the doubt was raised in relation to section 92 paragraph two of the Criminal Procedure Code which provided that “When the search is made by a superior administrative or police official acting in person, no warrant of search is necessary but it must be a case where a warrant of search may be issued or where a search may otherwise be made under this Code.” In order that the performance of duties of police officials was in compliance with the law, the Royal Thai Police Department consulted the Council of State. The latter was of the opinion that section 238 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) abrogated the principle allowing a superior administrative or police official to issue a warrant of search under section 58 (3) of the Criminal Procedure Code and provided only the Court with such power. That section 92 paragraph two of the Criminal Procedure Code provided the superior administrative or police official acting in person with the power to search in a private place without a warrant of search in the case where such warrant may be issued or where a search may otherwise be made was the principle extended from the provision of section 58 (3) of the Criminal Procedure Code. The law allowed a superior administrative or police official to search in a private place without a warrant of

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search because such person was deemed as a warrant himself. As a result, the provision of section 92 paragraph two of the Criminal Procedure Code in the part that a superior administrative or police official acting in person could search in a public place without any warrant of search in the case where such warrant may be issued was contrary to the provision of section 238 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore had to be unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Council of State notified the Royal Thai Police Department of its aforesaid opinion. Unfortunately, both the Royal Thai Police Department and the Ministry of Interior argued with the Council of State. They were of the opposite opinion that the superior administrative or police official acting in person could search in a private place without a warrant of search and that section 92 paragraph two of the Criminal Procedure Code was not contrary to section 238 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, they could not reach any decision in this connection and therefore submitted an application to the Constitutional Court for a ruling on whether a superior administrative or police official acting in person could search in a private place without a warrant of search in the case where such warrant may be issued or a search may be made under section 92 paragraph two of the Criminal Procedure Code.

The Constitutional Court, after consideration, was of the opinion that the Ministry of Interior submitted an application to the Court for a ruling on the power of search of a superior police official by virtue of section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The issue to be considered was therefore whether the Ministry of Interior was an organ under the Constitution of the Kingdom of Thailand.

The Constitutional Court held that under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that “In the case where a dispute arises as to the powers and duties of organs under the Constitution, such organs or the President of the National Assembly shall submit a matter together with the opinion to the Constitutional Court for decision,” an organ under the Constitution of the Kingdom of Thailand meant an organ having roles and powers and duties as provided in the Constitution. Under section 201 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that “The King appoints the Prime Minister and not more than thirty-five other Ministers to constitute the Council of Ministers having the duties to carry out the administration of the State affairs,” it was the provision prescribing the person responsible for and the powers and duties of State administration. The executive organ meant accordingly the Council of Ministers headed by the Prime Minister. The Minister of Interior or the Ministry of Interior was a part of or a body of such executive organ. It was not an organ under the Constitution of the Kingdom of Thailand. The Ministry of Interior therefore could not submit an application to the Constitutional Court for decision by virtue of section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

By reasons stated above, the Constitutional Court did not accept the application of the applicant for consideration.
