



**IN THE NAME OF THE KING**  
**The Constitutional Court**

**Ruling No. 5/2541\***

**Dated 4<sup>th</sup> August B.E. 2541 (1998)**

**Re : The application to the Constitutional Court for the interpretation of section 241 paragraph four and section 264 inconjunction with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)**

.....

Mrs. Ubon Boonyachalothorn submitted an application dated 30<sup>th</sup> June B.E. 2541 (1998) to the Constitutional Court for the interpretation of section 241 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that “In a criminal case for which the public prosecutor issues a final non-prosecution order, an injured person, the suspect or an interested person has the right to know a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to the making of the order for the case, as provided by law.” The applicant was prosecuted by the Public Prosecutor of Nonthaburi Province at the Nonthaburi Provincial Court for the charge of joint use and engagement of other persons to jointly and deliberately kill Mr. Sangchai Soonthornwat. For this case, the Attorney General issued a final non-prosecution order. However, the inquiry official and the public prosecutor thereafter re-prosecuted due to the existence of new material evidences. During trial, the defense attorney requested the Court to summon the inquiry official and the public prosecutor to deliver documentary evidence to the Court. The material documents according to the copy of the order summoning documentary evidence dated 21<sup>st</sup> April B.E. 2541 (1998) were “a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to making the order of prosecution against the applicant for the charge of directing other persons to kill Mr. Sangchai Soonthornwat both in respect to the part that the Attorney General issued the final non-prosecution order and that the re-prosecution order was issued in this case.” The prosecutor notified the Court of inconvenience of the delivery of requested documents. The defense attorney submitted an application to the Nonthaburi Provincial Court for forcing the prosecutor to deliver such documents. Should the Court agree with the prosecutor, the

---

\* Published in the Government Gazette, Vol.115, Part 56a, dated 2<sup>nd</sup> September B.E. 2541 (1998)

Court was then requested to refer the application to the Constitutional Court for ruling and interpretation. The Nonthaburi Provincial Court, in this connection, issued an order that the prosecutor had the right not to deliver the requested documents because such delivery may cause damages to the prosecutor and the Court needed not refer the matter to the Constitutional Court for ruling and interpretation. Therefore, the Constitutional Court was requested to consider the following issues:

1. Was the refusal of the prosecutor to deliver documents which were “a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to making the order of prosecution against Mrs. Ubon Boonyachalothorn for the charge of directing other persons to kill Mr. Sangchai Soonthornwat both in respect to the part that the Attorney General issued the final non-prosecution order and that the re-prosecution order was issued in this case” to the Nonthaburi Provincial Court due to confidentiality and potential damages, which the Court agreed to, contrary to section 241 paragraph four of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

2. The defendant requested the Nonthaburi Provincial Court to submit the matter under item 1. to the Constitutional Court for ruling and interpretation. Could the Court deny the submission thereof on the ground that it was not the case where the provisions of law which the Court applied to the defendant or to the case were contrary to or inconsistent with section 6 of the Constitution, which the Court had to submit the matter to the Constitutional Court for consideration and decision under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court considered the matter and held that section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “In the application of the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall stay its trial and adjudication of the case and submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision.” That provision meant that only the Court could submit, in the course of official service, the opinion to the Constitutional Court for consideration and decision. The applicant or the other party to the case was not entitled to directly submit the matter to the Constitutional Court. When it appeared that the applicant did not have the right to submit the matter to the Constitutional Court, the case therefore did not constitute a cause for the Constitutional Court to accept the application for consideration and ruling on whether such matter was contrary to or inconsistent with section 241 paragraph four in conjunction with section 6 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.

---