

Summary of the Constitutional Court Ruling No. 1/2543

Dated 13th January B.E. 2543 (2000)*

Re : The Bangkok South Criminal Court referred the application of the defendant in Criminal Case No. 990/2536 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on whether or not section 16 and section 120 of the Criminal Procedure Code were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The State Attorney of the Southern Bangkok Criminal Division prosecuted a total of 4 defendants in Criminal Case No. 990/2536 on charges of jointly causing another to commit an offence by the employment, compulsion, hire, asking as a favour or incitement of such other person to kill another (Mr. Pramarn Sansue) intentionally and with prior deliberation which were offences under section 288 and section 289 of the Criminal Code. Thereafter, the Bangkok South Criminal Court referred the application of the first defendant (Mr. Somporn Dechanupharb), the second defendant (Mr. Nen Mahavilai) and the fourth defendant (Mr. Rangsan Torsuwan) requesting the Constitutional Court to rule on whether or not section 16 and section 120 of the Criminal Procedure Code were contrary to or inconsistent with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore unenforceable under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The first applicant and the second applicant, i.e. the first and second defendants, submitted that the Rules of the Ministry of Interior on Criminal Case Proceedings, B.E. 2523 (1980) issued by the Minister of Interior by virtue of section 16 of the Criminal Procedure Code were rules which provided an exemption from the Criminal Procedure Code which already stated the powers of inquiry and that of the inquiry officer with clarity.

The third applicant, i.e. the fourth defendant, requested that the Constitutional Court rule that section 120 of the Criminal Procedure Code did not confer discretionary powers on the state attorney but granted absolute powers to the state attorney to exercise the powers of inquiry. In addition, the third applicant also requested the Constitutional Court to guarantee his rights and liberties under section 27 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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2. Preliminary issue

The Constitutional Court considered the application referred to it by the Bangkok South Criminal Court, the documents supporting the application, the statements of the applicant and statements of relevant persons and held that the case was in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore accepted the matter for consideration.

3. The issues considered by the Constitutional Court

The first issue considered was whether or not section 16 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The second issue considered was whether or not section 120 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

First issue: whether or not section 16 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

It was held that section 16 of the Criminal Procedure Code was a provision which widely prescribed the powers and duties of various organs and competent officials in relation to the performance of duties pursuant to the laws governing such organs or competent official. The provision was therefore not contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Regarding the Rules of the Ministry of Interior on Criminal Case Proceedings, B.E. 2523 (1980), the Order appointing the responsible inquiry officer pursuant the Order of the Police Department No. 861/2536, dated 31st May B.E. 2536 (1993) and the act of the inquiry officer pursuant to such Order, it was held that such an act was done in pursuance of the Rules of the Ministry of Interior whereas such Rules of the Ministry of Interior and Order were not issued by an organ which exercised legislative powers. The Rules and Order were therefore not provisions of law under the definition in section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and not within the powers of the Constitutional Court to consider.

Second issue: whether or not section 120 of the Criminal Procedure Code was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Pursuant to the application, this issue was divided into sub-issues considered by the Constitutional Court, as follows:

(1) Whether or not the provision was contrary to or inconsistent with section 241 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

It was held that an inquiry, which was lawfully conducted under the Criminal Procedure Code and other relevant laws, should be deemed as an inquiry justly conducted under section 241 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) Whether or not the provision was contrary to or inconsistent with section 4, section 5, section 26, section 27, section 28, section 31, section 32 and section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or the principles embedded therein, which were provisions which recognised and protected the human dignity, rights and liberties of a person.

The Constitutional Court held the following opinion. Section 120 of the Criminal Procedure Code stated the condition that an inquiry should be conducted before the State Attorney could exercise the power to submit a prosecution to the Court. This was an important measure necessary for the protection of rights and liberties of the suspect or the defendant. The applicant's claim that the State Attorney, inquiry officer as well as the Courts of Justice did not respect or protect the human dignity, rights and liberties of the applicant could not therefore constitute a cause for claiming that section 120 of the Criminal Procedure Code was contrary to or inconsistent with the aforementioned sections of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which the Constitutional Court could consider under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(3) Whether or not the provision was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 120 of the Criminal Procedure Code did not contain any provision which allowed the State Attorney to exercise any arbitrary discretion as claimed by the applicant. The State Attorney's decision to submit prosecution in some cases and not others was not an unjust discrimination of suspects or defendants. However, this was a necessary exercise of discretion to decide on prosecution or non-prosecution after a consideration of the evidence on a case-by-case basis and dependent upon the sufficiency of the evidence available for proving the commission of an offence. The provision was therefore not contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(4) Whether or not the provision was contrary to or inconsistent with section 70 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 120 of the Criminal Procedure Code did not contain any provision which allowed the exercise of discretion by a State official which could be neglected or resulted in the non-performance of a duty. The

applicant's claim that the State Attorney and other State officials failed to perform their duties under section 70 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was therefore a different issue from the meaning of section 120 of the Criminal Procedure Code. Section 70 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was meant to give the right to the applicant to instigate proceedings. It was not a matter which the applicant could request the Constitutional Court to consider under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(5) Whether or not the provision was contrary to or inconsistent with section 243 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 120 of the Criminal Procedure Code did not contain any provision which could be interpreted as being a violation of such prohibition in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A State official's non-compliance of section 243 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was a matter which section 28 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided for a mechanism and judicial process to which the applicant was entitled. As a result, the case was one where the applicant had to invoke the provisions of section 243 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as a defence in the Courts of Justice, which in this case was pending adjudication in the Bangkok South Criminal Court. Thus, this was not a case which the applicant could request the Constitutional Court to rule under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) that section 120 of the Criminal Procedure Code was a provision contrary to or inconsistent with section 243 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As for the case of the applicant's claims that there were violations of human dignity, rights and liberties of a person as recognized by the various provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that the applicant could invoke such constitutional provisions in exercising his rights in Court or in raising his defence in the Court. This was not a case where the applicant could exercise the right for a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held that:

(1) Section 16 of the Criminal Procedure Code was neither contrary to nor inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) Section 120 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 4, section 5, section 26, section 27, section 28, section 30,

section 31, section 32, section 33, section 70, section 241 and section 243 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Other requests made by the applicant did not have to be considered.
