

Summary of the Constitutional Court Ruling No. 2/2543

Dated 27th January B.E. 2543 (2000)*

Re : The Criminal Court referred the objection of the plaintiff in Criminal Case No. 7109/2540 requesting for a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Criminal Court referred the application of the applicant (Mr. Rangsan Torsuwan), who, as plaintiff, filed claims against Mr. Tawatchai Chamnarnlor, a State Attorney, and his company, a total of 8 persons, as defendants in the Criminal Court in Criminal Case No. 7109/2540 on 16th September B.E. 2540 (1997) on charges of unlawful performance or non-performance of duties, filing false claims and unlawfully filing claims to impose penalties. Such a case was at the stage of claims investigation on 19th November B.E. 2541 (1998). The case was filed as a result of the defendant's prosecution by the state attorney of the Southern Bangkok Criminal Division together with his company in Criminal Case No. 990/2536 filed on 16th July B.E. 2536 (1993) on charges of jointly causing another to commit an offence by the employment, hire, asking as a favour or incitement by any means of such other person to kill another. The applicant submitted that the Court was going to enforce the disputed provisions of the Criminal Procedure Code at the claims investigation stage but there had not yet been a ruling of the Constitutional Court under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on such provisions.

Subsequently, objections were submitted by the State Attorneys Mr. Sahai Sapsuntornkul, the first objector, Mr. Komen Phatrapiroom, the second objector, Mr. Tawatchai Chamnarnlor, the third objector, and Mr. Phornsak Srinarong, the fourth objector. The objectors were defendants in the criminal case and their objections submitted to the Constitutional Court stated that:

(1) The scope of the word "party" in section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was not yet settled. This case was only at the claims investigation stage and should not be within section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) This application overlapped with the application which the applicant and his company, as defendants in Criminal Case No. 990/2536, had already submitted to the

* Published in the Government Gazette, Vol. 117, Part 50a, dated 1st June B.E. 2543 (2000)

Constitutional Court for a consideration 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). Such an application had already been accepted by the Constitutional Court for consideration.

(3) The application, which referred to the acts of State Attorneys of the Southern Bangkok Criminal Division, was not related to the four objectors and was not in any manner relevant to Criminal Case No. 7109/2540 at the Criminal Court.

The objectors therefore requested that the Constitutional Court dismiss the application.

2. Preliminary issue

The Constitutional Court considered the application and the objections submitted by the four objectors 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 issue considered by the Constitutional Court

The issue considered was whether or not section 120 of the Criminal Procedure Code was a provision of law which was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, the applicant also submitted to the Constitutional Court that there was a violation of the human dignity, rights and liberties of a person recognized by various sections of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

The Constitutional Court had already held in Ruling No. 1/2543, dated 13th January B.E. 2543 (2000), that section 120 of the Criminal Procedure Code was neither contrary to nor inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As for the issues on violations of human dignity, rights and liberties of a person, the applicant was able to invoke the relevant constitutional provisions in Court or raise them as a defence in a case in Court pursuant to which the Court would refer such a matter to the Constitutional Court for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

As the Constitutional Court had already ruled on the matter, another ruling was not necessary. By virtue of the above stated reasons, the application was dismissed.
