

Summary of the Constitutional Court Ruling No. 11/2544

Dated 20th March B.E. 2544 (2001) *

Re : Is section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) contrary to or inconsistent with section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The State Attorney of Phrae Province, as plaintiff, prosecuted Mr. Nakhorn Duangkaew, the first defendant, and Mr. Suban Saraphan, the second defendant, on charges of having joint possession of 45.8 grams of class 1 narcotics (heroin), or 36.9 grams of pure heroin-hydrochloride, for distribution without license. The Phrae Provincial Court convicted both defendants for offences under section 15 paragraph one and section 66 paragraph one of the Narcotics Act, B.E. 2522 (1979). Both defendants appealed that during the trial they had made confessions that they had joint possession of the heroin only for use and that they did not have the heroin in possession for distribution. The Court of Appeal Region 2 affirmed the judgment because section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) stated that “the production, import, export or possession of class 1 narcotics in the amount of not less than twenty grams of pure substance shall be deemed as a production, import, export or possession for distribution”, which was an absolute assumption. When it was held on the facts that both defendants had in their joint possession heroin in the amount of 36.9 grams in pure substance, both defendants were deemed as having in possession such heroin for distribution and they could not submit claims or conduct investigations to rebut such an assumption. Both defendants thereafter appealed to the Supreme Court, objecting that section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) was contrary to or inconsistent with section 33 of the Constitution.

The Supreme Court held that in this case, the Court of Appeal Region 2 raised the provision of section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) as a basis for considering the case. Therefore, when the defendant appealed that such provision of law which the Court was going to apply to a case was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court relevant to such provision, a temporary stay should be imposed on the case and the objection referred to the Constitutional Court for a ruling under section 264 of the Constitution.

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2. Preliminary issue

Could the Constitutional Court have the power to accept the matter for consideration under section 264 of the Constitution?

The Constitutional Court held that this was a case where a defendant (the applicant) objected that section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979), which was to be applied by the Court to a case, was contrary to or inconsistent with section 33 of the Constitution in conjunction with the fact that there had not yet been a ruling of the Constitutional Court relevant to such provision. Therefore, when the Supreme Court referred such a matter to the Constitutional Court, the Constitutional Court had the power to accept the application for consideration under section 264 of the Constitution.

3. The issue considered by the Constitutional Court

The issue considered was whether or not section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) was contrary to or inconsistent with section 33 of the Constitution.

The Constitutional Court held as follows. The intention behind the law on narcotics was the efficient suppression and control of narcotics. In addition, narcotics posed a danger to both the health and life of a human being, thus there was a need for sanctions which were severer and more decisive than usual. The provision by law of the exact amount of class 1 narcotics in section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) was aimed at punishing the producers, importers, exporters and persons who had in possession class 1 narcotics which contained not less than twenty grams of pure substance as if such acts were committed with a view to distribution. Nevertheless, such a provision by law of the amount of class 1 narcotics was only a criterion for a comparison of the scale of penalties which would be imposed on the offender. In other words, regardless of whether or not the class 1 narcotics were held in possession for use, if such narcotics were held in possession without a license, different penalties would be imposed varying on the amount in possession as provided by law. This meant that a person receiving a penalty under such law should have passed the proof or investigation of the plaintiff as being an actual offender. The Court would be the final adjudicator and sentencer. However, section 33 of the Constitution was a provision which guaranteed the basic principle for a suspect or a defendant in a criminal case, which stated that in a criminal case, the plaintiff had the burden of proving that the acts of the suspect or defendant had satisfied all the elements of the crime as provided by law. The suspect or defendant did not have to submit evidence to prove his/her innocence and such a person was granted protection throughout the period prior to a final conviction. A State official could not treat a suspect or defendant as a convict.

4. Ruling of the Constitutional Court

The Constitutional Court held by a majority of 12 votes to 2 votes that section 15 paragraph two of the Narcotics Act, B.E. 2522 (1979) was neither contrary to nor inconsistent with section 33 of the Constitution.
