

# Summary of the Constitutional Court Ruling No. 6/2546

Dated 27<sup>th</sup> March B.E. 2546 (2003)\*

**Re :** The Lampun Provincial Court referred the objection of a defendant (Mr. Sajja Suriyakul Na Ayutthaya) in Case No. 1375/2545 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) (the case of whether or not section 5 and section 32 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 32, section 42, section 46, section 50, section 78, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)).

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## 1. Background and summarized facts

The Lampun Provincial Court referred to the Constitutional Court the objection of Mr. Sajja Suriyakul Na Ayutthaya (the defendant) in a case where he had been criminally prosecuted by the Lampun Provincial State Attorney (the plaintiff) for the offence of having in possession distilled spirits and fermented spirits. The defendant claimed that he was the director of the Research Institute for Rural Development, an establishment sponsored by the Office of National Research Council, with the objectives of disseminating research works, inventions and works of the institute, i.e. the dissemination of local wisdom to agriculturalists. In that case, the defendant had received an invitation from the Office of National Research Council to participate in the exhibition “Weekend Market for Research Products of the North”. However, at the event, the defendant was arrested by excise officials of Lampun Province. The spirits produced by the institute were confiscated as exhibits and remitted to the inquiry official of Amphoe Muang Lampun Police Station. The State Attorney submitted a prosecution to the Lampun Provincial Court.

## 2. Preliminary issue

The applicant (the defendant) sought to exercise his rights under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in requesting the Lampun Provincial Court to refer his objection through the Office of the Judiciary to the Constitutional Court for a ruling on whether or not section 5 and section 32 of the Spirits Act,

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B.E. 2493 (1950) were contrary to or inconsistent with section 26, section 27, section 28, section 29, section 32, section 42, section 46, section 50, section 78, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Upon the submission of such opinion by the Office of Judiciary through official channels, the Constitutional Court had the power to accept such application for consideration.

### **3. The issues considered by the Constitutional Court**

The Constitutional Court considered the application and held that the applicant objected that section 5 and section 32 of the Spirits Act, B.E. 2493 (1950) were contrary to or inconsistent with section 26, section 27, section 28, section 29, section 32, section 42 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the applicant had neither elaborated nor specified the subject matter which was the cause for the exercise of such a right, the facts or relevant circumstances and the purpose of the application in terms of a request for the Constitutional Court to proceed in one way or another together with clear reasons in support of such a request. Thus the Constitutional Court did not have to make a ruling on these objections. Hence, from the statements made by the applicant that section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 76 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the only issue which remained to be considered was whether or not section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 46, section 50, section 76, section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The issues which the Constitutional Court had to consider was whether or not section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 46, section 50, section 76, section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court held as follows.

(1) On the issue of whether or not section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), it was noted that section 46 of the Constitution granted rights to agriculturalists who had assembled to form a local community to conserve or revive customs and local knowledge. The distillation of spirits by the defendant was made by agricultural products through the application of local knowledge.

The Constitutional Court held that section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was intended to allow the community to administer or manage resources in its locality for its sole benefit, to manage the conservation and utilisation of natural resources found in the community for mutual benefits and customs, art or good traditions of the community should be conserved by the community itself. Nevertheless, the exercise of such rights must be in accordance with the provisions of law (section 46 last paragraph), which at that moment there were no provisions of law on the rights of persons to assemble as a local community as stipulated by the Constitution. Thus, the provisions of the Spirits Act, B.E. 2493 (1950), which stated that the distillation of spirits or possession of

containers or instruments for the distillation of spirits must be licensed by the Director-General of the Excise Department was an imposition of a legal duty that must be complied by all persons. Therefore, section 5 paragraph one of the Spirits Act, B.E. 2493 (1950), was neither contrary to nor inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) On the issue of whether or not section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held as follows. Section 50 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated that “a person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition”. After considering the provisions in section 50 paragraph two on the exceptions to the liberties to engage in an occupation, it was found that the restriction of liberties, as claimed by the applicant, could not be imposed except by virtue of law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public with regard to public utilities, maintaining public order and good morals or other public benefits. Therefore, section 5 of the Spirits Act, B.E. 2493 (1950), which stated that the distillation of spirits or the possession of containers or instruments for the distillation of spirits must be licensed by the Director-General of the Excise Department, was in no manner a restriction of liberties to engage in an enterprise or an occupation and to undertake fair and free competition.

(3) On the issue of whether or not section 5 of the Spirits Act, B.E. 2493 (1950) was contrary to or inconsistent with section 76 section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the applicant claimed that the State did not promote and support the participation of agriculturalists in the determination of policies relating to the free production of local spirits. It was also claimed that the State did not offer the opportunity for agriculturalists to inspect the exercise of State powers at all levels in accordance with section 76. Moreover, there was no decentralisation to effect the self-determination of localities under section 78 and no opportunity for agriculturalists to produce local spirits, inconsistent with section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that section 76, section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were provisions of Chapter 5 on the directive principles of fundamental State policies. Such provisions provided a guideline for the enactment of laws and determination of policies for the administration of the State. Section 76 prescribed a duty on the State to lay down policies for the political participation of the public. Section 78 prescribed that the State should decentralise powers to localities for the purpose of self-dependence. Section 84 prescribed that the State should organise an appropriate system for the holding and use of land. On the other hand, the provisions of section 5 of the Spirits Act, B.E. 2493 (1950), which prescribed that the production of spirits or possession of spirits container or distillation equipment were subject to a license granted by the Director-General of the Excise Department, dealt with licensing requirements as granted

by the Director-General of the Excise Department to individuals in respect of the production of spirits or possession of spirits container or distillation equipment, being a different matter from the directive principles of fundamental State policies. Therefore, the applicant was not able to claim on the propositions that section 5 of the Spirits Act, B.E. 2493 (1950), was contrary to or inconsistent with those three sections of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

#### **4. Ruling of the Constitutional Court**

The Constitutional Court held by a majority of 9 votes to 1 vote that section 5 of the Spirits Act, B.E. 2493 (1950), was neither contrary to nor inconsistent with section 46, section 50, section 76, section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court judge in the minority, Mr. Amara Raksasataya, held that section 5 and section 32 of Spirits Act, B.E. 2540 (1997), were either contrary to or inconsistent with section 42 and section 50, and therefore subject to section 6, whereas other sections did not have to be considered.

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