

# Summary of the Constitutional Court Ruling No. 16/2546

**Dated 13<sup>th</sup> May B.E. 2546 (2003)\***

**Re : The Buriram Provincial Court referred the objection of a defendant to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case where section 175 of the Criminal Procedure Code was contrary to or inconsistent with section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## **1. Background and summarized facts**

Buriram Province State Attorney, as plaintiff, prosecuted Mr. Nitipong Thienthongsri, the defendant, on charges of having in possession firearms and ammunition, being armed with a firearm without permission and attempting to kill another person.

The defendant denied the charges at the interrogatory stage and in court. The evidence list for the defendant, dated 29<sup>th</sup> November B.E. 2543 (2000) and 11<sup>th</sup> December B.E. 2544 (2001), were submitted by the defendant and were subsequently accepted by the court. Thereafter, the defendant filed an application at the Buriram Provincial Court on 11<sup>th</sup> December B.E. 2544 (2001) requesting for subpoenas in respect of items number 2, 3 and 4 on the evidence list dated 29<sup>th</sup> November B.E. 2543 (2000) and items 1-6 in the supplemental evidence list no. 1 dated 11<sup>th</sup> December B.E. 2544 (2001) due to the defendant's inability to bring such evidence himself. The Buriram Provincial Court issued a subpoena, dated 11<sup>th</sup> December B.E. 2544 (2001), to the State Attorney of Buriram Province, the plaintiff, directing that such evidence be produced as requested by the defendant for use in the proceedings prior to 28<sup>th</sup> December B.E. 2544 (2001). The plaintiff sent a letter, dated 27<sup>th</sup> December B.E. 2544 (2001), to the Buriram Provincial Court which reiterated that the case was pending examination of the plaintiff's evidence and that the documents subpoenaed were kept in the investigation file which the plaintiff necessarily required in the examination of his evidence. As a result, such documents could not yet be submitted to the court. Nevertheless, if upon the completion of the plaintiff's examination of his evidence, if the court considered it appropriate to summon the investigation file for its determination under section 175 of the Criminal Procedure Code, the plaintiff would comply by submitting the investigation file to the court.

The defendant submitted an application, dated 11<sup>th</sup> February B.E. 2545 (2002), stating that the plaintiff's refusal to submit documentary evidence to the court under the subpoena

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was an offence under section 170 of the Penal Code. The defendant raised such documents as evidence and wished to use them in the cross-examination of the plaintiff's evidence. It was contended that the plaintiff's argument of the case was at the stage of examining the plaintiff's evidence and that such documents were required by the plaintiff in the examination was not substantiated by any provision of law that allowed the refusal to send the documents to court. Therefore, the plaintiff was under a duty to deliver the documents to the court. As for the plaintiff's argument that once he had finished examining his witnesses, if the court considered it appropriate to summon the investigation file in its deliberation under section 175 of the Criminal Procedure Code, the plaintiff would be ready to deliver the investigation file to the court, the defendant viewed the argument as involving a different issue. Such argument was a case where the court considered it appropriate to summon an investigation file for the benefit of its deliberation after the completion of examination of the plaintiff's and defendant's evidence. The defendant therefore applied for another order to compel the plaintiff to deliver the documents stated in subpoena dated 11<sup>th</sup> December B.E. 2544 (2001) in order to admit those documents to the court's deliberation. The Buriram Provincial Court issued an order in the report of proceedings that the plaintiff's arguments for not delivering documents required in the examination of his evidence were reasonable. Hence, the plaintiff was not deemed as having an intention to withhold the documents stated in the subpoena.

The defendant submitted an application, dated 14<sup>th</sup> March B.E. 2545 (2002), to the Buriram Provincial Court that the court's order in the report of proceedings, issue dated 11<sup>th</sup> February B.E. 2545 (2002), which upheld the arguments of the plaintiff in refusing to submit the documentary evidence and the claim of section 175 of the Criminal Procedure Code, were arguments on different issues. It was submitted that the deliberations of the court must be in accordance with the Constitution and the law, including section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the provisions of law claimed by the plaintiff in refusing to send the documentary evidence to the court and the Buriram Provincial Court's application of such provisions in a manner which abrogated the defendant's right to defend in the proceedings which rendered the adjudication discrepant with legal rules and contrary to or inconsistent with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and there had not yet been a ruling of the Constitutional Court in relation to such provisions, the defendant requested the Buriram Provincial Court for a temporary stay of proceedings and a reference of the defendant's opinion to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Buriram Provincial Court referred the defendant's opinion to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Even though section 175 of the Criminal Procedure Code was not a provision of law directly applicable by the Buriram Provincial Court to the case according to the grounds of offence alleged by the plaintiff, it was necessary for the Buriram Provincial Court to apply section 175 of the Criminal Procedure Code when issuing an order in connection with evidentiary matters prior to making an adjudication. The provisions of section 175 of the Criminal Procedure Code were therefore applicable to the case. In addition, the defendant, a party in the case, objected that the provisions of section 175 of the Criminal Procedure Code were contrary to or inconsistent with section 6 and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and there had not yet been a Constitutional Court ruling in relation to such provisions. The Buriram Provincial Court had referred the application to the Constitutional Court for a ruling. Hence, the case was a reference of an application to the Constitutional Court for a ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, section 175 of the Criminal Procedure Code, which stated that “upon the completion of evidence examination by the plaintiff, if the court deems appropriate, it may summon the investigation file from the State Attorney for use in the determination”, was a provision applicable as between the court and the State Attorney in the legal proceedings. On the other hand, section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated that “the trial and adjudication of cases are the powers of the Courts, which must proceed in accordance with the Constitution and the law and in the name of the King”, was a general provision on the powers of the court to try and adjudicate cases. The provisions in section 175 of the Criminal Procedure Code and section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were not related to each other in any manner. Moreover, section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which stated that “the Constitution is the supreme law of the State; the provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable”, was a provision on the effect of laws, rules or regulations which were contrary to or inconsistent with the Constitution, i.e. that they would be unenforceable. Thus, no provisions of law, rules or regulations could be contrary to or inconsistent with the provisions of section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant’s objection under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), did not contain matters deserving of a ruling under section 264 paragraph two.

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

By virtue of the reasons stated above, the Constitutional Court, by a unanimous resolution, dismissed the application.

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