

# Summary of the Constitutional Court Ruling No. 17/2546

Dated 20<sup>th</sup> May B.E. 2546 (2003)\*

**Re : The Chachengsao Provincial Court referred to the Constitutional Court the objection of a defendant (Mr. Wanpen Kornkasem) for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), that section 175 of the Criminal Procedure Code was contrary to or inconsistent with section 241 paragraph three 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 Chachengsao Province, as plaintiff, prosecuted Mr. Wanpen Kornkasem, the defendant, on charges of having in possession for distribution narcotic drugs of the type amphetamine, having in possession firearms and ammunition without a license and being armed with a firearm in the village and on public highways without reasonable grounds and without an arms-carry license.

The defendant submitted an application to the Chachengsao Provincial Court on 11<sup>th</sup> August B.E. 2543 (2000) requesting for a summons of certain documentary evidence, namely, all the statements of Mr. Wanpen Kornkasem and supporting documents, which were in the plaintiff's possession, in order to use them in the court's deliberation and in the defendant's defence. The court issued a summons for such documentary evidence on the same day. However, the plaintiff did not submit the documents according to the summons. The defendant submitted another application to the court in request of a summons for documentary evidence as stated in the defendant's list of evidence, which were items in the plaintiff's possession, in order that the defendant could use them in his defence. The court once again issued a summons for such documentary evidence directing the plaintiff to submit such documents to the court for use in the deliberations.

On the day of the trial at the Chachengsao Provincial Court, 15<sup>th</sup> December B.E. 2543 (2000), the plaintiff submitted that pursuant to the court's summons of certain documentary evidence, the plaintiff found it necessary to use the documents in the case file for examining the plaintiff's witnesses, which he was entitled to do so under section 175 of the Criminal Procedure Code. Even though section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated that the injured person or the accused in a

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\* Published in the Government Gazette, Vol. 121, Part 14a, dated 27<sup>th</sup> January B.E. 2547 (2004)

criminal case had the right to inspect or require a copy of his or her statements made during the inquiry or documents pertaining thereto when the public prosecutor has taken prosecution, the same section in the Constitution also stated that such matters should be as provided by law. At that time there were still no laws on such matters. Hence, the plaintiff submitted that he was unable to comply with the court summons. Thereafter, on the trial date of 20<sup>th</sup> April B.E. 2544 (2001), the defendant submitted an application to the court for a temporary stay of the case because he held the opinion that the right to inspect or require a copy of the defendant's statements from the plaintiff was a right under section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). When the plaintiff failed to comply by claiming that he had the power to do so under section 175 of the Criminal Procedure Code, the defendant sought to object that section 175 of the Criminal Procedure Code was contrary to or inconsistent with section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and requested the Chachengsao Provincial Court to refer the opinion to the Constitutional Court for a ruling.

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

## **2. Preliminary issue**

The preliminary issue to be 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 the following opinion. The defendant, in his capacity as an applicant, objected that section 175 of the Criminal Procedure Code was contrary to or inconsistent with section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Even though the provisions of section 175 of the Criminal Procedure Code were not provisions of law directly applicable by the court to the case pursuant to the grounds of offence in the prosecution's case, it was necessary for the Chachengsao Provincial Court to apply section 175 of the Criminal Procedure Code when issuing pre-trial orders pertaining to evidentiary matters. The provisions of section 175 of the Criminal Procedure Code were therefore provisions of law applicable by the court to the case. In addition, there had not yet been a ruling of the Constitutional Court in relation to such provisions. The Constitutional Court could therefore accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

Was section 175 of the Criminal Procedure Code contrary to or inconsistent with section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion. Section 175 of the Criminal Procedure Code and section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), contained provisions on evidentiary matters in legal proceedings. However, they were not directly related to one another. Section 175 of the Criminal Procedure Code was a provision applicable between the courts and State Attorneys in legal proceedings whereas section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which recognised the rights of an injured person or a defendant to inspect or require a copy of his statements at the interrogation stage or documents pertaining thereto once the State Attorney had already filed his prosecution at the court. It was therefore not possible for these two provisions to be contrary to or inconsistent with one another.

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

By virtue of the reasons stated above, the Constitutional Court held that section 175 of the Criminal Procedure Code was neither contrary to nor inconsistent with section 241 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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