

# Summary of the Constitutional Court Ruling No. 26/2546

Dated 17<sup>th</sup> July B.E. 2546 (2003) \*

**Re :** The Supreme Court referred the objection of the first defendant (Sergeant Sarawut Tharatorn) 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 of whether or not section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was contrary to or inconsistent with section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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## 1. Background and summarized facts

A State Attorney of the Office of the Attorney-General, as plaintiff, prosecuted Sergeant Sarawut Tharatorn, the applicant, and others, a total of four defendants in the Criminal Court for offences relating to narcotics. The charges were stated as jointly producing and having in possession type 2 psychotropic substances (methamphetamine) for sale without a license and in an amount which exceeds that prescribed by the Minister. The Criminal Court's judgment in relation to the applicant stated that the applicant committed offences under section 6 subparagraph (7 bis), section 13 bis paragraph one, section 62 paragraph one, section 89 and section 106 bis of the Psychotropic Substances Act, B.E. 2518 (1975) as well as section 83 of the Penal Code. The applicant's conduct was a single criminal act which contravened several provisions of law. Thus, the court sentenced the applicant on the basis of the offence of producing type 2 psychotropic substances. However, as the applicant was a government official, the commission of a narcotics offence entailed a penalty three times the level normally prescribed for such offence according to section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991). As a result, the applicant was sentenced to 45 years of imprisonment. Nevertheless, because the applicant's confessions during arrest and in the interrogations had been of some assistance to the authorities, there were mitigating circumstances to reduce the penalty by one third according to section 78 of the Penal Code to 30 years of imprisonment.

The applicant appealed that section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), which imposed additional penalties for narcotics offenders who were government officials, was inconsistent with section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which stated that "members of

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the armed forces or the police force, government officials, officials or employees of State agencies, State enterprises or local government organisations shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law, by-law or regulation issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics". The applicant argued that even though he was a member of the armed forces, he still enjoyed the same rights as other persons generally under section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, if a sentence was to be made, then the penalty should be no different from the penalties imposed on other persons generally. The Court of Appeals, nevertheless, affirmed the judgment.

The applicant appealed to the Supreme Court that section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), which imposed additional penalties for offenders who were Government officials, was inconsistent with section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and therefore inapplicable as regards the imposition of additional penalties for members of the Armed Forces. The Supreme Court held that this was an objection that a provision of law applicable by the court was either contrary to or inconsistent with the Constitution. In addition, there had not yet been a ruling of the Constitutional Court in relation to such provision. A temporary stay was therefore imposed on the case and the applicant's objection was referred through the Office of the Judiciary and thereafter forwarded to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The issue considered was whether or not section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was contrary to or inconsistent with section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), stated that "any member of a committee or sub-committee under this Act or under other laws relating to narcotics, competent official, member of the State legislative assembly, member of a provincial assembly, member of a municipal assembly or other local assemblies, government official, local government official, official of an organisation or agency of the State or State enterprise official who commits an offence relating to narcotics or an offence under section 42 shall be liable to three times the penalty prescribed for such offence".

The Constitutional Court held the following opinion. Section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), recognised and restricted rights and liberties under the Constitution enjoyed by members of the armed forces or police force, government officials, other State officials, local government officials, officials or employees of State organisations. Such persons enjoyed the same rights and liberties under the Constitution as

those enjoyed by other persons, unless such enjoyment was restricted by laws, by-laws or regulations issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics. The Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), contained provisions which prescribed a higher level of penalty than that prescribed for people generally for narcotics offenders who were members of committees or sub-committees under the laws relating to narcotics, competent officials, members of the State legislative assembly, members of provincial assemblies, members of municipal assemblies or other local assemblies as well as persons under section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), namely, members of the armed forces and police force, government officials, other State officials, local government officials and officials or employees of State organisations. This was in accordance with section 32 which stated that “no person shall be inflicted with a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor...” A penalty under the law must be suitable for the offence and proportionate with the conscience of the offender and the impact on society. The prescription of severer than usual penalties for narcotics offenders who were members of the armed forces or police force, government officials, other State officials, local government officials and officials or employees of State organisations under section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), only resulted in a variation of the level of penalties imposed on offenders. This was not a case of a difference in rights and liberties under the Constitution. Therefore, section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), dealt with non-identical and unrelated matters. Contrariness or inconsistency was an irrelevant consideration.

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

The Constitutional Court unanimously held that section 10 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was neither contrary to nor inconsistent with section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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