

Summary of the Constitutional Court Ruling No. 27/2546

Dated 29th July B.E. 2546 (2003)*

Re : The Supreme Court referred the objection of the second defendant (Mr. Sompoch or Sompochna Tosmongkol or Todmongkol) 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 22, section 26 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 26, section 30, section 33 and section 48 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 Mr. Sompoch or Sompochna Tosmongkol or Todmongkol, the applicant, and others, a total of three defendants, at the Criminal Court on charges of jointly having in possession metamphetamine for distribution and the joint distribution thereof. Whilst pending trial, the plaintiff submitted an application to the Criminal Court requesting for an order of the Criminal Court to confiscate the applicant's properties, namely, a bank deposit account and interests accruing thereof and to remit such properties to the Narcotics Suppression Fund in accordance with section 3, section 15, section 22, section 27, section 29 and section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991).

The applicant submitted a protest on the grounds that such bank deposit was obtained on loan from the applicant's mother and was not money obtained from the commission of an offence. The applicant additionally argued that the case was still pending trial and that the court had not yet convicted the applicant. Moreover, such property had already been seized and attached. It was impossible to transform, transfer or destroy the evidence in a manner assumed by the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991). The property was only under suspicion that it might have been obtained from the commission of an offence. Thus the application of such measures was inconsistent with section 26 and section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The Criminal Court issued an order to confiscate the bank deposit account of Mr. Sompoch Todmongkol together with interests and remitted such sums to the Narcotics Suppression Fund in accordance with section 29 and section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991).

The applicant appealed in protest of the Criminal Court's order that section 22, section 26 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), restricted the constitutional rights of the Thai people and were contrary to or inconsistent with section 26, section 30, section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant pleaded to the Court of Appeals for a dismissal of the plaintiff's application and a revocation of the confiscation order. The Court of Appeal held that even if the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), contained certain provisions which restricted the rights and liberties of persons in property, it was a special law duly enacted and generally applicable to the people, not just to any specific group or the protestor. The law was therefore consistent with section 29 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Court of Appeal affirmed the Criminal Court's decision.

The applicant appealed to the Supreme Court in protest of the Court of Appeal's judgment on the grounds that even though section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), authorised the restriction of rights and liberties of a person by law, such a restriction of rights under the law should not affect the essential substances of such rights and liberties. The Supreme Court held that this was an objection that provisions of law which were to be applied by the Supreme Court to a case were contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court in relation to such provisions. A temporary stay was therefore imposed and the applicant's opinion was transmitted by official channels through the Office of the Judiciary 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 issue considered by the Constitutional Court was whether or not section 22, section 26 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 26, section 30, section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 26 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was a provision on personal liability for compensation in the case where a Committee's order of seizure or attachment of property under section 22 inflicted damages on any person. The provision was unrelated to the issue of whether or not the applicant's properties were related to the narcotics offence and subject to confiscation. Section 26 of the Act on Measures for the

Suppression of Narcotics Offenders, B.E. 2534 (1991), was therefore not a provision of law which was to be applied by the court to a case. This case was not in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Thus the Constitutional Court did not have to make a ruling.

Under the application, four other issues had to be considered by the Constitutional Court, as follows.

First issue: whether or not section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Second issue: whether or not section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Third issue: whether or not section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Fourth issue: whether or not section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion.

First issue. Section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision on the exercise of powers by all State authorities where regard should be had to human dignity, rights and liberties in accordance with the provisions of the Constitution. Section 22 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), however, was a provision on the rules, procedures and conditions for the inspection of properties of an inspected person or of a person whose properties had been seized or attached by the committee and on the rules, procedures and conditions for the temporary seizure or attachment of property. Section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991) was a provision on court procedures in the determination of an order to confiscate properties related to narcotics offences and the verification that such properties were indeed related to the narcotics offence.

The Constitutional Court held that the exercise of State powers by the Property Inspection Committee pursuant to section 22 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was an exercise of discretion to determine from the evidence whether the inspected property was related to a narcotics offence or whether it was received from a transfer in good faith in exchange for consideration or a property reasonably received by way of good morals or public donations; or to determine whether there were reasonable grounds to support the proposition that any property might be transferred, removed, concealed or whether there were other reasons or necessities for the

Committee to exercise powers to temporarily seize or attach the property. Such exercise of discretionary powers by the Committee pursuant to section 22 did not enable the Committee to exercise an unfettered discretion which ignored human dignity, rights and liberties in accordance with the provisions of this Constitution. As regards section 29, the exercise of court powers stipulated therein was an exercise of adjudicative powers to serve justice to every party. As the court was vested with the powers and duties of adjudicating cases to secure compliance with the provisions of the Constitution and the law, it followed that regard should be had to the rights and liberties of the parties recognised by the Constitution. The exercise of such powers by the court did not in any manner prejudice the human dignity, rights and liberties of the applicant.

Second issue. Section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision on the equality of persons before the law, equal protection under the law, equality of rights for men and women and the prohibition of unjust discrimination against a person. The Constitutional Court held that section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), granted legal equality and equal legal protection to persons because they were provisions which were generally applicable to persons of similar status having the same rights and duties under the law and receiving equal protection under the law. There was no unjust discrimination against any person because the law was generally applicable. No particular person was exempted from the application of such law.

Third issue. Section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision on the rights and liberties of an accused or a defendant in a criminal case. There was a presumption that the accused or defendant was innocent and that prior to the passing of a final judgment convicting a person of having committed an offence, such person should not be treated as a convict. The Constitutional Court held that section 22 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was a provision on the rules, procedures and conditions for the inspection of properties of the inspected person or person claiming to be the owner of a property seized or attached by the Committee. The law provided an opportunity for the applicant to prove the legitimacy of the properties received by the applicant. There was neither an assumption that the applicant had committed an offence nor treatment of the applicant as a convict. Regarding section 29, the provision therein was a presumption applicable to the properties of persons related to or had prior relations with the narcotics offender. The implementation of section 29 neither assumed that the applicant had committed an offence nor treated the applicant as a convict.

Fourth issue. Section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which protected the rights of a person in property. Nevertheless, boundaries and restrictions over a person's rights in property could be imposed by virtue of a law whose enactment had been authorised by the Constitution provided that such law prescribed a boundary or restriction of a person's rights in property only to the extent that was necessary without prejudicing the essential substances of that person's rights in

property. The Constitutional Court held that section 22 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was a provision on the inspection of properties by the Committee and section 29 was a provision on court procedures in the determination of an order for the confiscation of properties related to the commission of a narcotics offence. These provisions were provisions of law which restricted the boundaries of the inspected person's rights in property or of the owner of properties accused of being related to the commission of a narcotics offence. The provisions in these two sections were necessary for the implementation of measures for the suppression of narcotics offenders and enabled the prevention and suppression of offenders. The restriction of boundary of rights in property was merely temporary during the proceedings of the Committee and the court. If it was proven that a property was not related to a narcotics offence, the Committee would return such seized or attached property. Properties in the State Attorney's application to the court could not be confiscated. The essential substance of the person's rights in property was therefore unaffected.

3. Ruling of the Constitutional Court

The Constitutional Court unanimously held that section 22 and section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were neither contrary to nor inconsistent with section 26, section 30, section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
