

Summary of the Constitutional Court Ruling No. 28/2546

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

Re : The Criminal Court referred the objections of the first and second protestors (Mrs. Rattanaporn Chompulert and others) 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 29 and section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with 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 prosecuted Mrs. Rattanaporn Chompulert, the first applicant, and others, a total of four defendants in the Criminal Court on charges of conspiracy to commit a narcotics offence. The State Attorney also filed an application at the Criminal Court for an order to confiscate the first applicant's properties and to remit such properties to the Narcotics Prevention and 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). Thereafter, the State Attorney filed another application to confiscate additional properties belonging to the first applicant as well as the properties of Mr. Thiem Anujarawat, the first defendant's husband, and to remit such properties to the Narcotics Prevention and 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 first applicant lodged a protest stating that she had not committed the charged offences and that the resolution and order of the Property Inspection Committee to attach the properties were inconsistent with section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant contended that the opinion and exercise of discretion by the Secretary-General of the Narcotics Prevention and Suppression Commission according to the plaintiff's application were inconsistent with such provisions of law and were therefore unlawful. The plaintiff's application to confiscate the first defendant's and Mr. Thiem Anujarawat's properties was therefore inconsistent with section 33 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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Mr. Somjai Anujarawat and Miss Kanyarat Anujarawat, in their capacities as executors of Mr. Thiem Anujarawat's estate, the second applicant, lodged a protest that the plaintiff's application to confiscate the properties of the first applicant and of Mr. Thiem Anujarawat, the first applicant's husband, and to remit such properties to the Narcotics Prevention and Suppression Fund pursuant to section 29 and section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was inconsistent with section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Mr. Thiem Anujarawat, the deceased, who was the owner of properties in the application, was never involved in the commission of a narcotics offence. The competent official had never given notice of an order for inspection, seizure or attachment of the properties and never instructed Mr. Thiem Anujarawat to submit evidence of acquisition of such properties prior to his death. Those properties acquired and possessed by Mr. Thiem Anujarawat did not exceed his standing or ability to undertake a legitimate profession. The Property Inspection Committee could not exercise powers under section 29 last paragraph of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), to nullify or invalidate section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was requested that the court dismiss the application and return the properties to the second applicant.

The first and second applicants filed an application at the Criminal Court requesting for the court to rule on a point of law and/or make a reference to the Constitutional Court for a ruling. The Criminal Court held that the first and second applicants had filed an application in protest of the court's confiscation of properties on the grounds that section 29 last paragraph was inconsistent with section 33 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A temporary stay was therefore imposed on the case and the first and second applicant's opinions 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

According to the application, the issues which had to be considered by the Constitutional Court was whether or not section 29 and section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), were contrary to or inconsistent with section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court considered the issue of whether or not section 31 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was contrary to or inconsistent with section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and held the following opinion. Section 31 was a provision on the effect of a court confiscation order under section 29 and section 30, i.e. that the properties be remitted to the Narcotics Prevention and Suppression Fund. Section 31 was only applicable once a court confiscation order had been made. In the determination of

whether or not to issue an order to confiscate property pursuant to the plaintiff's application, the court did not have to apply section 31 to the case. Section 31 was therefore not a provision of law applicable to a case. The issue was not in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court could not accept the issue for consideration and the application was dismissed.

As for the issue of whether or not section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was contrary to or inconsistent with section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had already ruled in Ruling No. 27/2546, dated 29th July B.E. 2546 (2003), that section 29 of the Act on Measures for the Suppression of Narcotics Offenders, B.E. 2534 (1991), was neither contrary to nor inconsistent with section 33 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This issue did not have to be reconsidered.

3. Ruling of the Constitutional Court

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