

Summary of the Constitutional Court Ruling No. 40-41/2546

Dated 16th October B.E. 2546 (2003)*

Re: The Civil Court referred the objection of a protestor 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 Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), section 48 to section 59, were contrary to or inconsistent with section 29, section 32, section 48 and section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Civil Court referred the objection of protestors (Mr. Michael Charles Mascall and seven other persons) in Civil Case No. For. 3/2544 and of protestors (Mrs. Tayoi or Jo or Joy Rattanakij and four other persons) in Civil Case No. For. 5/2544, a total of two applications, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on whether or not Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), on Proceedings Relating to Property, was contrary to or inconsistent with section 29, section 32, section 48 and section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the application could be accepted 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 application had specified the sections of the Money Laundering Control Act, B.E. 2542 (1999), viz Chapter 6 from section 48 to section 59 which were contended as being contrary to or inconsistent with section 29, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 59 which was contended as being contrary to or inconsistent with section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such sections raised by the applicants were provisions of law which the court was going to apply to

* Published in the Government Gazette, Vol. 121, Part 45a, dated 19th July B.E. 2547 (2004)

a case and there had not yet been a ruling of the Constitutional Court on the constitutionality of such sections. This application was therefore in accordance with the criteria under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and could be accepted by the Constitutional Court for consideration.

3. The issues considered by the Constitutional Court

Both applications contained identical issues. Thus, the Constitutional Court considered the applications together in one case.

The first issue was whether or not Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), from section 48 to section 59, were contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision on the rights and liberties of a person who should not be inflicted with a criminal punishment unless he or she had committed an act which the law in force at the time of the commission provided to be an offence and imposed a punishment therefor; and the punishment to be inflicted should not be heavier than that provided by the law in force at the time of the commission of the offence. This principle recognised the prohibition of retroactive application of criminal law on a person. As for the provisions of the Money Laundering Control Act, B.E. 2542 (1999), upon a consideration of the legal purpose evidenced by the endnote of the Act, it was discovered that the law aimed at disrupting the circuit of crimes and eliminating the dominant incentive for committing hugely profitable crimes. Measures for dealing with money laundering were prescribed, viz criminal measures for dealing with persons and special measures for taking proceedings on property prescribed by the State. The proceedings under each measure were not interrelated and each measure's burden of proof had different presumptions. Therefore, as proceedings taken on property were not criminal proceedings on a person, they were neither contrary to nor inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The second issue was whether or not Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), from section 48 to section 59, were contrary to or inconsistent with section 29 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. Section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which protected and guaranteed the security of rights and liberties by stating that the restriction of rights and liberties recognised by the Constitution should not be imposed except where the provisions of section 29 had been complied. Section 48, on the other hand, was a provision on the recognition of rights of a person in property protected by the Constitution. However, the Constitution provided that the extent and the restriction of such right could be imposed by virtue of law subject to the condition that the imposition of limits and the restriction of personal rights in property

only be made to the extent of necessity and did not affect the essential substance of such rights. In this regard, Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), section 48 to section 59, were measures prescribed by the State in order to secure public benefits and the protection of proprietary rights of the majority. Protection of the proprietary rights of owners of such properties had also been included. Thus, the provisions could be considered as being neither contrary to nor inconsistent with section 29 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The third issue was whether or not section 59 of the Money Laundering Control Act, B.E. 2542 (1999), was contrary to or inconsistent with section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. This Act proffered adjudicative jurisdiction on the Civil Court and stipulated the application of civil procedures. The Civil Court was one of the courts in the Courts of Justice system established under section 19 of the Organisation of Courts Act, B.E. 2543 (2000), and had jurisdiction over all civil cases and other cases not within the jurisdiction of other courts of justice. Once this had been considered in conjunction with the sections governing proceedings on property in Chapter 6, which were special measures not being criminal measures for taking proceedings against a person, the proceedings in which the Civil Court assumed an adjudicative role were consistent with the law on organisation of courts and neither inconsistent with nor contrary to section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held that Chapter 6 of the Money Laundering Control Act, B.E. 2542 (1999), section 48 to section 59, were neither contrary to nor inconsistent with section 29, section 32 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 59 of the Money Laundering Control Act, B.E. 2542 (1999), was neither contrary to nor inconsistent with section 235 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
