

Summary of the Constitutional Court Ruling No. 49/2546

Dated 27th November B.E. 2546 (2003)*

Re : The Ubon Ratchathani Provincial Court requested for a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of whether or not section 84 in conjunction with section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), was contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Ubon Ratchathani Provincial Court, the applicant, submitted an application 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 section 84 in conjunction with section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), was contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The facts could be summarized as follows. The State Attorney for Ubon Ratchathani province, as plaintiff, prosecuted Mr. Khamdee Phaoduangdee, member of the Prachathipat (Democrat) Party Branch Committee No. 102, as a defendant in the Ubon Ratchathani Provincial Court in Criminal Case No. 376/2546 on charges of being a political party branch committee member who failed to submit an account of assets and liabilities of himself, his spouse and children who had not yet become *sui juris* to the registrar within the deadline. Such an act constituted an offence under section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998). The plaintiff motioned for a court sentence on the defendant and a daily fine not exceeding Baht 500 per day for a period of 273 days. The defendant submitted himself to the inquiry official and, during the inquiry, the defendant confessed to the commission of the offence.

The defendant filed a motion with the confession, confessing according to the charges of the plaintiff and pleading for a lesser sentence. The court subsequently read and explained the charges to the defendant and the latter confirmed his confession. The plaintiff and defendant did not require a trial of the evidence. Thus, the case was closed and an order issued for the plaintiff to submit the investigation file to the court for deliberations within

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five working days. An appointment was set for the delivery of judgment on 6th March B.E. 2546 (2003).

Thereafter, on 24th February B.E. 2546 (2003), the Ubon Ratchathani Provincial Court considered this case and held an opinion that the penal provisions in section 84 of the Organic Act on Political Parties, B.E. 2541 (1998), which provided that a political party branch committee member who failed to comply with section 42 should be liable to a penalty, was an imposition of a penalty on a person without precision of the grounds of offence. Such a penalty was imposed based only on an absolute presumption of the law, and was therefore contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 84 was about to be applied to a case by the court and there had not yet been a relevant ruling of the Constitutional Court. The court therefore deemed it appropriate to refer a copy of the case file and other documents 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 considered was whether or not the Constitutional Court had the power to accept this 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. In this case, the Ubon Ratchathani Provincial Court, as the applicant, submitted an application through official channels to the Constitutional Court for a ruling. The applicant was about to apply section 84 of the Organic Act on Political Parties, B.E. 2541 (1998), to a case and held an opinion that such provisions were contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997); and there had not yet been a ruling of the Constitutional Court. Such application was therefore a request for a ruling on whether or not a provision of law applicable to a case by the court was contrary to or inconsistent with the Constitution pursuant to section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court could therefore accept the application for consideration.

3. The issue considered by the Constitutional Court

The issue considered was whether or not section 84 in conjunction with section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), was 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), guaranteed that no person would be convicted and inflicted with a criminal punishment unless he or she had committed an act which the law

in force at the time of commission provided to be an offence and imposed a punishment. Section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), was a provision on the duties of a political party leader, political party executive committee member and political party branch committee member, whereas section 84 prescribed penalties for failure to comply with section 42. It had been clearly stated in both sections that failure to perform the duties would constitute an offence and be subject to penalties under the law. In the case under this application, Prachathipat (Democrat) Party sent a notification of the dissolution of Party Branch No. 102 to the Political Party Registrar for consideration and the latter sent a reply to Prachathipat (Democrat) Party accepting the dissolution of such party branch on 11th March B.E. 2545 (2002). Therefore, Party Branch No. 102 was dissolved under section 33 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998), resulting in the vacation of office as member of Party Branch Committee No. 102 by Mr. Khamdee Phaoduangdee as well as a duty to submit an account of assets and liabilities under section 42 within thirty days as from the date of vacation of office. Failure to submit such an account would result in a criminal liability under section 84.

In this application, the Ubon Ratchathani Provincial Court held the opinion that section 84 was contrary to or inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), because it prescribed a criminal offence on a person based on a presumption that the political party branch committee member should have known of the dissolution of the political party as from the date of notification by the Political Party Registrar, which was an uncertain date due to the fact that the political party branch committee member did not personally acknowledge such a notice; that the prescription of criminal offence was made despite the absence of an apparent offending act. The Constitutional Court held on this issue that section 33 and section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), had already provided for the commencement date of the thirty day period for the submission of an account by a political party branch committee member in the case of vacation of office. If any political party branch committee member failed to submit an account upon vacation of office within such period, an offence had been committed and criminal penalties ensued under section 84 of the Organic Act on Political Parties, B.E. 2541 (1998), which were matters within the adjudicative powers of the Ubon Ratchathani Provincial Court. This was not a matter concerning the absence of provisions of law providing for the offence and penalty at the time of commission of an act. The application was therefore not relevant to section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Thus, there was no case of contrariness or inconsistency with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court unanimously held that section 84 in conjunction with section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), was neither contrary to nor inconsistent with section 32 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
