

Summary of Constitutional Court Ruling

No. 48/2547

Dated 13th July B.E. 2547 (2004)*

Re: The Bangkok Military Court referred to the Constitutional Court the objection of a defendant (Major General Kattiya Sawasdipol) requesting for a ruling under section 264 of the Constitution on whether or not section 162(2) of the Criminal Procedure Code was contrary to or inconsistent with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Bangkok Military Court referred to the Constitutional Court the objection of a Major General Kattiya Sawasdipol, a defendant in Case No. 131/2546, which requested for a ruling under section 264 of the Constitution.

The facts stated in the application and the supporting documents could be summarized as follows. The State attorney for Bangkok Military Court, as plaintiff, indicted Major General Kattiya Sawasdipol, the defendant, for the offences of carrying a firearm in a public place without a firearms carrying license and without good cause, obstructing a competent official in the execution of functions by use of force and by or with the use of a weapon and use of force on others without causing bodily or mental harm. The prosecution requested for penalties under section 138, section 140, section 371, section 391 and section 91 of the Penal Code, section 4 of the Act Amending the Penal Code (No. 6), B.E. 2526 (1983), section 8 bis and section 72 bis of the Firearms, Ammunition, Explosives, Fireworks and Firearm Imitations Act, B.E. 2490 (1947), clause 3 of the Announcement of the National Executive Council No. 11, dated 21st November B.E. 2514 (1971), clause 4 of the Order of the National Administration Reform Committee No. 41, dated 21st October B.E. 2519 (1976), and clause 3 and clause 7 of the Order of the National Administration Reform Committee No. 44, dated 21st October B.E. 2519 (1976). The Bangkok Military Court stamped its acceptance of the case on 18th April B.E. 2546 (2003). This case was then pending trial.

The defendant filed a motion to the Bangkok Military Court on 2nd June B.E. 2546 (2003), requesting the court to conduct an inquiry on the substance of the charges before stamping its acceptance. It was argued that the State attorney for Bangkok Military Court ordered the indictment of this case without fairness and impartiality, rendering the indictment

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unlawful. The Bangkok Military Court ordered that there were no necessary grounds to conduct an inquiry on the substance of the allegations in this case because the plaintiff was a State attorney. The indictment was consistent with section 162(2) of the Criminal Procedure Code and the court had already stamped its acceptance.

The defendant appealed the Bangkok Military Court's order to deny an inquiry on the substance of the charges on 5th June B.E. 2546 (2003). The Bangkok Military Court ordered that the court order stating that there were no necessary grounds for conducting an inquiry on the substance of the charges was an interlocutory order which did not conclude the case. An appeal was disallowed under section 196 of the Criminal Procedure Code in conjunction with section 45 of the Act on Organisation of the Military Courts B.E. 2489 (1946). Therefore, the defendant's appeal was not granted. Thus, the defendant appealed to the Central Military Court on the order which denied the right to appeal.

The Central Military Court considered the merits of the defendant's appeal and held that the defendant's appeal was an objection of the Bangkok Military Court order which stated that there were no necessary grounds for conducting an inquiry on the substance of the charges. The appeal was therefore made with respect to an interlocutory order which did not conclude the case. Such appeal could not be lawfully granted by the Central Military Court. The Bangkok Military Court order to deny the defendant's appeal by stating that the appeal was prohibited for being made on an interlocutory order was consistent with the Central Military Court's opinion. The defendant's appeal on the Bangkok Military Court order did not contain any merits. Thus, the defendant's appeal on the Bangkok Military Court order was dismissed.

The defendant filed a motion to the Bangkok Military Court on 31st December B.E. 2546 (2003), requesting that his objection be referred to the Constitutional Court for a ruling. It was argued that section 26 of the Constitution stated that "in exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution". In this connection, it was asserted that the State attorney for Bangkok Military Court indicted the defendant in this case without any evidence to confirm that the defendant was the offender under the allegations. The indictment order of the State attorney for Bangkok Military Court did not take into account human dignity, rights and liberties under the provisions of the Constitution, thereby causing the Bangkok Military Court to stamp its acceptance of this case. The defendant considered that section 162(2) of the Criminal Procedure Code, which provided that "in a case where the plaintiff is a State attorney, there is no need to conduct an inquiry on the substance of the charge, but if it is considered appropriate, a pre-trial inquiry on the substance of the charge may also be ordered", was an unconstitutional provision for being contrary to or inconsistent with section 26 of the Constitution. It was therefore requested that the matter be referred to the Constitutional Court for a ruling on whether or not section 162(2) of the Criminal Procedure Code was contrary to or inconsistent with section 26 of the Constitution and also that the Bangkok Military Court temporarily stay its proceedings of this case until the Constitutional Court made a ruling.

The Bangkok Military Court imposed a temporary stay on its proceedings and referred the defendant's objection through official channels to the Constitutional Court for a ruling under section 264 paragraph one of the Constitution.

2. The issue considered by the Constitutional Court

The preliminary issue which had to be considered by the Constitutional Court was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that the defendant, in his capacity as applicant, objected that section 162(2) of the Criminal Procedure Code was contrary to or inconsistent with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This was an objection that a provision of law was contrary to or inconsistent with the Constitution. Even though section 162(2) of the Criminal Procedure Code was not a provision of law which the court was directly going to apply to the case pursuant to the offence charged by the plaintiff, the Bangkok Military Court had to apply the provisions of section 162(2) of the Criminal Procedure Code in issuing an order relating to the inquiry on the substance of the charges before giving judgment on the case. Therefore, section 162(2) of the Criminal Procedure Code was a provision of law which the court applied to the case. Moreover, there had not yet been a ruling of the Constitutional Court that was relevant to such section. The case was in accordance with the criteria under section 264 paragraph one of the Constitution. The Constitutional Court could accept the application for consideration under section 264 of the Constitution.

The next issue which had to be considered by the Constitutional Court was whether or not section 162(2) of the Criminal Procedure Code was contrary to or inconsistent with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 26 of the Constitution was a provision which protected the rights and liberties of a person. In other words, the exercise of powers by State organs should take into account human dignity, rights and liberties. Section 162(2) of the Criminal Procedure Code, which was a provision relating to criminal procedures in cases where a State attorney was plaintiff that an inquiry of the charges was not necessary unless the court considered it appropriate to do so, was a provision applicable as between the court and the State attorney in the proceedings. The grounds for finding it unnecessary to conduct an inquiry of the charges before stamping an acceptance on the indictment were that, prior to the State attorney's decision to bring the case to the court, procedures for the examination of evidence had already been undertaken by the investigation officials who then reached an opinion that the alleged offender should be indicted. The investigation officials would then transmit the case file to a State attorney. Upon receipt of the opinion and case file from the investigation officials, the State attorney would consider whether or not the case contained the elements of the alleged offences. If the State attorney

considered that the elements of the offences were lacking, an order of non-prosecution would be ordered. However, if the State attorney considered that there were elements of the offences, he or she would issue an indictment order and file a case against the alleged in court. Hence, it was apparent that prior to the State attorney filing the case, there had already been procedures to scrutinize the case at both the investigation officials and the State attorney stages, which provided a guarantee of fairness for the alleged offender. In a case where the State attorney was a plaintiff, it was therefore unnecessary for the court to conduct an inquiry of the charges before stamping its acceptance. Nevertheless, where it was deemed appropriate, the court also had the discretion to order an inquiry of the charges before acceptance. This was a different case from where a civilian was a plaintiff under section 162(1) of the Criminal Procedure Code. In a case where a civilian was a plaintiff, there had not been any steps or procedures for prior scrutiny. It was therefore necessary for the court to conduct an examination of the charges in order to determine whether or not the charges contained enough substance to stamp an acceptance. In a case where a State attorney was plaintiff under section 162(2) of the Criminal Procedure Code, which the court stamped its approval without having to conduct a prior inquiry on the substance of the charges, there were no deficiencies in fairness or impartiality and it was not considered that the applicant lost any of his human dignity, rights and liberties under section 26 of the Constitution of the Kingdom of Thailand, B.E 2540 (1997).

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 162(2) of the Criminal Procedure Code was neither contrary to nor inconsistent with section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
