

# Summary of Constitutional Court Ruling

No. 52-53/2547

Dated 26<sup>th</sup> August B.E. 2547 (2004)\*

**Re: The Ubon Ratchathani Kwaeng Court referred defendants' objections to the Constitutional Court for a ruling under section 264 of the Constitution in the case of whether or not section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), were contrary to or inconsistent with section 6, section 32, section 46, section 48, section 50, section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## 1. Background and summarized facts

The Ubon Ratchathani Kwaeng Court requested the Office of the Judiciary to transmit the opinions of the applicants, who were defendants in criminal cases, a total of 2 applications, to the Constitutional Court for a ruling under section 264 of the Constitution. The applications could be summarized as follows.

**First application.** The State attorney for Ubon Ratchathani Kwaeng Court indicted Mr. Samrong Jantawongse and others, a total of 8 defendants, as defendants in Criminal Case No. 1532/2545.

**Second application.** The State attorney for Ubon Ratchathani Kwaeng Court indicted Mrs. Mon Samila as defendant in Criminal Case No. 2775/2545.

The facts under the applications and supporting documents could be summarized as follows.

The State attorney for Ubon Ratchathani Kwaeng Court indicted the defendants in the first application for joint possession of spirits known to have been produced in violation of the law and joint possession of spirit ingredients without license. The defendant in the second application was indicted for producing fermented spirits and distilled spirits without license, having in possession spirits known to have been produced in violation of the law, selling spirits known to have been produced in violation of the law and having in possession spirit distillation containers without a license. The State attorney requested for penalties under section 4, section 5, section 25, section 30, section 31, section 32, section 42 bis and section 45 of the Spirits Act, B.E. 2493 (1950), section 6 of the Spirits Act (No. 2), B.E. 2497 (1954),

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section 33, section 83 and section 91 of the Penal Code and section 4 of the Act Amending the Penal Code No. 6, B.E. 2526 (1983).

The applicants (defendants) pleaded not guilty on the charges made by the plaintiff (State attorney) and requested the Ubon Ratchathani Kwaeng Court to refer their objections 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 issues which had to be considered by the Constitutional Court were whether or not section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), were contrary to or inconsistent with section 6, section 27, section 32, section 46, section 48, section 50, section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(1) Were section 4 and section 25 of the Spirits Act, B.E. 2493 (1950), contrary to or inconsistent with section 6 and section 27 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that section 6 of the Constitution was a general provision which provided that the Constitution was the supreme law of the country and that any provision of law, rules or regulations that was contrary to or inconsistent with the Constitution was unenforceable. Section 27 of the Constitution was also a general provision which recognized that rights and liberties recognized by the Constitution or rulings of the Constitutional Court would be protected and binding on the National Assembly, the Council of Ministers, courts and other State organs. That was a general principle to be adopted by State organs. Therefore, section 6 and section 27 of the Constitution were not provisions which conferred a right on a person to claim that provisions of law were contrary to or inconsistent with the Constitution. Thus, the Constitutional Court did not reach a ruling on such section.

(2) Were section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), contrary to or inconsistent with section 32, section 48, section 50 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and were section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), contrary to or inconsistent with section 46 and section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that section 32 of the Constitution was a provision which prescribed principles on the imposition of a criminal penalty on a person. Section 46 of the Constitution was a provision on the rights of a local community. Section 48 of the Constitution was a provision on the rights in property that were protected. Finally, section 50 was a provision on the liberties of a person to engage in an occupation and free competition. On the other hand, section 4 of the Spirits Act, B.E. 2493 (1950), provided certain definitions. Section 5 paragraph one prohibited the production of spirits or the possession

of containers or distillation equipment for making spirits except where licensed by the Director-General. Section 5 paragraph two provided that the issue of a license to produce spirits for household use should be in accordance with prescriptions in a Ministerial Regulation on the prohibition of spirits production or possession of containers or distillation equipment for making spirits and the issue of a spirits production license. Section 25 prohibited the possession of spirit ingredients except where licensed under section 24 or being a purchaser or recipient from such licensed person.

Therefore, section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), were neither contrary to nor inconsistent with section 32, section 46, section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As regards section 83 of the Constitution, the provisions addressed the distribution of revenues, and section 87 provided on the support of a liberal economic system. Those provisions were found in Chapter 5 Directive Principles of Fundamental State Policies, being provisions which provided guidance for legislation and the formulation of State administration policies by the government under the control of the National Assembly. In this instance, section 4, section 5 and section 25 of the Spirits Act, B.E. 2493 (1950), were provisions of law which prohibited the production of spirits and the sale of spirit ingredients. Those provisions were not related in any way to the directive principles of fundamental State policies and were therefore neither contrary to nor inconsistent with 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 unanimously held that:

1. Section 4 and section 5 of the Spirits Act, B.E. 2493 (1950), were neither contrary to nor inconsistent with section 27, section 32, section 48 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Section 4 and section 25 of the Spirits Act, B.E. 2493 (1950), were neither contrary to nor inconsistent with section 6, section 32, section 46, section 48, section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Section 4 in conjunction with section 25, specifically in relation to the definition of spirit ingredients excluding the part which referred to fermented rice flour, and section 5 of the Spirits Act, B.E. 2493 (1950), were neither contrary to nor inconsistent with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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