

Summary of the Constitutional Court Ruling No. 35/2548

Dated 22nd March B.E. 2548 (2005)*

Re: The Fourth Regional Court of Appeal referred the objection of the defendant (Mr. Singh Polkammak) 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 where section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) were contrary to or inconsistent with section 291 of the Constitution.

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1. Background and summarized facts

The public prosecutor of Maha Sarakham province, as plaintiff, filed the case against Mr. Singh Polkammak, as defendant, to Maha Sarakham Provincial Court in Pending Case No. 4018/2545 in the offence of being a member of political branch's committee who failed to submit the account showing particulars of assets and liabilities within 30 days from the day he vacated from the office under section 4, section 42, and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998). Maha Sarakham Provincial Court found that the defendant was guilty of the offence under section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) and imposed on him the punishment of fine in the amount of 20,000 Baht.

The defendant filed an appeal to the Fourth Regional Court of Appeal against the conviction of Maha Sarakham Provincial Court and submitted the application to such Court for the objection under section 264 of the Constitution which could be summarized as follows. Section 291 of the Constitution clearly specified the political positions that the persons holding such positions had the duty to submit the account showing particulars of assets and liabilities of themselves, their spouses and children who had not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office. In addition, section 296 of the Constitution provided that section 291 thereof shall apply *mutatis mutandis* to other State officials as provided by the organic law on counter corruption. Accordingly, it was the case where the Constitution specifically required the persons who had the duty to submit the accounts showing particulars of assets and liabilities. Any provisions of law to implement section 291 of the Constitution must be specifically authorized to be enacted by the Constitution. Apart from the positions specified in section 291 of the Constitution, other

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positions were specified in the organic law on counter corruption. The Organic Act on the Counter Corruption, B.E. 2542 (1999) clearly specified the positions of which the holders had the duty to submit the account showing particulars of assets and liabilities, namely, the persons holding political positions under section 32 thereof and State officials under section 39 thereof which were clearly defined in section 4 thereof.

The applicant was of the opinion that section 42 of the Organic Act on Political Parties, B.E. 2541 (1998) requiring the political party's leader, its executive committee members, and its political branch committee members to submit the accounts showing particulars of assets and liabilities could not be applied. Section 328 of the Constitution set forth the scope of substances to be contained in the organic law on political parties. That section 328 did not authorize to enact such law to include the requirement that the political party's leader, its executive committee members, and its political branch committee members shall submit the accounts showing particulars of assets and liabilities. Section 328 subparagraph (7) of the Constitution only provided for the preparation of an account indicating revenues and expenses of a political party and an account indicating assets and liabilities of a political party. In addition, there was no provision in the Constitution authorizing the addition of the positions of which the holders shall submit the account showing particulars of assets and liabilities into the Organic Act on Political Parties, B.E. 2541 (1998). Accordingly, section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) were the provisions stipulating additional positions of which the holders shall submit the account showing the particulars of assets and liabilities. The said two sections were to expand the meaning of the law against people not involving in exercise of State power, and they were the provisions of law being contrary to or inconsistent with section 291 of the Constitution. These provisions shall be unenforceable under section 6 of the Constitution. The Fourth Regional Court of Appeal was therefore requested to stay the trial and adjudication of the case and to officially submit the objecting opinion to the Constitutional Court for a ruling under section 264 of the Constitution.

The Fourth Regional Court of Appeal, after consideration, was of the following opinions. This was the case where the party thereto objected that the provisions of law to be applied by the Court to the case were contrary to or inconsistent with the Constitution. In addition, there had not been a decision of the Constitutional Court on such provisions. Accordingly, the trial and adjudication of the case shall be stayed and the objection of the defendant under section 264 paragraph one of the Constitution shall be officially referred to the Constitutional Court, through the Office of the Judiciary, for consideration.

2. Preliminary issue

The issue to be preliminarily considered by the Constitutional Court was whether or not the Court could accept this application for consideration and decision pursuant to section 264 of the Constitution.

The Constitutional Court was of the following opinions. The defendant, as the applicant, objected that section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) were contrary to or inconsistent with section 291 of the Constitution. The said sections were the provisions of law to be applied to the case, and there had not been a decision of the Constitutional Court on such provisions. The Constitutional Court could therefore accept this application for consideration pursuant to section 264 of the Constitution.

3. The issue considered by the Constitutional Court

Were section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) contrary to or inconsistent with section 291 of the Constitution?

The Constitutional Court held the following opinions. Section 291 of the Constitution was the provision of Part 1: Declaration of Accounts Showing Particulars of Assets and Liabilities in Chapter 10: Inspection of the Exercise of State Power. This provision stipulated that persons holding political positions comprising of Prime Minister, Ministers, members of the House of Representatives, senators, other political officials, local administrators and member of a local assembly as provide by law, shall submit an account showing their particulars of assets and liabilities to the National Counter Corruption Commission on each occasion of taking or vacating office. This was the measure to inspect the exercise of State power of the persons holding political positions in terms that such holders of political positions should show the transparency of their properties and liabilities during taking office.

The Organic Act on Political Parties, B.E. 2541 (1998) was the law stipulating the rules for the establishment and operation of political parties as well as the powers and duties of the executive members of the political parties, having aims as to promote the transparency of the persons to hold political positions. Section 42 of the Organic Act on Political Parties, B.E. 2541 (1998) provided that a political party's leader and members of executive committee, including members of political branches' committees had a duty to submit accounts showing particulars of assets and liabilities to the political party registrar. Failing to do so, they shall be punished with the penalties set forth in section 84 thereof. The said section 42 was enacted to implement section 328 (7) of the Constitution.

That the political party's leader, its executive committee members, and its branches' committee members were required by section 42 of the Organic Act on Political Parties, B.E. 2541 (1998) to submit the accounts showing particulars of assets and liabilities was irrelevant to the case of persons holding political positions required to submit the same under section 291 of the Constitution. The said section 291 was the provision of the Constitution regarding the inspection of the exercise of the State power and was to be applied to the persons holding political positions. Those two provisions maintained the different cases. Section 42 of the Organic Act on Political Parties, B.E. 2541 (1998), in any case, did not

mean to expand the meaning of or to add to the provision of section 291 of the Constitution. Section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) were therefore neither contrary to nor inconsistent with section 291 of the Constitution.

4. Ruling of the Constitutional Court

By the aforesaid reasons, the Constitutional Court unanimously held that section 42 and section 84 of the Organic Act on Political Parties, B.E. 2541 (1998) were neither contrary to nor inconsistent with section 291 of the Constitution.
