

Summary of the Constitutional Court Ruling No. 36/2548

Dated 29th March B.E. 2548 (2005)*

Re: The Ayutthaya District Court referred the objections of a defendant (Mr. Suchart Phanpheng) 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 section 17 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46, section 50, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

.....

1. Background and summarized facts

The State Attorney for Ayutthaya District Court, as plaintiff, prosecuted Mr. Suchart Phanpheng, the applicant, as defendant charged with the offences of producing fermented spirits without a license and having in possession fermented spirits known to have been produced in violation of the law and the sale or display for sale of fermented spirits in violation of the law. The plaintiff requested that the applicant be sentenced under section 4, section 5, section 17, section 30 and section 31 of the Spirits Act B.E. 2493 (1950), section 91 of the Penal Code and section 4 of the Act Amending the Penal Code (No. 6) B.E. 2526 (1983).

The applicant pleaded not guilty and objected that section 5 and section 17 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with the Constitution. The applicant motioned for the Ayutthaya District Court to refer the objection to the Constitutional Court for a ruling on whether or not section 5 and section 17 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with section 4, section 5, section 6, section 26, section 27, section 28, section 29, section 30, section 46, section 50, section 57, section 60, section 75, section 76, section 78, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issue considered by the Constitutional Court

The issues which had to be considered by the Constitutional Court were whether or not section 17 of the Spirits Act B.E. 2493 (1950) were contrary to section 4, section 5, section 6, section 29, section 30, section 46, section 50, section 57, section 78, section 83, section 84

* Published in the Government Gazette, Vol. 122, Part 119a, dated 15th December B.E. 2548 (2005)

and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that the applicant did not state any reason why section 17 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 4, section 5, section 6, section 29, section 30, section 57, section 78 and section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant also failed to describe or specify the matters which gave rise to the need to exercise his rights to make an objection including the relevant facts and circumstances. Moreover, the applicant did not specify a request with clear supporting reasons for the Constitutional Court to proceed in any way. The application was not in accordance with clause 6(3) and (4) of the Rules of the Constitutional Court on Constitutional Court Procedures B.E. 2546 (2003). Thus, where there was no objection by the applicant, there was no issue for the Constitutional Court to rule upon. The only issues which remained for the Constitutional Court to consider were whether or not section 17 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46, section 50, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

The Constitutional Court held as follows. Section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), manifested an intent to grant people assembling as a local indigenous community with the right to conserve or restore customs and local wisdom as well as to participate in the management of natural resources in the community for the community's own benefit. The maintenance and utilization of natural resources existing in the community should be for the mutual benefit. Furthermore, customs, art or good tradition of the community should be conserved. However, these rights should also be in accordance with provisions of law, which at present such provisions of law had not yet been enacted. As regards the right for people to assemble as a local community which the applicant claimed under section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), there were no facts indicating that the applicant was a representative of an indigenous local community or acted on behalf of an indigenous local community. Therefore, section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 50 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided for a person's liberty to engage in an enterprise or an occupation and to undertake free and fair competition. This provision recognized a person's liberty to engage in an occupation whereby any enterprise or occupation may be engaged so long as it was not inconsistent with the law or good morals and free and fair competition. Such liberty could not be restricted except by virtue of provisions of law specifically enacted for the benefit of maintaining the security of the State or national economy, protecting the people's public utilities and maintaining public order or good morals of the people or other public benefits.

In this case, section 17 of the Spirits Act B.E. 2493 (1950) was a provision which prohibited any person from selling spirits or displaying spirits for sale except where a license had been obtained from an excise official. The rationale for such legal prohibition was the control and inspection of distributed spirits to ensure that quality standards met consumable limits without posing any health hazards. The prohibition was therefore in accordance with section 50 paragraph two of the Constitution which allowed restrictions for maintaining State security and national economy, protecting the people's public utilities, maintaining public order and good morals, regulating occupations, consumer protection, town and country planning, public welfare, preventing monopoly or eliminating unfair competition. Section 50 paragraph two of the Constitution provided an exception whereby the State could impose restrictions on the liberty to engage in an enterprise or an occupation and fair competition. As a result, section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), were provisions in Chapter 5 on the directive principles of fundamental State policies. As such, they were provisions which provided guidance for the enactment of laws and the formulation of policies of State administration by the government under the supervision of the National Assembly. Section 17 of the Spirits Act B.E. 2493 (1950), which provided that "a person is prohibited from selling spirits or displaying spirits for sale except where a license is obtained from an excise official", was a prohibition on the sale or display for sale of spirits absent a license from an excise official. This had nothing to do with the directive principles of fundamental State policies because there was no relation to the organization of landholding systems, the provision of water sources for agriculture, or the protection of agricultural interests in production and the assembling of agriculturalists pursuant to section 84 of the Constitution. Moreover, this was not an obstruction to free trade under market mechanisms or a promotion of a monopoly for spirits distribution. Therefore, section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court, by unanimous resolution, held that section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, the Constitutional Court, by eleven Constitutional Court judges, namely, Mr. Kramol Thongthammachart, Mr. Jira Bunpojnasanunthorn, Mr. Noppadol Hengcharoen, Mr. Phan Jantrapan, Mr. Mongkol Sratana, Mr. Suthee Suthisomboon, Police General Suwan Suwanwecho, Mr. Suwit Theerapong, Mrs. Sowanee Asawaroj, Mr. Aphai Janthanajulka and Mr. Ura Wangormklang, held that section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Two Constitutional Court judges, namely Mr. Preecha Chalermwanich and Mr. Manit Wittayatem, did not accept the latter issue for consideration.

By virtue of the reasons stated above, the Constitutional Court held that section 17 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 46, section 50, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
