

Summary of the Constitutional Court Ruling No. 37/2548

Dated 31st March B.E. 2548 (2005)*

Re: The Court of Appeals for Region 3 referred the objection of a defendant (Mr. Jai Mungphanklang) 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 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Court of Appeals for Region 3 requested the Office of the Judiciary to refer the objection of Mr. Jai Mungphanklang, the applicant, who was a defendant in criminal case judgment no. 99/2546, case no. 1445/2547, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant objected that section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and that section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The state attorney for Surin District Court filed a prosecution against the applicant in the Surin District Court and requested that the applicant be sentenced under section 5, section 25, section 30, section 31, section 32, section 42 bis and section 45 of the Spirits Act B.E. 2493 (1950) and under section 91 of the Penal Code. The Surin District Court gave judgment that the applicant committed offences under section 5 paragraph one, section 25, section 30, section 31, section 32, section 42 bis and section 45 of the Spirits Act B.E. 2493 (1950). The applicant appealed the Surin District Court's judgment to the Court of Appeals for Region 3.

The Court of Appeals for Region 3 held that the prosecution did not request for sentencing of the applicant under section 24 of the Spirits Act B.E. 2493 (1950). The applicant was therefore unable to motion for a reference of this section to the Constitutional Court for ruling. In addition, the Constitutional Court had already determined in Constitutional Court

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Ruling No. 6/2546, dated 27th March B.E. 2546 (2003), that section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 46, section 50, section 76, section 78 and section 84 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In relation to these sections which the Constitutional Court had already made rulings, the Court of Appeals for Region 3 did not have to make a reference for another ruling. Thus, the issues which remained were whether or not section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 4, section 5, section 57, section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 4, section 5, section 46, section 50, section 76, section 78, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

In claiming that section 5 and section 25 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with the Constitution above, the applicant must clearly present opinions on how and why each section objected to in those laws was inconsistent with the Constitution. However, the applicant's appeal did not contain any details on how or why section 5 of the Spirits Act B.E. 2493 (1950) was inconsistent with section 4, section 5 and section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and how and why section 25 of the Spirits Act B.E. 2493 (1950) was inconsistent with section 4, section 5, section 50, section 76, section 78, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application on these issues was therefore not in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the Court of Appeals for Region 3 did not have to refer these claims to the Constitutional Court for a ruling. The only issues remaining to be referred to the Constitutional Court for a ruling were whether or not section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. On the applicant's objection that section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 25 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with

section 46 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had already determined in Ruling No. 52-53/2547, dated 26th August B.E. 2547 (2004), that they were neither contrary to nor inconsistent. Therefore, only one issue remained in the application for the Constitutional Court to rule upon, i.e. whether or not section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision in Chapter 5 on the directive principles of fundamental State policies, wherein section 88 paragraph one stated that “the provisions of this Chapter are intended to serve as directive principles for legislating and determining policies for the administration of State affairs” and paragraph two stated that “in stating its policies to the National Assembly under section 211, the Council of Ministers which will assume the administration of State affairs shall clearly state the National Assembly the activities intended to be carried out for the administration of the State affairs in implementation of the directive principles of fundamental State policies provided in this Chapter and shall prepare and submit to the National Assembly an annual report on the result of the implementation, including the problems and obstacles encountered.” As such, it was held that section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided guidance for the formulation of the government’s State administration policies under the supervision of the National Assembly. Section 5 of the Spirits Act B.E. 2493 (1950), which was a provision of law that prohibited the production of spirits or the possession of containers or distillers for the production of spirits, was not relevant in any way to the directive principles of fundamental State policies with section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 83 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 83 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 25 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).
