

Summary of the Constitutional Court Ruling No. 38/2548

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

Re: The Nakorn Ratchasima District Court referred the objection of a defendant (Mr. Kongsin Sornyoaha) 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 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).

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1. Background and summarized facts

The State Attorney for Nakorn Ratchasima District Court (plaintiff) filed a prosecution against Mr. Kongsin Sornyoaha as defendant charged with the offences of producing spirits, having possession of a container or distiller for producing spirits without license, having possession of spirits ingredients without license and having possession of spirits that had been unlawfully produced pursuant to section 5 and section 31 of the Spirits Act B.E. 2493 (1950) and section 5 of the Spirits Act (No. 2) B.E. 2497 (1954).

The applicant filed a motion in the Nakorn Ratchasima District Court in request of a Constitutional Court ruling. The application argued that the prosecution was precluded from applying the legal rules in the Acts mentioned above in these proceedings because section 5 and section 31 of the Spirits Act B.E. 2493 (1950) and section 5 of the Spirits Act (No. 2) B.E. 2497 (1954) were contrary to or inconsistent with section 4, section 5, section 6, section 46, section 50, section 57, section 76, section 78, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Reasons were provided only in support for the proposition that section 5 was contrary to or inconsistent with 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).

The Nakorn Ratchasima District Court held that the issues on which the applicant requested for a Constitutional Court ruling were consistent with the description given in the plaint. The application was therefore transmitted by the Office of the Judiciary to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of

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Thailand, B.E. 2540 (1997), on 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).

2. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court under the application were whether or not section 5 and section 31 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with section 4, section 5, section 6, section 46, section 50, section 57, section 76, section 78, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that the application did not state arguments on how section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 4, section 5, section 6 and section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and how section 31 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Also, no clear reasons were given in support of the arguments. The application with respect to these claims were therefore not in accordance with clauses 6(3) and (4) of the Rules of the Constitutional Court on Constitutional Court Procedures B.E. 2546 (2003) and the Constitutional Court did not have to consider parts which did not amount to an objection. Thus, the issues which remained for the Constitutional Court to consider was whether or not section 5 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with 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).

3. Ruling of the Constitutional Court

The Constitutional Court by unanimous resolution held that the Constitutional Court had already determined in 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), and in Ruling No. 52-53/2547, dated 26th August B.E. 2547 (2004), that section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As for the issue on 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), the Constitutional Court, by 12 Constitutional Court judges, namely Mr. Kramol Thongthammachart, Mr. Jira Bunpojanasunthorn, Mr. Noppadol Hengcharoen, Mr. Phan Jantrapan, Mr. Mongkol Saratan, Mr. Sak Techacharn, Mr. Suthee Suthisomboon, Police General Suwan Suwanwecho, Mr. Suwit Theerapong, Mrs. Sowanee Asawaroj,

Mr. Aphai Janthanajulka and Mr. Ura Wangormklang, held that the Constitutional Court had already determined in Ruling No. 37/2548, dated 31st March B.E. 2548 (2005), that 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).

Two other Constitutional Court judges, Mr. Preecha Chalermwanich and Mr. Manit Wittayatem, ruled that the application be dismissed.

By virtue of the reasons stated above, the Constitutional Court held 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, section 83, section 84 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
