

Summary of the Constitutional Court Ruling No. 39/2548

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

Re: The Nakorn Ratchasima District Court referred the objection of a defendant (Mrs. Samruam Wajasit) 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 Mrs. Samruam Wajasit, the applicant, as defendant charged with the offences of producing fermented spirits and unlawfully having possession of fermented spirits under section 5, section 30, section 32 and section 45 of the Spirits Act B.E. 2493 (1950), section 4 and section 6 of the Spirits Act (No. 2) B.E. 2497 (1954), section 32, section 33 and section 91 of the Penal Code and section 4 of the Act Amending the Penal Code (No. 6) B.E. 2526 (1983). The applicant confessed to all charges stated in the prosecution.

The applicant, however, also filed a motion in the Nakorn Ratchasima District Court requesting for a Constitutional Court ruling that the plaintiff was precluded from applying the Acts mentioned above to the proceedings because section 5, section 24 and section 25 of the Spirits Act B.E. 2493 (1950) contained provisions which 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). Supporting reasons were given only with respect to section 5 which was claimed to be 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

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Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of 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, section 24 and section 25 of the Spirits Act B.E. 2493 (1950) was 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, according to the application, the State Attorney (plaintiff) did not request the Nakorn Ratchasima District Court for sentencing of the applicant under section 24 and section 25 of the Spirits Act B.E. 2493 (1950). It was therefore not the plaintiff's intention to seek sentences of the Nakorn Ratchasima District Court under section 24 and section 25 of the Spirits Act B.E. 2493 (1950). In addition, the applicant did not present arguments on why 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), nor did the applicant present clear supporting reasons. The application with respect to these claims were thus not in accordance with clauses 6(3) and (4) of the Rules of the Constitutional Court on Constitutional Court Procedures B.E. 2546 (2003), on which the Constitutional Court did not have to make a ruling. The issues in the application which remained to be 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 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).
