

Summary of the Constitutional Court Ruling No. 45/2548

Dated 26th May B.E. 2548 (2005)*

Re: The Supreme Court referred the objection of the plaintiff (Mr. Chamnan Ravivannapong) in the criminal case of the Criminal Court 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 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with the Constitution.

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1. Background and summarized facts

The Supreme Court referred the application of the plaintiff (Mr. Chamnan Ravivannapong) to the 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 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with section 27 and section 29 of the Constitution.

The facts under the application and documents attached thereto could be summarized as follows. Mr. Chamnan Ravivannapong, as plaintiff, brought an action against Mr. Sutat Ngeunmuen and others, 3 persons in total, as defendants, to the Criminal Court in Pending Case No. 1245/2543 in an offence of malfeasance in office and a conspiracy to commit an offence of criminal association. The plaintiff requested that the defendant be punished under section 157 and section 210 paragraph two of the Penal Code.

The Criminal Court, after consideration, ordered that the plaintiff was not the injured person in the offence of criminal association and had no power to file the case. In this regard, the complaint was dismissed. The offence of malfeasance in office, in addition, fell within the jurisdiction of the Criminal Division for Persons Holding Political Positions of the Supreme Court under section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999). The Criminal Court could not hear the case regarding that offence pursuant to section 4 of the said Organic Act.

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The plaintiff filed an appeal, and the Appeal Court sustained the decision.

The plaintiff filed a Dika appeal to the Supreme Court for overruling the decision of the Appeal Court and accepting the complaint for consideration. In addition, the plaintiff submitted the application to the Supreme Court for referring his objection to the Constitutional Court for a ruling that section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with section 27 and section 29 of the Constitution. This was because the said provisions restricted the right of an injured person to file a criminal case under section 28 of the Criminal Procedure Code, which such right was, by implication, recognized by the Constitution. As a result, the injured person in a criminal case who previously had the right to file a criminal case as recognized by the Constitution was lost such right. The power to file the criminal case was a fundamental right of the injured person recognized and protected by the Constitution. Hence, if the Supreme Court agreed with the objection and reasons thereof raised by the plaintiff, the Supreme Court should kindly comply with the provision of section 264 of the Constitution.

The Constitutional Court considered and ordered the followings. It was appeared that the plaintiff submitted the application stating that section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with section 27 and section 29 of the Constitution, and 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 plaintiff shall be referred to the Constitutional Court for consideration.

2. Preliminary issue

The issue to be 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 plaintiff, as the applicant, objected that section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with section 27 and section 29 of the Constitution. Such section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were the provisions of law the Supreme Court would apply 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

The issue to be considered by the Constitutional Court was whether or not section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999) were contrary to or inconsistent with section 27 and section 29 of the Constitution.

The Constitutional Court considered the application and held the followings. Section 27 of the Constitution was the provision in Chapter 3: Rights and Liberties of the Thai People which contained the general principles that the rights and liberties of the Thai people recognized by various provisions of the Constitution as well as by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws. Such section 27 contained no statement recognizing any specific rights and liberties, because they were provided for in other provisions of the Constitution. Section 29 of the Constitution provided for the general principle that the restriction of the rights and liberties recognized by this Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties. The law enacted for such purpose shall be of general application and shall not be intended to apply to any particular case or person.

Section 272 paragraph two of the Constitution provided for a Criminal Division for Persons Holding Political Positions to be contained in the Supreme Court and the quorum of judges to decide the case. According to section 272 paragraph three, the competence the Criminal Division for Persons Holding Political Positions of the Supreme Court shall be in accordance with this Constitution and the organic law on criminal procedure for persons holding political positions. In the case where any person holding a political position was accused of committing an offence as provided in section 308 of the Constitution, section 309 of the Constitution stipulated that the injured person from the act of such person could submit the application to the National Counter Corruption Commission for taking actions under section 301 subparagraph two in accordance with the organic law on counter corruption. Thereafter, there was the enactment the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999). Section 9 thereof provided for the competence of the Court in consideration of the case. Accordingly, the Constitutional Court was of the opinion that the Constitution and section 9 of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999) specifically stipulated the jurisdiction of the Court of competence. To consider what case fell within the jurisdiction of what court, the type and nature of the case shall be taken into account as provided by law. In this connection, section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holding Political Positions, B.E. 2542 (1999) was consistent with section 332 of the Constitution.

The proceedings against persons holding political positions were of more importance

than the general criminal proceedings. Section 332 of the Constitution provided that the criminal procedure for holders of political positions shall be based on the inquisitorial system. This was different from the criminal procedure in general that be based on the accusatorial system. Section 272 of the Constitution provided for the quorum of the judges to decide such case which differed from that in general case. The competence to decide the case belonged to only one level of the Court of Justice. In addition, section 311 of the Constitution provided that orders and judgments of the Criminal Division for Persons Holding Political Positions of the Supreme Court shall be final.

The person authorized to file this kind of case was limited to only the Attorney-General or the National Counter Corruption Commission. As the case involved the offence against State, the directly injured person was the State itself. The Attorney-General or the National Counter Corruption Commission filed the case on behalf of the State. Section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) specifically provided for the jurisdiction of the Supreme Court's Criminal Division for Persons Holding Political Positions for the purpose of criminal proceedings against holders of political positions, other political officials, including principals, instigators and supporters in committing such offence. The said provisions were of general application and did not affect the essential substances of the rights of the injured person or any particular person. Moreover, section 332 of the Constitution provided for the enactment of the organic law on criminal procedure for persons holding political positions. Section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were the provisions of law enacted in accordance with section 308 and section 332 of the Constitution. Consequently, there was no case where the said provisions were to be contrary to or inconsistent with section 27 and section 29 of the Constitution.

4. Ruling of the Constitutional Court

By the aforesaid reasons, the Constitutional Court held that section 9 subparagraph (1) and subparagraph (2) of the Organic Act on Criminal Procedure against Persons Holdings Political Positions, B.E. 2542 (1999) were neither contrary to nor inconsistent with section 27 and section 29 of the Constitution.
