

Summary of the Constitutional Court Ruling No. 54/2548

Dated 16th August B.E. 2548 (2005)*

Re: The Lampun Provincial Court referred the application of a defendant (Mr. Sajja Suriyakul Na Ayutthaya) 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 and section 32 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Lampun Provincial Court requested the Office of the Judiciary to transmit the application of an applicant, a defendant in criminal case no. 1375/2545, 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 and section 32 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with section 26, section 28, section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and of whether or not section 32 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 27, section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Mr. Sajja Suriyakul Na Ayutthaya, the applicant, was a defendant charged with offences under section 4, section 5, 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) and section 91 of the Penal Code.

The applicant claimed that section 5 and section 32 of the Spirits Act B.E. 2493 (1950) were provisions of law which were contrary to or inconsistent with section 26, section 27, section 28, section 29, section 42, section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and were therefore subject to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court considered the application and found that the Lampun Provincial Court had made the reference of the applicant's opinion through official channels to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom

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of Thailand, B.E. 2540 (1997). The Constitutional Court therefore had the power to accept the application for consideration.

2. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 5 and section 32 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with section 26, section 27, section 28, section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 32 of the Spirits Act B.E. 2493 (1950) was contrary to or inconsistent with section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

Section 26 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a general provision which did not grant any person with a right to claim that a provision of any law was contrary to or inconsistent with such section of the Constitution.

As regards section 27 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had already determined in Ruling No. 38-39/2547, dated 8th April B.E. 2547 (2004), that such provisions laid down general principles which recognized the rights and liberties of the Thai people as enumerated in the various sections of this Constitution. It was not a provision which recognized any specific right or liberty since rights and liberties were already specifically provided for in other sections of this Constitution. Hence, there was no instance where section 5 of the Spirits Act B.E. 2493 (1950) could be contrary to or inconsistent with section 27 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the question of whether or not section 32 of the Spirits Act B.E. 2493 (1950) contained any substance which was contrary to or inconsistent with section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had 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 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, it followed that section 32 of the Spirits Act B.E. 2493 (1950), a related provision which provided penalties for offences under section 5, was neither contrary to nor inconsistent with such sections of the Constitution.

On the questions of whether or not section 5 and section 32 of the Spirits Act B.E. 2493 (1950) were contrary to or inconsistent with section 28, section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held as follows.

Section 28 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which laid down the principle that a person was allowed to invoke human dignity or exercise his/her rights and liberties to the extent that the rights and liberties of other persons were not violated, that did not prejudice the Constitution or that was not contrary to the good morals of the people. A person who had suffered from a violation of rights or liberties recognized by the Constitution was also allowed to invoke provisions of the Constitution in order to exercise judicial rights or present arguments in court. This was a matter which had to be considered on a case by case basis. Section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision which guaranteed the security of rights. A restriction of rights and liberties of a person could only be imposed under the rules prescribed by the Constitution, i.e. by virtue of provisions of law specifically enacted for the purposes prescribed by the Constitution and only to the extent of necessity which must not affect the essential substance of the rights and liberties.

Section 5 of the Spirits Act B.E. 2493 (1950) was a provision which prohibited any person from producing spirits or having in possession containers or distillation equipment for producing spirits except where licensed by the Director-General. The legal requirement that spirits production or possession of containers or spirits distillation equipment should be licensed by the Director-General of the Excise Department was a matter of spirits production control for the benefit of tax collection and public health. The right and liberty to produce spirits might be partially restricted, but this was imposed to the extent of necessity and did not affect the essential substances of the right and liberty to produce spirits since spirits production could still be undertaken under the control of State officials. In addition, section 5 of the Spirits Act B.E. 2493 (1950) did not impair human dignity in any way. Therefore, section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 28 and section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided on the academic liberty of a person which could be exercised to the extent that was not inconsistent with a citizen's duties and good morals of the people. The case in this application involved spirits and wine production, an activity which could be detrimental to public health. Hence, controls and inspections by the Excise Department were necessary prior to dissemination and distribution. The requirement of a license from the Excise Department under section 5 of the Spirits Act B.E. 2493 (1950) prior to display and distribution was therefore not a restriction of academic liberty under section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 32 of the Spirits Act B.E. 2493 (1950) was a penal provision for the offence of purchasing or having in possession spirits that had been produced in violation of section 5. Hence, section 32 was a provision related to section 5. Once it was determined that section 5 of the Spirits Act B.E. 2493 (1950) was neither contrary to nor inconsistent with section 28,

section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 32, which provided penalties in relation to section 5, was therefore also neither contrary to nor inconsistent with section 28, section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court therefore held that section 5 and section 32 of the Spirits Act B.E. 2493 (1950) were neither contrary to nor inconsistent with section 26, section 27, section 28, section 29 and section 42 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and that section 32 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).
