

Summary of Constitutional Court Ruling No. 7/2549

Dated 18th April B.E. 2549 (2006)*

Re: Whether or not section 4 paragraph one subparagraph (2) of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by section 3 of the Control of Market Sales and Trade in used Items Act (No. 2) B.E. 2481 (1938), and section 12 paragraph one of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by section 3 of the Control of Market Sales and Trade in Used Items Act (No. 5) B.E. 2535 (1992), were contrary to or inconsistent with section 50 in conjunction with section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

.....

1. Summary of Background and Facts

The State Attorney, Office of the Special State Attorney for Sub-District Court 2 (Dusit Sub-District), prosecuted Mr. Tawatchai Buakhli as a defendant in the Dusit Sub-District Court in Criminal Case No. 1577/2548, on charges that the defendant had defied authorities by carrying out the business of trading in used computers and computing equipment, being a trade in used items, without a license from the licensing officer, and requested the court to sentence the defendant under section 4 and section 12 of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931).

The defendant denied the prosecutor's charges and filed a motion of objection with the Dusit Sub-District Court that section 4 and section 12 of the Market Sales and Trade in used Items Act B.E. 2474 (1931) were contrary to or inconsistent with section 50 in conjunction with section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Dusit Sub-District Court therefore referred the motion together with the court's opinion to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Preliminary Issue

The Constitutional Court held that, since the Dusit Sub-District Court was going to apply the provision of law objected by the applicant as being contrary to or inconsistent

* Published in the Government Gazette, Vol. 123, Part 68a, dated 28th June B.E. 2549 (2006)

with the Constitution to the case, the case was therefore in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Constitutional Court therefore had the power to admit this application for ruling.

3. Issue considered by the Constitutional Court

After considering the application, supporting documents and issue on which a Constitutional Court ruling was requested, the Constitutional Court determined that the issue which had to be ruled upon was whether or not section 4 paragraph one subparagraph (2) of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by the Control of Market Sales and Trade in Used Items Act (No. 2) B.E. 2481 (1938), and section 12 paragraph one of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by the Control of Market Sales and Trade in Used Items Act (No. 5) B.E. 2535 (1992), were contrary to or inconsistent with section 50 in conjunction with section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 50 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for recognition of the liberty to engage in an enterprise or an occupation and to undertake fair and free competition. The people enjoyed safeguards in exercising their free choices to engage in an enterprise or an occupation without mandate from any person and without being deprived of the opportunity to engage in an enterprise or an occupation in competition with other operators, thus resulting in a fair and free competition. Section 50 paragraph two, however, permitted the restriction of liberty to engage in an enterprise or an occupation and to undertake fair and free competition by virtue of specific provisions of law for the benefit of maintaining the security of the State or national economy, the protection of the people with respect to public utilities, the maintenance of public order or good morals of the people, consumer protection, town and country planning, preservation of natural resources or the environment, public welfare or the prevention of monopolies or the elimination of unfair competition. In any event, the restriction of liberty to engage in an enterprise or an occupation and to undertake fair and free competition was only permitted to the extent of necessity and should not affect the essential substance of such rights and liberties. In addition, the law restricting such rights and liberties should have a general application and not be specifically directed to any particular case or person as provided by section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931) was a law enacted to implement controls to improve the market sales and trade in used items. The Act contained provisions which required a person wishing to engage in the profession of trading used items to obtain a license from a licensing officer under section 4 paragraph one subparagraph (2). Section 12 paragraph one further provided that a person who engaged in the profession of trading used items without a license would be deemed as having committed an offence and held liable to penalties. For the benefit of implementing controls, the Act

provided for disqualifying characteristics of persons applying for a license to trade in used items in section 6, i.e. an applicant must not have been sentenced to a sentence of imprisonment for an offence relating to forgery of currencies or seals, an offence of theft, snatching, robbery, gang robbery, extortion or fraud, or an offence of handling stolen goods. Moreover, section 8 required the compliance of a trader of used items in relation to the display of trading license, the preparation of trading accounts and the recordkeeping of all significant trading transactions, the designation of numerical orders with marks affixed to goods which corresponded to the numerical order in the account books and the notification of police officials or inspectors when there was reasonable cause to suspect that an object offered or transferred by a person had been unlawfully obtained. Such provisions of law thus intended to control the profession of trade in used items so as to prevent the operations from supporting offences in relation to properties, especially objects which were important national treasures such as antiques or artworks under the law on ancient sites, antiques or artworks and national heritage sites as well as to support police officials in the prevention and suppression of crimes relating to property. The law also intended to promote order in the profession of trading in used items and to protect consumers who could be affected by the purchase of objects obtained from the commission of an offence. The Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931) was therefore a specific law enacted for the benefit of maintaining public order and good morals, the promotion of order in the profession and the protection of consumers.

After considering section 4 paragraph one subparagraph (2) of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), which prohibited any person from engaging in the profession of trading in used items without a license issued by a licensing officer, and section 12 paragraph one which provided that a person who engaged in the profession of trading in used items without a license would be deemed as having committed an offence and held liable to penalties, the Constitutional Court gave the following opinion. Such provisions were provisions of law which restricted the liberty to engage in the profession of trade in used items since there was a requirement that a person who wished to engage in the profession of trade in used items had to apply for a license and obtain a license from a licensing officer before engaging in such profession. A person who engaged in the profession of trade in used items without a license would be held to have committed an offence and be liable to the penalties prescribed by law. Nevertheless, such provisions were merely control and inspection measures provided by law so as to fulfill the intentions of the law in exerting controls on the profession of trade in used items to prevent the operations from supporting offences relating to properties and to promote better order in the profession of trade in used items as well as to protect consumers. The provisions were therefore provisions which restricted the liberties of a person to engage in the profession of trade in used items enacted by virtue of specific provisions of law under section 50 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Even though such provisions affected the liberties of a person wishing to engage in the profession of trade in used items, such effects on the liberties were only imposed to the extent of necessity without affecting the essential substances of the liberty. The provisions were also of general application

without being directed specifically to any particular case or person. Moreover, the measures conferred a greater benefit to the public than the detriment caused to private persons.

Section 4 paragraph one subparagraph (2) and section 12 paragraph one of the Control of Market Sales and Trade in used Items Act B.E. 2474 (1931) were therefore provisions consistent with section 50 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) which provided a guarantee that the liberty to engage in a profession could be restricted by virtue of specific provisions of law for the benefit of maintaining public order and good morals, the promotion of order in the profession and the protection of consumers. The provisions of law also restricted the liberty to engage in a profession to the extent of necessity and did not affect the essential substance of such liberty, having a general application on persons wishing to engage in the profession of trade in used items, and not intended for application to any particular case or person, as safeguarded by section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court by unanimous resolution held that section 4 paragraph one subparagraph (2) of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by the Control of Market Sales and Trade in Used Items Act (No. 2) B.E. 2481 (1938), and section 12 paragraph one of the Control of Market Sales and Trade in Used Items Act B.E. 2474 (1931), as amended by the Control of Market Sales and Trade in Used Items Act (No. 5) B.E. 2535 (1992), were neither contrary to nor inconsistent with section 50 in conjunction with section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
