

Summary of Constitutional Court Ruling No. 16-17/2549

Dated 7th September B.E. 2549 (2006)*

Re: Whether or not section 48 of the Printing Act B.E. 2484 (1941) was contrary to or inconsistent with section 39 and section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

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1. Summary of Background and Facts

The Bangkok South Criminal Court and the Supreme Court referred the applications of defendants to the Constitutional Court for rulings under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The two applications could be summarized as follows.

In the first application, the state attorney of the Office of the Attorney-General (Office of Special Prosecutor for South Bangkok 2), the plaintiff, and MR. Chatu Mongkol Sonakul, co-plaintiff, filed a prosecution against Manager Media Group Public Company Limited, the first defendant, and Mr. Tul Sirikulpipat, the second defendant, at the Bangkok South Criminal Court on charges of jointly committing the offence of defamation by publishing documents under section 326, section 328 and section 83 of the Penal Code, section 3 and section 4 of the Act Amending the Penal Code (No. 11) B.E. 2535 (1992) and section 48 of the Printing Act B.E. 2484 (1941).

The Bangkok South Criminal Court had completed its proceedings and scheduled an appointment for a reading of the judgment. Subsequently, the two defendants filed a motion with the Bangkok South Criminal Court stating that section 48 of the Printing Act B.E. 2484 (1941) was inconsistent with the Constitution and therefore unenforceable. It was thus requested that Bangkok South Criminal Court imposed a temporary stay of proceedings and refer the opinion to the Constitutional Court for a ruling that section 48 of the Printing Act B.E. 2484 (1941) was contrary to or inconsistent with section 39 and section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

In the second application, Mr. Chuan Leekpai, the plaintiff, filed a prosecution against Mr. Tul Sirikulpipat, the first defendant, and Mr. Sonthi Limtongkul, the second defendant, at the Bangkok South Criminal Court on charges or offences of defamation under section 83, section 58, section 326 section 328 and section 332 of the Penal Code and section 48 of the

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Printing Act B.E. 2484 (1941). Prior to the inquiry of charges, the court allowed the plaintiff to withdraw the prosecution against the second defendant. Thereafter, the Bangkok South Criminal Court gave judgment that the first defendant had committed an offence under section 328 of the Penal Code in conjunction with section 48 of the Printing Act B.E. 2484 (1941). The first defendant was sentenced to 4 months imprisonment and ordered to publish the judgment in a total of 5 daily newspapers for 3 consecutive days at the costs of the first defendant.

The first defendant appealed. The Court of Appeals amended the judgment by imposing an additional fine sentence of 40,000 baht on the first defendant and suspended the imprisonment sentence for a period of 1 year.

The plaintiff submitted an appeal to the Supreme Court, dated 17th January B.E. 2548 (2005), requesting a heavier sentence on the first defendant.

The first defendant (applicant) submitted an appeal to the Supreme Court, dated 27th January B.E. 2548 (2005), objecting to the judgments of the court of first instance and Court of Appeals, and filed a motion, dated 2nd February B.E. 2548 (2005), with the Supreme Court requesting for the court to stay the proceedings and refer the matter to the Constitutional Court for a ruling that section 48 of the Printing Act B.E. 2484 (1941) was contrary to or inconsistent with section 39 and section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Issue Considered by the Constitutional Court

The Constitutional Court held that both applications contained identical issues which required a ruling. The applications were therefore tried together. The issues considered by the Constitutional Court were as follows.

The first issue was whether or not section 48 paragraph two of the Printing Act B.E. 2484 (1941) was contrary to or inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 39 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision which recognized the liberty to express opinions, speech, writing, publications, advertisements and the communication of meanings by other means, and that such liberty could not be restricted except by virtue of specific provisions of law in the interest of state security, the protection of rights, liberties, honor, fame, family rights or privacy of other persons. Section 34 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) recognized personal rights in the family, honor, fame or privacy which were to be free from reference or dissemination of texts or pictures by any means to the public that would be a violation or infringement of such rights, except in cases of the public interest. It could be seen that even though a person or the media had the liberty to express opinions, speech, writing, publication and advertising, such liberties were subject

to the limitations of the Constitution and specific laws, such as section 326 and section 328 of the Penal Code. The purpose of such limitations was to prevent the exercise of one's liberties from violating the rights, liberties, honor, fame, family rights or privacy of others.

Upon a consideration of the provisions of section 48 paragraph two of the Printing Act B.E. 2484 (1941), it was found that such provision was another specific provision of law which stated that an author and editor must be liable as principals, and if the author could not be found, the publisher should also be liable as a principal. Whereas section 4 of the Printing Act B.E. 2484 (1941) provided that the 'publisher' was a person who managed and was responsible for publishing, and provided that the 'editor' was a person responsible for the preparation, editing, selection or control of literary works or other materials in a newspaper, therefore, both the publisher and editor were persons stipulated by law as having the duties of managing and being responsible for publishing, editing, selection or control of literary works or other materials in a newspaper. One purpose of such provision was to prevent the publication of any content that would infringe upon the rights, liberties, honor, fame or family rights or privacy of other person. Once the law had provided for such duties, if a publisher or editor failed to carry out inspections, selections or controls by allowing the publication of contents in a newspaper which violated the rights of other persons going beyond honesty or fair comment as recognized under section 34 and section 39 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the law would deem that the publisher and editor had acted by failing to perform acts to prevent such a result under the essence of section 59 paragraph five of the Penal Code. Such persons would therefore be liable to punishment under the specific provisions of law in order to protect the rights, liberties, honor, fame and family rights of other persons, and in order to prevent the exercise of rights and liberties beyond the limitations causing injuries to others. It was therefore held that section 48 paragraph two of the Printing Act B.E. 2484 (1941) was neither contrary to nor inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The second issue was whether or not section 48 paragraph two of the Printing Act B.E. 2484 (1941) was contrary to or inconsistent with section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 41 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for a private staff member or employee engaged in the business of publishing, radio or television broadcast to have the liberty to present news and express opinions within the limitations of the Constitution without being subject to the authority of a government agency, state agency, state enterprise or the owners of such business, but should nonetheless not be inconsistent with professional ethics. Upon a consideration of such provisions along with section 48 paragraph two of the Printing Act B.E. 2484 (1941), it was found that an author, publisher or editor engaged in a newspaper business enjoyed the liberty to present news and express opinions within the limitations of the Constitution and without being inconsistent with professional ethics. Such persons did not enjoy complete freedom in the presentation of news and expression of

opinions without limitations under the law or supervision under a professional code of conduct. In this regard, section 34 and section 39 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for the recognition of personal rights in the family, honor, fame or privacy and recognized the liberty to express opinions, speech, writing, advertisements and the communication of meanings by other means, along with the newspapers code of conduct of the Thai Newspapers Association and professional ethics of the press under the National Press Council providing for a code of conduct and ethics of newspapers in the presentation of news, pictures or expression of opinions which must be polite, honest, an accurate report of the news, and to omit from adding gloss. Newspapers had to uphold the truth, correctness, accuracy and completeness. News should not be glossed to the extent of altering or exaggerating facts, and the presentation of biased or prejudicial accounts of news that would alter or exaggerate the facts should be abstained. Thus, section 48 paragraph two of the Printing Act B.E. 2484 (1941) provided for the liability of the author and the editor as principals, and if the author was not found, the publisher should also be liable as a principal. The provision provided the offenses for such persons, which was a different case from section 41 of the Constitution which provided for a private staff member or employee engaged in a publishing business to have the liberty to present news and express opinions within the limitations of the Constitution and professional code of conduct. Therefore, section 48 paragraph two of the Printing Act B.E. 2484 (1941) was neither contrary to nor inconsistent with section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 48 paragraph two of the Printing Act B.E. 2484 (1941) was neither contrary to nor inconsistent with section 41 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
