

Summary of Constitutional Tribunal Ruling No. 9/2550

Dated 26th July B.E. 2550 (2007)*

Re: Whether or not section 218, section 219 and section 219 ter of the Criminal Procedure Code were contrary to or inconsistent with section 2, section 4, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

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1. Summary of background and facts

The Provincial State Attorney of Seekew (Pak Chong), as plaintiff, prosecuted Mr. Suchart Amnuaymongkolporn, the defendant, at Seekew (Pak Chong) Provincial Court on charges of construction and use of a building without a license and failure to submit a license application for building construction and construction of a building in contravention of an order of a local official. Subsequently, Seekew Provincial Court (Pak Chong) convicted the defendant for offences under section 21(2), section 65, section 67, section 70 and section 71 of the Building Control Act B.E. 2522 (1979). The defendant appealed the judgment of Seekew Provincial Court (Pak Chong). The 3rd Region Court of Appeals gave judgment amending only the fines while affirming the remainder of the Court of First Instance's judgment. The defendant appealed to the Supreme Court. Seekew Provincial Court (Pak Chong) ordered on 31st March B.E. 2548 (2005) that the defendant's appeal was an appeal on a point of fact. The defendant's application for appeal was therefore dismissed. The defendant appealed the order dismissing the application to appeal to the Supreme Court as well as submitted an application to the Supreme Court requesting a referral to the Constitutional Court for ruling. It was objected that section 218, section 219 and section 219 ter of the Criminal Procedure Code were contrary to or inconsistent with section 2, section 4, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and therefore unenforceable.

The Supreme Court found that the court had to apply such law to the case and therefore the case contained an objection that a provision of law which the court had to apply to a case was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court on such provision. Thus, a temporary stay of proceedings was imposed on the case and such opinion was transmitted through official channels to the Constitutional Court for a ruling under section 264 of the Constitution.

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2. Preliminary issue

A preliminary issue which had to be considered was whether or not the Constitutional Tribunal should proceed to make a ruling on such application.

After consideration, the Constitutional Tribunal held as follows. The defendant's application objected that section 218, section 219 and section 219 ter of the Criminal Procedure Code were contrary to or inconsistent with section 2, section 4, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). It was requested that the Supreme Court refer the application to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Constitutional Court ordered the admission of the application for ruling on 27th December B.E. 2548 (2005). The case was thus pending proceedings in the Constitutional Court. At that time, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was still in force and the Supreme Court had to apply such law to the case. In this respect, section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) recognized that human dignity, rights, liberties and equality which the Thai people enjoyed protection under Thailand's tradition on democratic form of government with the King as head of state and under existing international obligations remained protected under this Constitution. Moreover, section 38 paragraph one provided a rule for deciding a case which was not provided for by the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) stating that such cases should be decided according to Thailand's conventions on the democratic form of government with the King as head of state. Therefore, the Constitutional Tribunal had the power to rule on such application.

3. Issues considered by the Constitutional Tribunal

The issues considered by the Constitutional Tribunal were whether or not section 218, section 219 and section 219 ter of the Criminal Procedure Code were contrary to or inconsistent with section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 2, section 4, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Constitutional Tribunal held as follows. Section 2 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), provided in Chapter 1, General Provisions, stated that Thailand was ruled under the democratic form of government with the King as head of state, being a provision on Thailand's form of government. Section 4 provided recognition and protection of human dignity, rights and liberties of the people generally. Section 30 was a provision which recognized equality of the people, whereby men and women had equal rights and all persons enjoyed equal protection under the law. The provisions of the Constitution in those three sections provided wide general principles. Despite the subsequent repeal of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the principles remained in section 2 of the Constitution of the Kingdom of Thailand

B.E. 2540 (1997), which provided the form of government, section 4, the protection of human dignity, rights and liberties of a person and section 30, the equality of persons. Once section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) retained the protection of human dignity, rights, liberties and equality which the Thai people enjoyed protection under Thailand's tradition of the democratic form of government with the King as head of state, such provisions of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) mentioned above also enjoyed protection under section 3 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

On the other hand, section 218, section 219 and section 219 ter of the Criminal Procedure Code were provisions on rules of appeal in the Courts of Justice at the Supreme Court level. In other words, the provision in section 218 paragraph one provided that "in a case where the Court of Appeals affirms the lower court's decision or makes minor amendments, and the defendant is sentenced to a term of imprisonment not exceeding five years, or a fine, or both, provided that the term of imprisonment does not exceed five years, the parties are prohibited from submitting an appeal to the Supreme Court on a point of fact." Section 219 provided that "in a case where the Court of First Instance sentences the defendant to a term of imprisonment not exceeding two years or a fine not exceeding forty thousand baht, or both, if the Court of Appeals sentences the defendant to a penalty not exceeding the aforesaid limit, the parties are prohibited from submitting an appeal to the Supreme Court on a point of fact, but such prohibition does not apply to a defendant in the case where the Court of Appeals' judgment makes substantial amendments or increases the penalty on the defendant." Section 218 paragraph two provided that "in a case where the Court of Appeals affirms the lower court's judgment or makes minor amendments and sentences the defendant to a term of imprisonment not exceeding five years, regardless of whether or not other penalties are also imposed, the plaintiff is prohibited from appealing on a point of fact." Section 219 ter provided that "in a case where the Court of First Instance imposes a sentence of detention in lieu of imprisonment, or amends a detention penalty to a term of imprisonment, or a case relating to detention in lieu of a fine, or detention in connection with confiscation of property, if the Court of Appeals did not reverse the judgment of the Court of First Instance, the parties are prohibited from submitting an appeal on a point of fact to the Supreme Court." The provisions of section 218, section 219 and section 219 ter were therefore not provisions which prohibited or abrogated the right to commence legal proceedings, but were provisions which laid down the rules of appeal at the Supreme Court level. The provisions in section 218, section 219 and section 220 which prohibited the parties from appealing on a point of fact to the Supreme Court were not absolute provisions. On the contrary, the parties, whether the plaintiff or defendant and on an equal basis, still had the opportunity of requesting a judge who participated in the trial or signed the judgment, or gave a dissenting opinion in the Court of First Instance, or upon the Court of Appeals' grant of leave to appeal to the Supreme Court or the Attorney General's signature of approval in the appeal to the Supreme Court that the case contained reasonable cause for review by the highest court, the case may also be admitted for consideration in accordance with section 221 of the Criminal Procedure Code. Therefore, even though

section 218, section 219 and section 219 ter of the Criminal Procedure Code were provisions which restricted the right to appeal to the Supreme Court, such provisions were equally applicable to all persons and did not affect the equal treatment of persons under the law. The provisions also did not in any manner amount to an unfair discrimination under the provisions of section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Thus, section 218, section 219 and section 219 ter of the Criminal Procedure Code were neither contrary to nor inconsistent with section 2, section 4 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

As for the question of whether or not section 218, section 219 and section 219 ter of the Criminal Procedure Code were contrary to or inconsistent with section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Constitutional Tribunal made the following findings. Section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a general provision which stated that “the trial and adjudication of cases are the powers of the Court which must be exercised in accordance with the Constitution, laws and in the name of His Majesty the King.” Section 272 paragraph one stated that “there shall be three levels of the Courts of Justice, namely the Court of First Instance, Court of Appeals and Supreme Court, unless otherwise provided in this Constitution or other laws.” The word “laws” in section 233 meant procedural laws, the Criminal Procedure Code included. As the Constitution of the Kingdom of Thailand B.E. 2540 (1997) did not provide for the restriction of rights to appeal to the Supreme Court, the provisions of section 218, section 219 and section 219 ter of the Criminal Procedure Code on such matter, which were intended to prevent cases that had already been tried in two courts from a further trial in the Supreme Court, constituted provisions on the types of cases that could be tried and adjudicated by the Supreme Court. Section 218, section 219 and section 219 ter of the Criminal Procedure Code were therefore neither contrary to nor inconsistent with section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The provisions were also neither contrary to nor inconsistent with section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which were provisions relating to the structure of the Courts of Justice.

4. Ruling of the Constitutional Tribunal

By virtue of the reasons given above, the Constitutional Tribunal held that section 218, section 219 and section 219 ter of the Criminal Procedure Code were neither contrary to nor inconsistent with section 2, section 4, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
