

Summary of Constitutional Court Ruling No. 10/2550

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

Re: Whether or not section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were contrary to or inconsistent with section 6 and section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

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1. Summary of background and facts

Songkhla Provincial Court referred the objection of the defendant (Mr. Kaen Sae-Ong) in Criminal Judgment No. Ror. 1/2548 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 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were contrary to or inconsistent with section 6 and section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The defendant submitted an application for retrial of a criminal case in Criminal Judgment No. Ror. 1/2539 but the application was dismissed by the 3rd Region Court of Appeals. The defendant was of the opinion that the ruling of the 3rd Region Court of Appeals that the Notification of the Ministry of Interior and Notification of the Ministry of Industry were merely Notifications and thereby issued an order to dismiss the defendant's application was an order which was inconsistent with section 5(3) of the Retrial of Criminal Cases Act B.E. 2526 (1983) and inconsistent with section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) because an erroneous ruling or an unlawful order could not be deemed as a final adjudication of a case under section 10 of the Retrial of Criminal Cases Act B.E. 2526 (1983). Criminal Judgment No. Ror. 1/2539 was not final as it was deemed that an application for retrial by the court had not yet been submitted under section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983). Therefore, section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were inapplicable.

Thereafter, the defendant submitted an application for retrial of a criminal case to the Songkhla Provincial Court in Retrial No. Ror. 1/2548 which could be summarized as follows. After the Supreme Court gave judgment in the original case, the Permanent Secretary of the Ministry of Interior submitted the matter to the Council of State for a legal re-determination of the land category that should be assigned to the Muang Chalung land. The 7th Committee of the Council of State ruled on the legal question, stating that "the Muang

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Chalung land was not land specifically reserved for use by the State, but were merely abandoned land under section 1304(1) of the Civil and Commercial Code, and the Mining Organization only had the right to carry out mining activities.” The defendant submitted an application to Songkhla Provincial Court for a referral to the Constitutional Court for ruling.

The Songkhla Provincial Court made a reference to the Constitutional Court for a ruling on the defendant’s objection that section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were contrary to or inconsistent with section 6 and section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Preliminary Issue

The preliminary issue which had to be considered was whether or not the Constitutional Court had the power to resume the trial and adjudication of this case.

The Announcement of the Council for Democratic Reform No. 3, dated 19th September B.E. 2549 (2006) declared the repeal of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the abolishment of the Constitutional Court. Thereafter, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) was promulgated on 1st October B.E. 2549 (2006) wherein section 35 paragraph one stated that “matters provided by law as powers of the Constitutional Court or problems on whether or not laws are contrary to or inconsistent with the Constitution shall be the powers of the Constitutional Tribunal...” and section 35 paragraph four provided that “all cases or matters pending proceedings in the Constitutional Court prior to 19th September B.E. 2549 (2006) shall transfer to the powers and responsibilities of the Constitutional Tribunal.” Thus, the case was transferred to the powers of the Constitutional Tribunal under section 35 paragraph one and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

Subsequently, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) as of 24th August B.E. 2550 (2007). Section 300 provided that the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) shall be the Constitutional Court and the provisions in section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) shall remain in force until the promulgation of the Organic Act on Constitutional Court Procedures. All cases or matters pending proceedings in the Constitutional Tribunal should be resumed by the Constitutional Court. This case was therefore within the powers of the Constitutional Court under section 300 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

3. Issues Considered by the Constitutional Court

Before the Constitutional Court could rule on the issue in the application of whether or not section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were

contrary to or inconsistent with section 6 and section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), a preliminary issue had to be decided on whether or not section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were provisions of law which would be applied to a case by the Songkhla Provincial Court under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Constitutional Court held as follows. Under the procedures for retrial of a criminal case, the Court of First Instance receiving the application should conduct an inquiry on the application to determine whether or not there was sufficient substance for a retrial. The records of the inquiry, as well as the Court of First Instance's opinion, would then be submitted to the Court of Appeals for consideration. Once the Court of Appeals received the records of the inquiry and opinion, it would then exercise its discretion in issuing an order. Thus, such order was the power of the Court of Appeals under section 10 of the Retrial of Criminal Cases Act B.E. 2526 (1983). The case in the application was a second application for a retrial after an application for retrial had already been submitted on a prior occasion which was considered and dismissed by the 3rd Region Court of Appeals. While the second application for retrial was pending inquiry by the Songkhla Provincial Court, the applicant filed an application at the Songkhla Provincial Court requesting for a referral of an objection to the Constitutional Court for ruling on whether or not section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were contrary to or inconsistent with section 6 and section 247 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Songkhla Provincial Court referred such application to the Constitutional Court for ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). However, a submission to the Constitutional Court for ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was restricted to only an objection pertaining to a provision of law that a court would apply to a case pending trial. As section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were applicable to the case in the Court of Appeals (3rd Region Court of Appeals), and not the Court of First Instance (Songkhla Provincial Court), the case was not in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). A ruling on the issue under the application was therefore not required.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 10 and section 18 of the Retrial of Criminal Cases Act B.E. 2526 (1983) were not provisions of law which the Court of First Instance (Songkhla Provincial Court) would apply to this case under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The application was dismissed.
