

Summary of Constitutional Court Ruling No. 18/2552

Dated 17th November B.E. 2552 (2009)*

Re: The Supreme Court referred the objections of an objector in a criminal case in Chonburi Provincial Court, Case No. 5163/2543 (2000), Judgment No. 7108/2543 (2000), to the Constitutional Court for a ruling on whether or not section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) were contrary to or inconsistent with section 6 and section 32 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) (identical principles to section 6 and section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)).

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1. Summary of background and facts

On 14th June B.E. 2543 (2000), police officers of Chonburi Muang District Regional Police Station and others carried out the arrest of Mrs. Ubonrat, or Puek Pradabpet, who was in possession of methamphetamine, which was a class 1 narcotic drug under the Narcotic Drugs Act B.E. 2522 (1979), and a narcotic drug under the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991). Cash in the sum of 195,600 baht was seized as property related to the commission of the narcotic drugs related offence. On 11th August B.E. 2543 (2000), Chonburi Province State Attorney, as the prosecution, prosecuted Mrs. Ubonrat, or Puek Pradabpet, as defendant, in Chonburi Provincial Court on charges of having in possession for distribution class 1 narcotic drugs without a license. Thereafter, a motion was submitted to the court for an order to confiscate properties in the form of 195,600 baht in cash, the seized items in such case, for remittance to the Prevention and Suppression of Narcotic Drugs Fund pursuant to section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991), as ruled by the Property Investigation Committee.

Mr. Charint Ornseetong (applicant) filed a motion of objection in Chonburi Provincial Court, stating that the applicant, who was the owner of such cash, did not collude with the commission of such offence, and that the property was not involved in the commission of the narcotic drugs related offence. The properties had been earned by the applicant honestly through a stable and secure occupation. It was asserted that the motion for seizure or

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confiscation of properties under section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) was deemed as a penalty under section 18(5) of the Penal Code. Even though section 22 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) authorized the Property Investigation Committee to seize or freeze assets related to the commission of a narcotic drugs related offence, there was no implication that these provisions or law could apply retroactively to the prior commission of an offence by an offender. The applicant was of the opinion that section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) and the relevant Ministerial Notifications and Ministerial Regulations were inconsistent with section 6 and section 32 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and section 2 and section 18(5) of the Penal Code, as well as being in conflict with the theory of criminal proceedings against an offender where it was a universally accepted principle that the criminal law did not impose penalties retroactively.

Chonburi Provincial Court subsequently ordered the confiscation of the cash and the applicant appealed against the order of Chonburi Provincial Court on the issue of objection that the seized cash in the case belonged to the applicant, and that it was not property related to the commission of an offence. It was requested that the court order the return of such property to the applicant and that a ruling be made on the constitutional issue stated above. Court of Appeals Region 2 affirmed the judgment of the Court of First Instance. The applicant submitted an objection to the Supreme Court against the judgment of Court of Appeals Region 2 on the appealed issues. The Supreme Court found that it had to apply the provisions of section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) in making a decision on the case. This case therefore involved an objection that provisions of law to be applied by a court to a case were contrary to or inconsistent with the Constitution, and that there had not yet been a ruling of the Constitutional Court with respect to such provisions. A temporary stay of proceedings was therefore imposed and the issues raised by the objected transmitted through the Office of the Judicial along official channels to the Constitutional Court for a ruling under section 264 of the Constitution.

2. Preliminary Issue

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for trial and adjudication.

This application was admitted for trial and adjudication by the Constitutional Court under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which was constituted as a Constitutional Court by virtue of section 300 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) where the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) became the Constitutional Court, and section 300 paragraph four provided that upon the appointment of Constitutional Court Judges under this Constitution, all cases or matters pending

proceedings would be transferred to the powers and duties of the newly appointed Constitutional Court. As a result, the Constitutional Court had the power to admit this application for trial and adjudication.

The Constitutional Court found that at the time of the Constitutional Court's trial of this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had already been promulgated. The constitutional review of any provision of law therefore had to take into consideration whether such provision of law was contrary to or inconsistent with the Constitution in force at the time of the Constitutional Court ruling. As the provisions of section 6 and section 32 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), raised in the applicant's objection that provisions of law were contrary to or inconsistent with, embodied identical principles to section 6 and section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court therefore gave a ruling on this application pursuant to the provisions of section 6 and section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

3. Issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) were contrary to or inconsistent with section 6 and section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After consideration, the Constitutional Court found as follows. Section 6 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which provided that "the Constitution is the supreme law of the State; the provisions of any law, rule or regulation which are contrary to or inconsistent with this Constitution shall be unenforceable," was enacted in Chapter II General Provisions as a provision to recognize and safeguard the principle on the Constitution's legal supremacy in order to prevent laws, rules or regulations in force or to be subsequently enacted from having provisions that were contrary to or inconsistent with the Constitution. This was not a case where section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) could be contrary to or inconsistent with section 6 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

As for the issue of whether or not section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) were contrary to or inconsistent with section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. The legislative intent behind the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) could be found in the notes annexed to the Act, which stated an intention to improve the efficiency in suppressing offenders and the necessity to prescribe various legal measures in order to enable competent officials to suppress offenders. The provisions in section 22 and

section 27, in particular, provided for the powers of the Committee to seize or freeze properties related to the commission of narcotic drugs related offences temporarily without having to carry out the procedures or conditions prescribed by law. Furthermore, in order to confiscate the seized or frozen properties under section 22, an application had to be submitted to the court for a court order to confiscate such properties as provided under section 27. At the stage of the court trial, a person claiming to be the owner of the property had the right to participate in the proceedings in accordance with the principles of judicial proceedings. The provisions in both sections were therefore merely special measures which enabled the state to process the properties related to the commission of narcotic drugs related offences, being measures for the suppression of narcotic drugs related offenders which were seriously detrimental to the safety and order of the society, as well as to prevent persons from committing offences since such properties were involved in the promotion, support and facilitation of the offence, including properties that motivate persons to participate in the production and distribution of narcotic drugs. Moreover, the seizure or freezing of properties also assisted in hampering the ability of narcotic drugs traders to operate conveniently, thus inhibiting the ability to commit a narcotic drugs related offence efficiently. There were no provisions which applied retroactively to impose criminal penalties on a person. Section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) were therefore neither contrary to nor inconsistent with section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

4. Ruling of the Constitutional Court

The Constitutional Court therefore held that section 22 and section 27 of the Measures for the Suppression of Narcotic Drugs Related Offenders Act B.E. 2534 (1991) were neither contrary to nor inconsistent with section 6 and section 39 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
