

Summary of Constitutional Court Ruling No. 2-4/2555 (2012)

Dated 15th February B.E. 2555 (2012)*

Re: Whether or not section 32 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) was contrary to or inconsistent with section 29 and section 43 of the Constitution.

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1. Summary of background and facts

Sukhothai Provincial Court and Pathumthani Provincial Court referred the objections of defendants in 3 applications to the Constitutional Court for a ruling under section 211 of the Constitution. The facts in the application and supporting documents could be summarised as follows. The defendants objected that section 3, section 32 and section 43 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) were contrary to or inconsistent with section 6, section 29 and section 43 of the Constitution due to a restriction of a person's liberty to operate a business or engage in an occupation protected and recognized under section 43 paragraph one of the Constitution. It was contended that this case did not fall within the exception of a specific provision of law specified under section 42 paragraph two of the Constitution. Furthermore, the restriction or denial of liberty to compete freely and fairly prejudiced the essential substances of the right and liberty more than necessary as provided under section 29 of the Constitution. Moreover, section 32 paragraph one of the Control of Alcoholic Beverages Act B.E. 2551 (2008) was an ambiguous provision due to a lack of provision or definition of alcoholic beverage advertisement or display of name or mark of alcoholic beverage that would constitute a claim of quality, a direct persuasion for others to consume, or an indirect persuasion for others to consume. Section 32 paragraph three also encouraged business operators or foreign professionals to advertise widely. Thus, the law promoted a monopoly and caused unfair competition. It was therefore stated that the law was inapplicable under section 6 and section 29 of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court could accept all three applications for trial and ruling under section 211 paragraph one of the Constitution.

After consideration, the Constitutional Court found that all three applications contained an objection on whether or not section 3, section 32 and section 43 of the Control

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of Alcoholic Beverages Act B.E. 2551 (2008) were contrary to or inconsistent with section 6, section 29, section 39 and section 43 of the Constitution and there had not yet been a Constitutional Court ruling relating to those provisions. The cases were in accordance with section 211 paragraph one of the Constitution in conjunction with clause 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the acceptance of all three applications for trial and ruling, and the applications were consolidated into one trial.

3. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 3, section 32 and section 43 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) were contrary to or inconsistent with section 6, section 29, section 39 and section 43 of the Constitution.

After consideration, the Constitutional Court made the following findings. Section 3 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) merely provided the definition or interpretation of terms to promote clarity in accordance with the intent of this Act, and was thus not a case which could be contrary to or inconsistent with the Constitution. Section 43 was a penal provision, the substance of which also did not contain any case which could be contrary to or inconsistent with any section of the Constitution. Lastly, section 32 was an unclear provision, the application of which could affect lives, bodies, liberties and properties. However, this objection was not related to section 39 of the Constitution. A ruling on this issue was therefore not required.

The only issue which remained for the Constitutional Court to give a ruling was whether or not section 32 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) was contrary to or inconsistent with section 29 and section 43 of the Constitution.

After consideration, the Constitutional Court made the following findings. The Control of Alcoholic Beverages Act B.E. 2551 (2008) was a law enacted for the purpose of providing measures to control alcoholic beverages and to promote public health. The dangers of alcoholic beverages were acknowledged. Measures were prescribed to prevent children and juveniles from easy access to alcoholic beverages. Section 32 paragraph one of the Control of Alcoholic Beverages Act B.E. 2551 (2008) prohibited any person from advertising an alcoholic beverage or displaying a name or mark of an alcoholic beverage which boasts qualities or persuades others to drink directly or indirectly. Paragraph two provided that an advertisement or any public notice by the manufacturer of all types of alcoholic beverages could only be done in the form of information release and socially creative knowledge without any illustration of the product or packaging of such alcoholic beverage, except only for an illustration of the logo of the alcoholic beverage or logo of the alcoholic beverage manufacturing company, as prescribed by Ministerial Regulation. Such provision was one of the measures for controlling alcoholic beverage advertisement, which could only be done

within the limits imposed by law. The reasons were concerns of the influence of alcoholic beverage advertising which had a direct impact on the public's alcohol consumption behaviour. Although the prohibition of alcoholic beverage consumption affected the sales of alcoholic beverages of persons engaged in such occupation, where violation would result in an offence and criminal sanctions, the provisions were restrictions of rights and liberties within the scope of section 43 paragraph two of the Constitution, which authorised the restriction for the purpose of maintaining public order and good morals of the people. The restriction ensured order in the occupation and protected consumers. Furthermore, the provision restricted liberties only to the extent of necessity since the prohibition of advertisement was not absolute. An advertisement of alcoholic beverage which constituted an information release or socially creative knowledge was allowed. The essential substance of a person's liberty to operate a business or engage in an occupation was not affected. The provision was applied generally to all vendors of the relevant product and was not directed to any particular case or person. Hence, the provisions were consistent with the rules under section 29 and section 43 of the Constitution. As for section 32 paragraph three of the Control of Alcoholic Beverages Act B.E. 2551 (2008), which provided that the provisions in paragraph one and paragraph two did not apply to advertisements originated outside the Kingdom by way of a live broadcast via satellite link from a foreign country, such advertisements were beyond control and ceased at the same time as the live broadcast of such programmes. The programme did not exist perpetually as in the case of advertisements originating within the Kingdom.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 32 of the Control of Alcoholic Beverages Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 29 and section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
