

Constitutional Court Ruling No. 8/2564 (2001)

Civil Court

Applicant

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Respondent

Constitution, section 26, section 27 paragraph one and paragraph three, section 29 paragraph one and paragraph two and section 37 paragraph one and paragraph two; Revenue Code, section 37 ter.

Section 37 ter of the Revenue Code provided that a person who committed an offence under section 37, section 37 bis and section 90/4 who evaded or committed a tax fraud in the value of ten million baht per tax year or greater, or filed for a tax refund by relying on false representation in the value of two million baht per tax year or greater, where such action was committed in a conspiracy or network by creating false transactions or concealing incomes, and there were circumstances of concealment or hiding of assets related to the commission of offence, such offence would be deemed as a predicate offence under the law on anti-money laundering. Upon the Director-General, by the approval of the Tax Offences Qualifying as Predicate Offences Screening Committee, determining that a tax offence was within the description of a predicate offence and submitting relevant information to Anti-Money Laundering Office (AMLO), proceedings would be taken under the law on anti-money laundering. However, predicate offences under section 3 of the law on anti-money laundering applied to serious offences and did not include offences provided under other laws. Furthermore, the Revenue Code already provided legal measures for dealing with tax evasion and tax arrears, which were appropriate for the seriousness of the offence in each case. It was therefore not necessary to use measures under the law on anti-money laundering as provided under section 37 ter. Moreover, section 37 ter was a provision which allowed an official to exercise a discretion in deciding on the consolidation of assets to obtain the total amount of funds as provided by law, which also implied that other related persons acting in good faith could be subject to serious measures under the law on anti-money laundering until proven in court. Such provision unreasonably increased a burden and restricted rights and liberties of a person, inconsistent with the principle of proportionality, contrary to the rule of law, and was therefore contrary to or inconsistent with section 26 and section 37 paragraph one and paragraph two of the Constitution.

As for the question on section 37 ter of the Revenue Code as regards the unlawful exercise of discretion of a competent official, it was held that a person affected by the exercise of such discretion could exercise rights in court. This was not a matter of discrimination against a person or principle of equality, and proceedings against assets obtained from the commission of offence were not criminal penalties under section 18

of the Penal Code. The issue was therefore not related to the principle of criminal penalties under a law having retroactive effect on a person, and was not a presumption of criminal liability that was subject to the provisions of section 29 of the Constitution. The provision was therefore neither contrary to nor inconsistent with section 27 paragraph one and paragraph three and section 29 paragraph one and paragraph two of the Constitution.