

Summary of the Constitutional Court Ruling No. 5/2542

Dated 22nd April B.E. 2542 (1999) *

Re : The Bangkok South Civil Court referred the opinion of the defendant (Pata Interdepartment Group Company Limited and others) to the Constitutional Court for a ruling.

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1. Background and summarized facts

The Bangkok South Civil Court submitted the opinion of the defendant (Pata Interdepartment Group Company Limited), the applicant, to the Constitutional Court for a ruling on whether the charge of interest by Sin Asia Finance and Securities Public Company Limited, the plaintiff, on the defendant at the rate exceeding 15 percent per annum under the Notification of Sin Asia Finance and Securities Public Company Limited in conjunction with the Notification of the Bank of Thailand and the Interest for Loan of Financial Institutions Act (No. 3), B.E. 2535 (1992), was contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

The issues to be considered by the Constitutional Court according to the applicant were as follows:

1. Were the Notification of the Bank of Thailand, Re: Prescribing financial company practices in relation to raising loan or receiving money from people and prescribing interest rates or discounts which financial companies could pay or charge, dated 28th May B.E. 2535 (1992), and the Notification of Sin Asia Finance and Securities Public Company Limited, Re: Fixing the highest interest rate for loan and discount which Sin Asia Finance and Securities Public Company Limited could charge, dated 1st June B.E. 2535 (1992), contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

2. Was the Interest for Loan of Financial Institutions Act (No. 3), B.E. 2535 (1992) only in the part of the charge of interest at the rate exceeding 15 percent per annum contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

On the first issue, the Constitutional Court held that the Notification of Sin Asia Finance and Securities Public Company Limited was not an administrative notification and

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not the provision of law which the Constitutional Court could consider. As for the Notification of the Bank of Thailand, it was issued by the Governor of the Bank of Thailand with the approval of the Minister of Finance by virtue of section 27 and section 30 (1) and section 30 (2) of the Finance, Securities and Credit Foncier Businesses Act, B.E. 2522 (1979), which was an Act conferring such power and was applicable within the scope of powers in the primary Act. However, such Notification was not issued by an organ exercising legislative power. It was therefore not the provision of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The issues in the application submitted to the Constitutional Court for a ruling on the said two notifications were therefore outside the powers of the Constitutional Court to consider.

As for whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 28th May B.E. 2535 (1992) was contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Court held that this Notification was an analogy with the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, 20th October B.E. 2536 (1993). The issue in relation to the latter Notification had been ruled by the Constitutional Court in its Ruling No. 4/2542 dated 1st April B.E. 2542 (1999) that this Notification was issued by virtue of section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E.2522 (1979), and it was thus applicable within the scope of powers in the primary Act. Such Notification was not issued by an organ exercising legislative power. It was therefore not the provision of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, the Constitutional Court held that section 30 of Chapter 3: Rights and Liberties of the Thai People of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was the provision dealing with the protection of the rights and liberties of the Thai people. It provided that all persons were equal before the law and were equally protected under the law. The Interest for Loan of Financial Institutions Act allowed financial institutions which were juristic persons having the scope of object of finance business charge the interest under this Act. Moreover, the Finance, Securities and Credit Foncier Businesses Act, B.E. 2522 (1979) conferred the Bank of Thailand under the approval of the Minister of Finance with the power to prescribe certain practices in finance companies in matters relating to raising loan and receiving money from people under section 27 of the said Act and to prescribe interests or discounts which finance companies could pay upon raising loan or receiving money from people or interests or discounts which such companies could charge under section 30 (1) and section 30 (2) of the said Act. Therefore, the charge of interest by financial institutions at the rate exceeding the rate prescribed by the Civil and Commercial Code was protected under the law and was in compliance with the Interest for Loan of Financial Institutions Act (No. 3), B.E. 2535 (1992) and the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979). However, such charge was under control and supervision of the Ministry of Finance and the Bank of Thailand which were State authorities in charge of prescribing policies, controlling and supervising public finance services of

the State to be in accordance with economic conditions. This was not deemed as unfair discrimination which the applicant could claim the equality under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to be applied in the case according to his application. The Interest for Loan of Financial Institutions Act, B.E. 2523 (1980), as amended by the Interest for Loan of Financial Institutions Act (No. 3), B.E. 2535 (1992) in the part of the charge of interest at the rate exceeding 15 percent per annum was therefore not contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

By reasons stated above, the Constitutional Court dismissed the application.
