

# Summary of the Constitutional Court Ruling No. 11/2542

Dated 25<sup>th</sup> May B.E. 2542 (1999) \*

**Re : The President of the National Assembly requested the Constitutional Court to rule on whether or not a letter of intent to seek technical and financial assistance sent by the government to the International Monetary Fund was a treaty that had to be approved by the National Assembly under section 224 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

.....

## 1. Background and summarized facts

The following facts could be summarised from the President of the National Assembly's application. General Chavalit Yongjaiyut, opposition leader in the House of Representatives, and a group of 126 members of the House of Representatives, lodged with the President of the Senate a complaint in order to request the Senate under section 304 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to pass a resolution under section 307 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) removing Mr. Chuan Leekpai, the Prime Minister, and Mr. Thanin Nimanhem, the Minister of Finance, from office. It was alleged that such persons' behaviors indicated an intent to exercise powers in a manner inconsistent with section 224 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because the Government sent a letter of intent to the International Monetary Fund (IMF) without the approval of the National Assembly. The President of the Senate referred such an application for impeachment to the Commission of Counter Corruption, which acted as the National Counter Corruption Commission under section 321 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), through the official service in order that a fact-finding investigation be conducted under section 305 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The National Counter Corruption Commission was of the opinion that a preliminary issue had to be considered on whether or not the letter of intent sent by the government to the IMF was a treaty that had to be approved by the National Assembly under section 224 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As conflicting opinions were held between the Council of Ministers and 126 members of the House of Representatives on this issue, this was a problem arising from a dispute on the powers and duties of various organs under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, the President of the National Assembly referred the application together with an opinion on such matter, dated 24<sup>th</sup> December B.E. 2541 (1998), to the Constitutional Court for a ruling.

---

\* Published in the Government Gazette, Vol. 116, Part 63, dated 19<sup>th</sup> July B.E. 2542 (1999)

## **2. Preliminary issue**

The preliminary issue considered was whether or not the President of the National Assembly had the power to submit an application and whether or not the Constitutional Court had the power to accept the application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that a problem had arisen on the competent powers and duties of organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the President had submitted the matter together with an opinion thereof to the Constitutional Court under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore had the power to accept this matter for consideration.

## **3. The issues considered by the Constitutional Court**

The Constitutional Court considered the statements and their supporting documents and the submissions and their supporting documents of both parties and held that the issue to be considered was whether or not the letter of intent to seek technical and financial assistance sent by the government to the IMF was a treaty under section 224 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and whether or not it had to be approved by the National Assembly under section 224 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Every issue of such letter of intent was an explanation of the policies and the operations of the government as reasons forming part of the application to exercise rights to withdraw sums from the IMF. The letters bore the characteristics of being a unilateral act by the Thai government in request of the exercise of its rights in its capacity as a member State to utilize the general resources of the IMF under article 5 section 3 (b) of the “Agreement on International Monetary Fund.” The Thai government was represented by the Minister of Finance and the Governor of the Bank of Thailand who affixed their signatures in the unilateral letter of intent to reveal the Thai government’s operational plan. Failure to implement such a plan would not be enforced by law. The IMF did not send a reply letter of acceptance in the form of an international treaty. Moreover, IMF did not hold such a letter of intent as an offer letter to create a binding agreement between the two parties under international law. IMF sent a letter date 16<sup>th</sup> February B.E. 2542 (1999) to the Minister of Finance (Mr. Thanin Nimanhemin) informing the latter of the Resolution of the IMF Executive Committee No. 6056-(79/38), dated 2<sup>nd</sup> March A.D. 1979 (B.E. 2522), which had been in existent for around 20 years, stating that “a Stand-by Arrangement does not constitute an international agreement in order to avoid any language which would create an understanding of a contractual obligation in the assistance plan and in the letter of intent”. This was therefore an illustration that neither the Thai government nor IMF deemed the letter of intent as a treaty or international agreement with IMF.

Even though the Thai government stipulated certain undertakings as its benchmark practice in the letter of intent, such as in the fifth letter of intent which stated that modifications would be made to the insolvency laws by proceeding to gain the National Assembly's approval within 31<sup>st</sup> October B.E. 2541 (1998) as its benchmark, the Thai government's failure to meet its benchmark would not be considered by IMF as a breach of Thailand's obligation to the IMF in its capacity as a member State. No sanctions would also be imposed under the Agreement on International Monetary Fund. The letter of intent sent by the government to IMF was therefore not a "treaty" within the meaning of an agreement drawn up in writing by Thailand with IMF as an international organisation because such a letter lacked the characteristics of an international agreement.

#### **4. Ruling of the Constitutional Court**

By virtue of the reasons stated above, the Constitutional Court held that the letter of intent to seek technical and financial assistance sent by the government to the IMF was not a treaty under section 224 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This was therefore not a case where the approval of the National Assembly was required under section 224 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

---