

Summary of the Constitutional Court Ruling No. 12-35/2542

Dated 3rd June B.E. 2542 (1999)*

Re : The Lom Sak Provincial Court referred the objection of the defendants to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Lom Sak Provincial Court submitted 24 applications of the defendants, the applicants. In 23 applications, the plaintiff in civil cases was Krungthai Bank Public Company Limited, while, in the other application, the plaintiff in a civil case was Thai Commercial Bank Public Company Limited. The applications raised the question of whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) was unlawful and in violation 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 section 4 of the Interest for Loan of the Financial Institutions Act, B.E. 2523 (1980), as amended by the Interest for Loan of the Financial Institutions Act (No. 3), B.E. 2535 (1992), and whether it was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The applicants in all 24 applications submitted pleas refusing all allegations raised by the plaintiffs. Specifically, the applicants objected that the charge of interest by the plaintiffs at the rate exceeding 15 per cent per annum which was exceeding the rate prescribed in the contracts was illegal. That the plaintiffs referred to the Notification of the Bank of Thailand to justify the charge of interest at the rate exceeding 15 per cent per annum was not deemed as the exemption from the law. The plaintiffs should inform the applicants from time to time of the change of interest rate which may lower or higher than prescribed rate. The charge of interest at the rate exceeding 15 per cent per annum without notification of its change to the applicants should be void. Therefore, the applicants submitted the applications under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling that the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) was unlawful and in violation of the two Acts as aforesaid and was contrary to or inconsistent with section 6 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

* Published in the Government Gazette, Vol. 116, Part 66a, dated 23rd July B.E. 2542 (1999).

2. The issues considered by the Constitutional Court

The Constitutional Court considered all 24 applications and was of the opinion that the issues to be considered were identical, which were whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) was in violation 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 section 4 of the Interest for Loan of the Financial Institutions Act, B.E. 2523 (1980), as amended by the Interest for Loan of the Financial Institutions Act (No. 3), B.E. 2535 (1992), and was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore accepted the applications for joint consideration.

The Constitutional Court held the following opinion:

The issue raised by the applicants for the Constitutional Court ruling had been ruled by the Court in its Ruling No.4/2542 dated 1st April B.E. 2542 (1999) that the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) 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 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 in the meaning of section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The issue of whether the said Notifications of the Bank of Thailand 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), was in violation of the said Act and the Interest for Loan of the Financial Institutions Act, B.E. 2523 (1980), as amended by the Interest for Loan of the Financial Institutions Act (No. 3), B.E. 2535 (1992), was outside the powers of the Constitutional Court to consider. According to Ruling No. 9/2542 dated 13th May B.E. 2542 (1999), the issue therefore needed not be reconsidered.

3. Ruling of the Constitutional Court

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