

# Summary of the Constitutional Court Ruling No.7/2543

**Dated 2<sup>nd</sup> March B.E. 2543 (2000)\***

**Re : The Civil Court referred the objection of a defendant (Miss Siem Famthaisong) to the Constitutional Court requesting 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 Thai Military Bank Public Limited Company, as plaintiff, filed claims against Miss Siem Famthaisong, the defendant, in Civil Case No. T. 00019/2541 for breach of a loan agreement, mortgage foreclosure and repayment of sums. The plaintiff claimed the repayment of the sum of Baht 39,365,020.83 with interests at the rate of 19.5 per cent per annum from the principal sum of Baht 29,732,460.52 accrued as from the day following the date of case filing to the date when complete repayment was made to the plaintiff.

Miss Siem, the applicant, considered that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), allowed the Bank of Thailand to prescribe practice directions for commercial banks in relation to interests and discounts which were immediately chargeable on the consumers, or the applicant, whilst the applicant, in her capacity as a consumer, was not given right to submit any objection. Such a provision was therefore improper and unenforceable. In addition, the Act did not provide for representatives of consumers to give opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection. Only a State agency, viz the Bank of Thailand, and the plaintiff bank were present in jointly expressing opinions on the enactment of the Act and jointly implementing various measures on charging interests and spreads on the consumers and the applicant. This constituted a gap in the law whereby the Bank of Thailand and the plaintiff issued such a Notification which was improper and unlawful.

Thai Military Bank Public Limited Company, the plaintiff, stated in a letter of protest that the defendant had waited until the trial had proceeded past the examination of the plaintiff and defendant witnesses and up to the point where a date for the reading of the judgment had already been set before submitting such an application to the Court for the Court to refer the matter to the Constitutional Court for consideration. The plaintiff considered that the defendant intended to delay the case by raising such claims as an excuse.

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## **2. Preliminary issue**

The application was referred to the Constitutional Court for consideration in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore had the power to consider the application.

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

The issue considered was whether or not 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 contrary to or inconsistent with section 57 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

The provision in the Commercial Banking Act, B.E. 2505 (1962) referred to in the applicant's claims stated that "the Bank of Thailand has the power to prescribe practice directions for commercial banks in the following matters... (2) interests or discounts chargeable by commercial banks... A prescription under this section shall receive the approval of the Minister [of Finance] and shall be published in the Government Gazette." The purpose behind the enactment of this law was the benefit to the country's economy and finance as well as the protection of the bank's depositors. Therefore, the interest rates or discounts which commercial banks could charge on the general public in connection with loan agreements concluded with such bank should be prescribed by the Bank of Thailand and should also receive the approval of the Minister of Finance. The Bank of Thailand could not make such prescriptions arbitrarily.

The provisions in section 57 paragraph one and section 57 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) laid down general principles on the protection of the rights of a person as a consumer. However, the rules and principles of such protection were to be provided by law, under which there should be an independent organization consisting of representatives of consumers. From the facts, it appeared that the National Assembly had not yet enacted such a law.

The Consumer Protection Act, B.E. 2522 (1979) was promulgated before the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in order to give protection to general consumer rights as well as to establish an appropriate State organization to inspect, supervise and coordinate the operations of various State agencies in implementing consumer protection. The provision referred to by the applicant conferred powers on the Bank of Thailand to prescribe practice directions for commercial banks in relation to interests or discounts which could be chargeable by commercial banks. Such provision did not relate to the protection of rights of persons as consumers. The provisions were therefore not contrary to or inconsistent with section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The provisions in section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) meant that if the performance of any administrative function affected or might affect the rights or liberties of a person, the Constitution entitled such a person to participate in the decision-making process of State officials in the performance of such administrative functions. However, the provisions claimed by the applicant which conferred powers on the Bank of Thailand did not relate to the right of a person to participate in the decision-making process of State officials in the performance of administrative functions which affected or might affect his or her rights and liberties. Such provisions were therefore not contrary to or inconsistent with section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court held that 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 neither contrary to nor inconsistent with section 57 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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