

Summary of the Constitutional Court Ruling No. 4/2546

Dated 27th February B.E. 2546 (2003)*

Re : The Civil Court referred the objection of a defendant in a case where section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), as amended by section 4 of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Thai Restructuring Consolidated Fund, as plaintiff, filed a claim against Mr. Worakeart Trongtrong, the defendant, for offences relating to assignment of claim rights, loans and mortgage foreclosure in Civil Case No. 11433/2543. While pending trial, the defendant filed an application at the Bangkok South Civil Court requesting for a referral of the defendant's objection that section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), as amended by section 4 of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), was contrary to or inconsistent with section 7, section 29, section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), to the Constitutional Court for a ruling. The submissions could be summarized as follows.

Section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), restricted the defendant's rights of ownership in property as well as restricted the defendant's right to raise a defense in court proceedings under section 308 of the Civil and Commercial Code. The enactment of laws which restricted the rights of a person to defend a case naturally affected the essential substance of that person's rights. Such provisions were therefore inconsistent with section 7 and section 29 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Moreover, section 30 bis conferred powers on the Committee of the Organisation for Reform of the Financial Institution System (RFIS Committee) to adjudicate the objections raised in defense by the debtors and to rule on their reasonableness. This resulted in an adjudication of the substantial issues of a case, or an establishment of an "extra-judicial tribunal" vested with powers to pass judgments on cases as that of courts, inconsistent with section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such provisions were also

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inconsistent with the tradition of the democratic regime of government with the King as Head of State because every Constitution contained provisions to the effect that the trial and adjudication of cases were the powers of the courts and the establishment of a new court to consider a particular case in lieu of a court existing under the law could not be done.

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the application could be accepted for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. The application had specified the section of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), which was objected as being contrary to or inconsistent with various section of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Those sections of the Emergency Decree objected by the defendant were also provisions of law to be implemented in a case by the Court. At the time of the application, there had not been a ruling of the Constitutional Court on such sections. The case was in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application was therefore accepted for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), as amended by section 4 of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), was contrary to or inconsistent with section 7, section 29, section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court had ruled in Constitutional Court Ruling No. 24/2545, dated 4th June, B.E. 2545 (2002), that section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), as amended by section 4 of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This issue therefore need not be reconsidered.

The issue which remained to be considered by the Constitutional Court was whether or not section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), was contrary to or inconsistent with section 7, section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. In the applicant's argument that section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997),

was contrary to or inconsistent with section 7 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the applicant did not give reason as to how it was contrary or inconsistent. Section 7 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a provision applicable to cases in the absence of any constitutional provisions applicable to such a case. However, the case in this application which argued that section 30 bis was a provision which restricted the right of proprietary ownership and restriction of a right to defend a case, affecting the essential substance of the applicant's rights, was a contention premised on the inconsistency of the provisions with the constitutional provisions on rights of a person in property. The Constitution had already provided for such rights. As for the arguments on inconsistency with section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitution also contained those provisions. This was therefore not a case of an absence of constitutional provisions applicable to a case pursuant to section 7 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As for the applicant's submission that section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), was contrary to or inconsistent with section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided that the powers of trial and adjudication of cases were the powers of the court. The Courts of Justice had the powers to try and adjudicate all cases except those specified by the Constitution or the law to be within the jurisdiction of other courts. Section 30 bis provided for the procedures for the sale of property in the settlement of accounts. The RFIS Committee had the powers to consider the objections of interested persons who had defenses pertaining to the properties to be sold. If the RFIS Committee dismissed the objections and damages were sustained subsequent to the auction, the interested persons were entitled to claim damages from the Organisation for Reform of the Financial Institution System (ORFIS). If the interested person did not agree with the determination of damages made by the ORFIS, a case could be filed at the court under section 30 quarter. The RFIS Committee therefore did not assume the courts' powers to try and adjudicate cases and this was not an establishment of a new court to consider a particular case.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 30 bis of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), as amended by section 4 of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), was neither contrary to nor inconsistent with section 7, section 29, section 233 and section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
