

# Summary of the Constitutional Court Ruling No. 40-49/2544

Dated 27<sup>th</sup> November B.E. 2544 (2001) \*

**Re : Are the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) 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 Bangkok South Civil Court referred to the Constitutional Court the objections of defendants (applicants) in a total of 8 applications:

(1) Case No. Y. 1925/2543. The plaintiff was Global Thai Property Mutual Fund and the defendant was Mrs. Kalayani Kamsombat. In this case, the defendant was the applicant who objected that both Emergency Decrees on Reform of the Financial Institution System were contrary to or inconsistent with section 29 of the Constitution.

(2) Case No. 3647/2543. The plaintiff was Gamma Capital Mutual Fund and the defendant was Mr. Chatchai Tri-atboon. In this case, the defendant was the applicant who objected that both Emergency Decrees on Reform of the Financial Institution System were contrary to or inconsistent with section 87 of the Constitution.

(3) Case No. 4440/2543. The plaintiff was Gamma Capital Mutual Fund and the defendants were Toyota Saraburi (1989) Toyota Distributors Company Limited, the first defendant, Mr. Bunsom Bunvisut, the second defendant, Mr. Pornchai Bunvisut, the third defendant, and Mr. Sukij Bunvisit, the fourth defendant. In this case, all four defendants were applicants who objected that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with section 26 and section 29 of the Constitution.

(4) Case No. 5224/2543. The plaintiff was Bangkok Capital Mutual Fund and the defendants were Sling and Luadkleaw Company Limited, the first defendant, Phaya Meng

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Rai Country Club, the second defendant, Kito (Thai) Company Limited, the third defendant, Mr. Somboon Suriyaboonpakul, the fourth defendant and Mr. Bandit Suriyaboonpakul, the fifth defendant. In this case, the first to fourth defendants were applicants who objected that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with the Constitution.

(5) Case No. 649/2544. The plaintiff was Thai Restructuring Mutual Fund and the defendants were Mrs. Erin Raktakanis, the first defendant, and Mr. Kitichai Raktakanis, the second defendant. Both defendants were applicants who objected that both Emergency Decrees on Reform of the Financial Institution System were contrary to or inconsistent with section 26, section 29 and section 30 of the Constitution.

(6) Case No. 818/2544. The plaintiff was Gamma Capital Mutual Fund and the defendants were Yong Hua Li Company Limited, the first defendant, and Mr. Bancha Tangvararat, the second defendant. In this case, the second defendant was the applicant who objected that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with section 29 of the Constitution.

(7) Case No. 1452/2544. The plaintiff was Thai Restructuring Mutual Fund and the defendant was Mr. Pini Jantawasu. In this case, the defendant was the applicant who objected that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution.

(8) Case No. 3689/2544. The plaintiff was Keartnakin Securities Public Limited Company and the defendants were Mrs. Ratchanee Sorsottikul, the first defendant, and Mr. Krirkchai Sorsottikul, the second defendant. In this case, both defendants objected that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution.

The Civil Court referred to the Constitutional Court the objection of a defendant who was the applicant in one application, from Case No. 8304/2543 where Gamma Capital Mutual Fund was the plaintiff and Mr. Montri Ekrintrakul was the defendant. In this case, the defendant was the applicant who objected that both the Emergency Decrees on Reform of the Financial Institution System were contrary to or inconsistent with section 29 of the Constitution.

The Samut Sakhon Provincial Court referred to the Constitutional Court the objection of a defendant who was the applicant in one application, from Case Decision No. 1147/2544 where Gamma Capital Mutual Fund was the plaintiff and Miss Peangjai Chuenchupol was the first defendant and Mr. Bun Rungsaengrattanakul was the second defendant. In this case the first defendant was the applicant who objected that both Emergency Decrees on reform of the financial institution system were contrary to or inconsistent with section 29 of the Constitution.

All ten applications referred to the Constitutional Court for consideration by the Bangkok South Civil Court, the Civil Court and the Samut Sakhon Provincial Court contained similar facts. In brief, the plaintiff purchased from the Organisation for Reform of the Financial Institution System (ORFIS) assets in the form of business credit, including the claim rights of the finance companies or securities companies, who were the original creditors of the defendants, whose operations had been suspended under the Order of the Minister of Finance. The ORFIS was the administrator of the sale of assets for the repayment of accounting debts in such finance companies or securities companies by virtue of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998). Subsequently, the plaintiff sent a letter of notice of the transfer of claim rights in the debts of the defendants from such finance companies and securities companies and demanded repayment of the debts by the defendants within the due date. Upon the expiration of the due date, the defendants did not repay their debts. The plaintiff therefore filed claims for repayment of debts.

The defendants objected and requested that the Court submit an opinion to the Constitutional Court for consideration, which in summary, requested for a ruling on whether or not the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998), which were laws which the ORFIS relied on in the sale of debts from the original creditor finance companies or securities companies to the plaintiff, were contrary to or inconsistent with the Constitution. However, all 10 applications did not specify which sections of such Emergency Decrees were alleged as being contrary to or inconsistent with the Constitution.

The Constitutional Court held that all 10 applications contained the same issues for consideration. The applications were therefore jointly considered.

## **2. Preliminary issue**

The 10 applications requesting for a ruling of the Constitutional Court under section 264 of the Constitution contained an issue to be preliminarily considered by the Constitutional Court, being whether or not all 10 such applications which did not specify the

sections of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) that were alleged as being contrary to or inconsistent with the Constitution, were in accordance with section 264 of the Constitution.

The Constitutional Court held that:

An objection that a provision of law which the Court was going to apply to a case was contrary to or inconsistent with the Constitution, which was prohibited by section 6 of the Constitution, and requesting that the Court submit an opinion to the Constitutional Court for consideration under section 264 paragraph one of the Constitution must specify which section of the law was contrary to or inconsistent with which section of the Constitution. In all 10 applications, the applicants only claimed that the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were contrary to or inconsistent with various sections of the Constitution without specifying the sections of the Emergency Decree were contrary to or inconsistent with the Constitution and thus prohibited by section 6 of the Constitution. Moreover, the contents of the applications were not clear enough as to be able to deduce which sections of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were alleged as being contrary to or inconsistent with the Constitution. All 10 applications were not in accordance with section 264 of the Constitution.

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

The Constitutional Court held that the application be dismissed.

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