

Summary of the Constitutional Court Ruling No. 19-22/2545

Dated 30th May B.E. 2545 (2002) *

Re : Are section 27, section 30 bis and section 30 ter 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), contrary to or inconsistent with section 29 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The Patum Thani Provincial Court, Dusit District Court and Bangkok South Civil Court submitted the applications of defendants, a total of four applications, requesting that the Constitutional Court make a ruling under section 264 of the Constitution on whether section 27, section 30 bis and section 30 ter 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), were contrary to or inconsistent with section 29 paragraph one of the Constitution.

In the first application, the Patum Thani Provincial Court submitted the application of the defendants (Mr. Anupharb Satprakorb and company) in Case No. 662/2543 stating that section 27 and section 30 ter 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), were contrary to or inconsistent with section 29 paragraph one of the Constitution.

In the second application, the Dusit District Court submitted the application of the defendant (Mr. Krisdang Nutjarat) in Civil Case No. 7600/2543 stating that section 27 and section 30 ter 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), were contrary to or inconsistent with section 29 paragraph one of the Constitution.

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In the third application, the Bangkok South Civil Court submitted the application of the defendants (Mr. Krisdang Nutjarat) in Case No. 9227/2543 stating that section 27 and section 30 ter 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), were contrary to or inconsistent with section 29 paragraph one of the Constitution.

In the fourth application, the Bangkok South Civil Court submitted the application of the first defendants (Bangkok International Sport Company Limited) and Punyasit Construction Company Limited as third defendant in Case No. 10306/2543 stating that section 27, section 30 bis and section 30 ter 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), were contrary to or inconsistent with section 29 paragraph one of the Constitution.

All four applications had the same set of facts. Summarily stated, the plaintiffs were buyers of assets in the form of business credits, which included claim rights, of finance companies or securities companies whose operations had been suspended by an order of the Minister of Finance. Such companies were the original creditors of the defendants. The assets were purchased from the Organization for the Reform of the Financial Institution System (ORFIS) which acted as the administrator in the sale of assets for the repayment of debts in such finance companies or securities company by the powers vested in it under the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998). Thereafter, the plaintiffs issued letters to the defendants notifying of the assignment of claim rights in the defendants debts which were owed to such finance companies or securities companies and demanded that those debts be repaid within the time limit. Upon the expiration of the said limit, the plaintiff filed a lawsuit for debt repayment.

2. Preliminary issue

Could the Constitutional Court accept this application for consideration under section 264 of the Constitution?

The Constitutional Court held that the applicants in all four applications had specified the sections of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) which were alleged to be contrary to or inconsistent with section 29 paragraph one of the Constitution. Such sections of the Emergency Decree as submitted by the applicants were also provisions of law which were to be applied to cases by the courts and there had not yet been a ruling of the Constitutional Court on those relevant sections. This case met the criteria under section 264 paragraph one of the Constitution. The Constitutional Court therefore accepted this application for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether section 27, section 30 bis and section 30 ter 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) were contrary to or inconsistent with section 29 paragraph one of the Constitution.

Section 29 paragraph one of the Constitution was a provision which laid down the principle of the protection of rights of liberties recognized by the Constitution. A condition was set to the effect that restrictions of rights and liberties could only be imposed by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties.

The objection that section 27, section 30 bis and section 30 ter of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) were contrary to or inconsistent with section 29 paragraph one of the Constitution raised the issue that such provisions of law were contrary to or inconsistent with the principle on protection of rights and liberties recognized by the Constitution. The applicants claimed that section 27, section 30 bis and section 30 ter of the Emergency Decree were provisions which restricted the rights and liberties recognized by the Constitution in relation to the liberty of dwelling, the rights in property and the liberty to engage in an enterprise or an occupation. Therefore pursuant to the four applications, the issues which had to be ruled upon were whether or not section 27, section 30 bis and section 30 ter of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) imposed restrictions on the liberty of dwelling, the rights in property and the liberty to engage in an enterprise or an occupation and were, hence, contrary to or inconsistent with section 29 paragraph one of the Constitution.

After a consideration of section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), it was held as follows. Under the legal rule on assignment of claim rights, such an assignment could be effected in two ways. The first was by agreement or contract, which would be the result of a legal act. Another was by law, for which the final part of section 27 provided that there shall be no prejudice to the debtor's right to raise an argument under section 308 paragraph two of the Civil and Commercial Code. Therefore, the debtor had neither been taken away any right nor damaged by the legal assignment of claim rights.

As for section 30 bis, which provided the procedure for the sale of assets for repayment of debts, and section 30 ter, which provided for the effect of the transfer of property sold under the procedure in section 30 bis, those provisions were necessarily enacted for the proper repayment of ORFIS's accounting debts in order to satisfy the objectives of the enactment of the two Emergency Decrees on Reform of the Financial Institution System as stated in the reasons for the enactment of both laws. Such reasons,

as summarized, were the necessity for measures for the systematic remedy of problems in financial institutions in accordance with international approach and the establishment of a State organization to be in charge of the implementation of such measures. The aim was to rehabilitate the status of financial institutions and assist good faith depositors and creditors of the financial institution. It was also necessary to have special measures to alleviate the normal stringency of the law in order to allow the ORFIS to expediently operate under the objectives of the law to generate trust in the buyers of the property as part of the solution to the economic crisis.

Section 27, section 30 bis and section 30 ter of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) did not contain any provision which affected the essential substances of the rights and liberties in dwellings, property, engagement in enterprises or occupation of persons, including the applicants. Under section 27, the debtors' debts were maintained at their original levels. No additional liabilities or duties were imposed on the debtors. Any legal argument which the debtors had against the original creditors could still be raised against the new creditors who had been assigned the claim rights. Under section 30 bis and section 30 ter, which provided for procedures for the sale of property for the repayment of accounting debts and the effect of the transfer of property sold, no rights or liberties of debtors or interested persons were diminished in any way. Such Emergency Decree only prescribed procedures for the assignment of claim rights, the sale of property and the effect of transfer of property which differed from the existing laws such as the provisions of the Civil and Commercial Code and the Civil Procedure Code. The purpose behind this was to introduce expediency as well as the timely remedy of the economic crisis which had occurred.

Section 27, section 30 bis and section 30 ter of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) were therefore provisions of the law specifically enacted for a purpose determined by the Constitution and only to the extent of necessity and did not affect the essential substances of rights and liberties in dwellings, property, engagement of enterprise or occupation. This satisfied the conditions set forth in section 29 paragraph one of the Constitution for the restriction of rights and liberties of persons. Therefore, all three sections of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) were neither contrary to nor inconsistent with section 29 paragraph one of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 27, section 30 bis and section 30 ter 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), were neither contrary to nor inconsistent with section 29 paragraph one of the Constitution.
