

Summary of the Constitutional Court Ruling No. 23/2545

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

Re : Is section 27 of the Emergency Decree on Reform of the Financial Institution System B.E. 2540 (1997) contrary to or inconsistent with section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The Lampang Provincial Court submitted the application of an applicant, who was a defendant in Civil Case Decision no. 89/2544, requesting the Constitutional Court to consider, pursuant to section 264 of the Constitution, the question of whether section 27 of the Emergency Decree on Reform of the Financial Institution System B.E. 2540 (1997) was contrary to or inconsistent with section 29 paragraph two of the Constitution.

The facts as stated in the application and documents attached thereto revealed that Bangkok Capital Venture Company Limited, as plaintiff, filed a plaint against Mr. Anucha Saengpakdi as first defendant and Mr. Thanit Manokham as second defendant in a dispute arising out of the assignment of rights in a hire purchase and guarantee contract and claimed for damages, for which judgment was given in Civil Case Decision No. 89/2544. In summary, the first defendant hire purchased a motor vehicle from Thai Thamrong Finance Company Limited with the second defendant as guarantor jointly liable for the first defendant's debts. Thereafter, the Ministry of Finance issued an order suspending the operations of Thai Thamrong Finance Company Limited, during which its debts were paid off with the Organization for Reform of the Financial Institution System (ORFIS) as its administrator. The plaintiff purchased the hire purchase contracts and was therefore assigned Thai Thamrong Finance Company Limited's claim rights under such hire purchase contracts under section 27, section 30 bis and section 30 (three) 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). When the first defendant defaulted on more than two successive hire purchase payments to Thai Thamrong Finance Company Limited thereby constituting a breach of contract, the plaintiff, as assignee of the claim rights under such hire purchase contract proceeded to follow up such debts but received no response from both defendants. As a result, the plaintiff filed this case against the defendants.

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Both defendants submitted a plea that section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was a law enacted to restrict the rights and liberties of persons. The law did not have a general application but was aimed at applying to only one case, being, the assignment of claim rights amongst the few companies whose operations had been suspended which only included Thai Thamrong Finance Company Limited and the plaintiff. It was submitted that this was a case where the law was aimed at applying to a specific case or person, the provisions of which were contrary to or inconsistent with section 29 of the Constitution and therefore rendered unenforceable pursuant to section 6 of the Constitution. The Lampang Provincial Court was thus requested to submit this question to the Constitutional Court.

2. Preliminary issue

Could the Constitutional Court hear this application pursuant to section 264 of the Constitution ?

The Court held that as the application stated the section of the Emergency Decree on Reform of the Financial Institution System which was objected to as being contrary to or inconsistent with section 29 of the Constitution in conjunction with the fact that such section of the Emergency Decree as claimed by the applicant was a provision of law applicable by the court to a case and that there had not yet been a decision of the Constitutional Court on such provision, this case was in accordance with the rules under section 264 paragraph one of the Constitution. The Constitutional Court could therefore hear this application.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether section 27 of the Emergency Decree on Reform of the Financial Institution System B.E. 2540 (1997) was contrary to or inconsistent with section 29 paragraph two of the Constitution.

The Court held that the reasons pertaining to the promulgation of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was the necessity to remedy problems in the financial institution system and rehabilitate the businesses of certain financial institutions unable to carry out normal operations as well as to safeguard the depositors and creditors of such financial institutions in order to recall confidence in the financial institution system. It had been deemed appropriate to prescribe measures which systematically solved the financial institution problem in line with the international approach and to establish a State agency entrusted with the duties of overseeing the execution of such measures. The objective was to rehabilitate the financial institutions as well as to aid the depositors and bona fide creditors of the financial institution. As the case was an unavoidable exigency for the preservation of stability in the national economy, it was deemed necessary to enact this Emergency Decree. The intention behind the Emergency

Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was to solve the financial institution problem and rehabilitate the business of certain financial institutions unable to carry out normal operations by prescribing remedial measures and establishing a State agency to carry out such measures. Moreover, the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) has been applied generally on all finance companies and securities companies which had been suspended by orders of the Minister of Finance dated 26th June B.E. 2540 (1997) and 5th August B.E. 2540 (1997), not specifically on a single case or person. Section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was thus a provision of law consistent with section 29 paragraph two of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was a provision of law not contrary to or inconsistent with section 29 paragraph two of the Constitution.
