

Summary of the Constitutional Court Ruling No. 25/2545

Dated 4th June B.E. 2545 (2002)*

Re : The Bangkok South Civil Court referred to the Constitutional Court the objections of the defendants that section 7, section 8, section 16(3) and section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and 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 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 the defendant in Case No. 3710/2543 requesting that the Constitutional Court make a ruling under section 264 of the Constitution on whether or not section 7, section 8, section 16(3) and section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and 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 4, section 26, section 27, section 29 section 30, section 48 and section 50 of the Constitution.

The facts according to the application and the documents attached thereto stated that Bangkok Capital Mutual Fund, as plaintiff, filed a lawsuit against Thai New Sprinter Paper Industry (1995) Company Limited, the first defendant, Thai Saha Kanjana Animal Feed Company Limited, the second defendant, Siam Pattana Industries Company Limited, the third defendant, C. I. C. International Company Limited, the fourth defendant, Mr. Pitan or Mr. Vichian Jantapakul, the fifth defendant, Mrs. Phenapa Jantapakul, the sixth defendant and Police Cadet Somchai or Mr. Somchai Jantapakul, the seventh defendant, for breach of loan contracts, promissory notes, guarantee contracts and mortgages. Briefly stated, Thai New Sprint Paper Industry (1995) Company Limited, the first defendant, was a credit customer and a debtor of Thanapol Securities Public Company Limited. In due course, Thanapol Securities Public Limited Company's operations were suspended by order of the Minister of Finance and the Organization for the Reform of the Financial Institution System (ORFIS), by virtue of the powers accorded to it under the law, sold off the debts and

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securities entered into by the first defendant with Thanapol Securities Public Company Limited and assigned the claim rights in such debts and securities to the plaintiff. Prior to the filing of lawsuit, the plaintiff proceeded to demand repayment of the debts by the seven defendants to the plaintiff. The defendants did not respond. As a result, the plaintiff filed lawsuits against all seven defendants in the case mentioned.

All seven defendants submitted pleadings containing objections, in summary, that section 7, section 8, section 16(3) and section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) were contrary to or inconsistent with the Constitution. Section 7 empowered the ORFIS to carry out the rehabilitation of finance and securities companies whose operations had been suspended. Section 8 empowered the ORFIS to carry out any act within the scope of objectives under section 7, which included, inter alia, the powers to hold the right of ownership, possession or other proprietary rights, to construct, buy, procure, sell, distribute, lease, hire, hire-purchase, borrow, loan, pawn, mortgage, exchange, transfer, receive a transfer or carry out any activity incidental to a property within and outside the Kingdom. The powers also included the receipt of money or property granted to it as well as to offer for sale, buy at a discount or subrogate the purchase at a discount of negotiable instruments or receive an assignment of claim rights. Section 16 entrusted the ORFIS with the powers and duties to lay down policies and carry out the general supervision of ORFIS's operations within the scope of objectives under section 7. These powers included the determination of procedures for the repayment of accounting debts and the sale of assets in companies whose operations could not be continued. Section 27 provided that in the assignment of claim rights, either in all or in part, of a company whose operation had been suspended to another financial institution, no notice under section 306 of the Civil and Commercial Code needed be given to the debtor.

The reason for promulgating the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was stated as "the need to remedy problems in the financial institution system and rehabilitate the operational status of certain financial institutions which, because of problems, are prevented from carrying out normal operations." From such reason, the applicant considered that such law was enacted by unjust discrimination, and it could be observed that no Constitutional safeguards had been accorded to the applicant, who was a debtor of Thanapol Securities Public Company Limited, and other good debtors in other financial institutions whose operations had been closed down. This could be deemed as a case where a law was applied to one specific case or one specific person, and not of general application. Therefore, the compliance with the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) resulted in empowering the ORFIS to exercise powers over the scope and beyond the extent of necessity under a law which was not enacted for general application. In actual fact, the law was enacted for application to a specific case or group of persons, and was also contrary to or inconsistent with provisions of the Constitution. The ORFIS administered the assets and liabilities of finance companies, and various other finance and securities

companies whose operations had been suspended by order, including Thanapol Securities Public Company Limited, to which the applicants were in debt. The various properties and claim rights of such finance companies or finance and securities companies were unlawfully sold by auction. The applicants' rights had been restricted and the applicants had not been notified, hence, no opportunity was ever given for the applicants to participate in the auction despite the fact that the applicants had the ability to compete in the bidding process. This was a restriction of basic rights and liberties in the properties of the applicants and of all the good debtors, which was contrary to or inconsistent with the provisions of the Constitution on human dignity, rights and liberties of a person and the enactment of laws intended for application to a particular case or group of persons. Such acts also constituted unjust discrimination, a restriction of rights in property and a restriction of the liberty to engage in free competition, which were protected by the provisions of the Constitution.

The applicant thus considered that section 7, section 8, section 16(3) and section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and 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 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution. Such provisions were therefore unenforceable under section 6 of the Constitution. Hence, an application was submitted for the Bangkok South Civil Court to stay its trial and adjudication of the case and submit the objection to the Constitutional Court for a ruling under section 264.

2. Preliminary issue

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

The Constitutional Court held that as the objections stated in the application that various sections of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), a total of seven sections, were contrary to or inconsistent with the Constitution were provisions of law to be applied to a case and there had not yet been a ruling of the Constitutional Court on such provisions, this case satisfied 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 was whether or not section 7, section 8, section 16(3), section 27, section 30 bis, section 30 ter and section 30 quarter 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 4, section 26, section 27, section 29, section 30,

section 48 and section 50 of the Constitution.

On this issue, the Constitutional Court had made a ruling that section 7, section 8, section 16(3), section 27, section 30 bis, section 30 ter and section 30 quarter, 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 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution as stated in Ruling No. 24/2545, dated 4th June B.E. 2545 (2002).

4. Ruling of the Constitutional Court

As the Constitutional Court had already ruled upon the issue stated in this application, the Constitutional Court did not have to reconsider such issue.
