

# **Summary of the Constitutional Court Ruling No. 45/2545**

**Dated 13<sup>th</sup> August B.E. 2545 (2002)\***

**Re : Is section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), contrary to or inconsistent with section 30, section 50, section 57 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

.....

## **1. Background and summarized facts**

The plaintiff, DBS Thai Dhanu Bank Public Limited Company, filed a lawsuit against the defendant, Mr. Pichai Jongsaritwant (the applicant), at the Thon Buri Civil Court for breach of an overdraft contract. The plaintiff applied to the court to enforce the repayment by the applicant in the amount of Baht 40,821,090.68 together with interest at the rate of 18.25 per cent per annum on the principal sum of Baht 20,000,000 and interest at the rate of 15 per cent per annum on the principal sum of Baht 8,637,298.84 calculated as from the day following the date of the filing of lawsuit until all debts had been repaid to the plaintiff. The case was recorded as Case No. 2813/2543.

The applicant denied the plaintiff's claims and raised an objection regarding section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), which conferred powers on the Bank of Thailand to issue notifications prescribing banking practices in relation to interests. As a result, because of their stronger economic positions, various financial institutions were able to set interest at rates higher than 15 per cent per annum, which exceeded the standards of society. The provision of law was therefore a cause of unjust discrimination and promoted the exploitation of consumers and created a monopoly inconsistent with section 30, section 50, section 57 and section 87 of the Constitution. The applicant therefore submitted an application to the Thon Buri Civil Court requesting that the objection be referred to the Constitutional Court for consideration.

Thon Buri Civil Court referred the applicant's (defendant's) application to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

---

\* Published in the Government Gazette, Vol. 120, Part 54a, dated 13<sup>th</sup> June B.E. 2546 (2003)

## **2. Preliminary issue**

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

The Constitutional Court held that this was a case where the applicant, who was a defendant in a case, objected that a provision of law which was to be applied by the court to the case was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court on such provisions. The Constitutional Court therefore accepted the case for consideration under section 264 of the Constitution when the objection was referred to it by the Thon Buri Civil Court.

## **3. The issue considered by the Constitutional Court**

The issue which had to be considered was whether or not section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was contrary to or inconsistent with section 30, section 50, section 57 and section 87 of the Constitution.

The Constitutional Court held that, because the Constitutional Court had made rulings in Ruling No. 7/2543 dated 2 March B.E. 2543 (2000) and Ruling No. 13/2545 dated 18 April B.E. 2545 (2002) that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was not contrary to or inconsistent with section 50, section 57 and section 87 of the Constitution, another ruling would not be made on these points. The only issue which remained to be considered under the application was whether or not section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act, B.E. 2522 (1979), was contrary to or inconsistent with section 30 of the Constitution.

The Constitutional Court held that section 30 of the Constitution's aim was to protect the rights and liberties of the Thai people by guaranteeing the equality of all people under the law and equal legal protection for all. The provision disapproved of the practice of unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally consistent political views. Section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was a provision which conferred powers on the Bank of Thailand to prescribe banking practices in relation to interest rates or discounts which commercial banks could pay or charge. Such a prescription required the approval of the Minister of Finance and should thereafter be published in the Government Gazette. The prescription offered equal treatment to all bank customers and could not be made arbitrarily. A prescription had to be consistent with the intentions behind the law which was enacted in the interests of the national finance and economy as well as the protection of depositors. There was no unjust discrimination against a person on any ground stated in section 30 of the Constitution.

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

The Constitutional Court, by 14 Constitutional Court judges, held that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banks Act (No. 2), B.E. 2522 (1979) was neither contrary to nor inconsistent with section 30 of the Constitution. One Constitutional Court judge considered that the application should be dismissed.

---