

# Summary of Constitutional Court Ruling No. 49-50/2548

Dated 5<sup>th</sup> July B.E. 2548 (2005)\*

**Re: The Prachuab Kiri Khan Provincial Court referred the applications of defendants (Mrs. Tasanee Sirichai and Mr. Dolthana Sirichai) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on whether or not section 30 and section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) and section 1 subsections (2), (3) and (7), section 55 and section 271 to section 290 of the Civil Procedure Code 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 Prachuab Kiri Khan Provincial Court referred the applications of defendants, a total of 2 applications, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Under the first application, Phalap Asset Management Company Limited was a plaintiff in a lawsuit against the defendant Mrs. Tasanee Sirichai in civil case no. 246/2545 at the Prachuab Kiri Khan Provincial Court alleging assignment of claims and breach of loan contract. In summary, the defendant entered into a loan contract with DBS Thai Dhanu Bank Public Company Limited on 22<sup>nd</sup> December B.E. 2542 (1999) for the amount of 1,912,538.82 baht. The defendant received the loan sum but did not undertake repayment under the contract. On 20<sup>th</sup> September B.E. 2543 (2000), the plaintiff received an assignment of claim rights from DBS Thai Dhanu Bank Public Company Limited, formerly Thai Dhanu Bank Public Company Limited, which included the right to claim repayment from the defendant in this case. In this regard, the plaintiff had made demands for repayment from the defendant, but the latter took no action. As a result, the plaintiff filed a lawsuit against the defendant in court in order to seek judgment to enforce the repayment of loan debt and interests from the defendant.

The defendant filed a defence which was not admitted by the court due to its being superfluous. At that point, the court also entered a ruling that the defendant failed to file a

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defence within the time limit. The defendant filed a motion that section 30 and section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) were contrary to or inconsistent with section 1 to section 4, section 26 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and that section 1 subsections (2), (3) and (7), section 55 and section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 1 to section 4, section 27 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was requested that the Prachuab Kiri Khan Provincial Court refer the application to the Constitutional Court for a ruling.

Under the second application, Phalap Asset Management Company Limited was a plaintiff in a lawsuit against the defendant Mr. Thana Sirichai in civil case no. 247/2545 at the Prachuab Kiri Khan Provincial Court alleging assignment of claims and breach of loan contract. In summary, the defendant entered into a loan contract with DBS Thai Dhanu Bank Public Company Limited on 22<sup>nd</sup> December B.E. 2542 (1999) for the amount of 820,987.95 baht. The defendant received the loan sum but did not undertake repayment under the contract. On 20<sup>th</sup> September B.E. 2543 (2000), the plaintiff received an assignment of claim rights from DBS Thai Dhanu Bank Public Company Limited, formerly Thai Dhanu Bank Public Company Limited, which included the right to claim repayment from the defendant. In this regard, the plaintiff had made demands for repayment from the defendant, but the latter took no action. As a result, the plaintiff filed a lawsuit against the defendant in court in order to seek judgment to enforce the repayment of loan debt and interests from the defendant.

The defendant filed a defence which was not admitted by the court due to its being superfluous. At that point, the court also entered a ruling that the defendant failed to file a defence within the time limit. The defendant filed a motion that section 30 and section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) were contrary to or inconsistent with section 1 to section 4, section 26 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and that section 1 subsections (2), (3) and (7), section 55 and section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 1 to section 4, section 27 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was requested that the Prachuab Kiri Khan Provincial Court refer the application to the Constitutional Court for a ruling.

## **2. Preliminary issue**

The preliminary issue considered was whether or not the Constitutional Court had the power to accept these applications for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Under the applications, the applicants objected that section 30 and section 31 of the Emergency Decree on Thai Asset Management

Corporation B.E. 2544 (2001) were contrary to or inconsistent with section 1 to section 4, section 26 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 1 subsections (2), (3) and (7), section 55 and section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 1 to section 4, section 27 to section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, this was a case referred to the Constitutional Court by the Prachuab Kiri Khan Provincial Court under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court could therefore accept these applications for consideration. Moreover, as these two applications contain identical issues, they should be considered and ruled upon simultaneously.

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

The Constitutional Court considered the applications and found that the applications had specified sections of the Constitution. However, in relation to the reasons argued in support of the claims that certain sections were contrary to or inconsistent with the Constitution, the applicants did not request the court to take any action nor provide clear reasons. This was not in accordance with clause 6(4) of the Rules of the Constitutional Court on Constitutional Court Procedures B.E. 2546 (2003), for which the Constitutional Court denied a ruling. The only issues which the Constitutional Court considered therefore consisted of the following two questions:

firstly, whether or not section 30 and section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) were contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

secondly, whether or not section 1 subsections (2), (3) and (7), section 55 and section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 4, section 27, section 28, section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the first issue, it was held as follows. Section 30 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) provided on the transfer of low quality assets of financial institutions or state asset management companies to the Thai Asset Management Corporation (TAMC) in order for the latter to resolve the problem of low quality assets by way of debt restructuring and reorganization of business structures to revive the ability of transferred debtor to repay the outstanding debts as well as to enable the debtor to undertake its business activities efficiently. This was undertaken for the benefit of reviving the general economy of the country. Thus, the provisions of law were applied generally to financial institutions and State asset management companies as well as the debtors. The law was not specifically applied to a case or person. Therefore, the limitation of rights and liberties of persons were imposed to the extent authorized by section 29 of the

Constitution, and financial institutions and State asset management companies were given equal protection. There was no unfair discrimination against a person on the grounds of differences in personal status, economic or social standing under section 30 of the Constitution. Also, there were no provisions which restricted the bounds of rights or the rights of a person in property under section 48 of the Constitution.

Section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) provided on the voluntary transfer of low quality assets in financial institutions or private asset management companies to TAMC. The transfers, however, were subject to conditions prescribed in section 31 subsections (1), (2), (3) and (4) due to the fact that the objective of establishing TAMC was principally to remedy the problem of low quality assets of financial institutions or State asset management companies, to which the remedy of low quality assets in the private sector was only secondary. The reason for provided such conditions was that the transfer of low quality assets which belonged to a private person to the State amounted to a prejudice of private property rights. It was appropriate to require the consent or agreement of the private person before such a transaction was undertaken. The State was not able to require a financial institution or private asset management company to transfer all assets to TAMC. On the other hand, if the private company so wishes, it could do so under the conditions prescribed by law. Thus, this was not a restriction of rights and liberties of a person under section 29 of the Constitution and there were no provisions which restricted the bounds of rights or limited a person's rights in property under section 48 of the Constitution. As for the issue on whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) was contrary to or inconsistent with section 30 of the Constitution, the Constitutional Court had already decided in Ruling No. 86/2547, dated 7<sup>th</sup> December B.E. 2547 (2004), that section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue of whether or not section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 4, section 27, section 28, section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held as follows. Section 271 to section 290 of the Civil Procedure Code were provisions in the chapter on enforcement of judgment. In this application, the plaintiff and the applicants were still carrying out proceedings in the court of first instance. A case which required the enforcement of a judgment or order had not yet arisen. For this reason, section 271 to section 290 of the Civil Procedure Code were not provisions of law which were applied to a case under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Thus, the only remaining issues for the Constitutional Court to rule upon were whether or not section 1 subsections (2), (3) and (7) and section 55 of the Civil Procedure Code were contrary to or inconsistent with section 4, section 27, section 28, section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On these issues, the Constitutional Court held as follows. Section 1(2) “case”, (3) “plaint” and (7) “proceedings” of the Civil Procedure Code were definitions of terms in the law which did not have any potential contrariness or inconsistency with section 4, section 27, section 28, section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 55 of the Civil Procedure Code dealt with the rights of a person who wished to exercise judicial rights in the event of a dispute on rights or duties of a person under the civil law. The purpose was to seek a judgment or adjudication of the court on the dispute. Hence, there was no provision which could violate human dignity, rights and liberties of a person under section 4 of the Constitution. In addition, under the applications, the plaintiff’s rights were disputed and judicial rights were exercised. The plaintiff was entitled to do so under section 55 of the Civil Procedure Code, which was not inconsistent with section 27 of the Constitution and not a restriction of rights of a person whose rights and liberties in relation to judicial rights recognized under section 28 of the Constitution was violated. The provision was not applied to any specific case or person. Therefore, it did not constitute a restriction of rights and liberties under section 29 of the Constitution and there were no texts which limited the bounds of rights or restricted the rights of a person in property under section 48 of the Constitution. As for the issue of whether or not section 55 of the Civil Procedure Code was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had already decided in Ruling No. 87/2547, dated 16<sup>th</sup> December B.E. 2547 (2004), that section 55 of the Civil Procedure Code was neither contrary to nor inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

The Constitutional Court held that section 30 and section 31 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001), were neither contrary to nor inconsistent with section 29, section 30 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and that section 1 subsections (2), (3) and (7) and section 55 of the Civil Procedure Code were neither contrary to nor inconsistent with section 4, section 27, section 28, section 29 section 30 and section 48 Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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