

# Summary of the Constitutional Court Ruling No. 61/2548

**Dated 15<sup>th</sup> November B.E. 2548 (2005)\***

**Re: Is section 229 of the Civil Procedure Code contrary to or inconsistent with  
section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

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

The facts stated in the application could be summarized as follows. Phetchaburi Asset Management Company Limited substituted the right of Siam City Bank Public Company Limited, as plaintiff, to file a lawsuit against Talsumkaewprom Partnership Limited and others, as defendants, at the Ubon Ratchathani Provincial Court in disputes arising out of loan, suretyship and enforcement of mortgage. The Ubon Ratchathani Provincial Court gave an interlocutory order imposing a stay on taking evidences of the defendants and made the judgment that all three defendants jointly paid the sum of money and interest thereof to the plaintiff. The defendants appealed to the Third Regional Court of Appeal against the order of the Ubon Ratchathani Provincial Court not allowing them to postpone the case. The Third Regional Court of Appeal dismissed the appeal for the reason that all three defendants failed to comply with section 229 of the Civil Procedure Code. They lodged a dika appeal against such decision to the Supreme Court together with the application for referring their opinion to the Constitutional Court for consideration under section 264 of the Constitution. About that the Third Regional Court of Appeal dismissed the appeal due to their failure to deposit the costs they had to pay to the plaintiff under section 229 of the Civil Procedure Code, the three defendants were of the opinion that such section 229, which provided that "..., and the appellant must at the same time deposit in such Court, the costs which he has to pay to the opposing party according to the judgment or order;...", constituted the unjust discrimination on the ground of the difference in economic standing. The said section therefore was contrary to or inconsistent with section 30 paragraph one and section 30 paragraph three of the Constitution.

## **2. Preliminary issue**

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that according to the application, the applicants objected that section 229 of the Civil Procedure Code was contrary to or inconsistent

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with section 30 of the Constitution, and the Supreme Court referred the objection to the Constitutional Court pursuant to section 264 of the Constitution. Therefore, the Constitutional Court had the power to accept this application for consideration.

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

The issue to be considered by the Constitutional Court was whether or not section 229 of the Civil Procedure Code was contrary to or inconsistent with section 30 of the Constitution.

Section 229 of the Civil Procedure Code required the appellant against the judgment or order of the Court of First Instance to deposit in such Court the costs he had to pay to the opposing party according to the judgment or order at the same time of appeal, because in the civil proceedings, the Civil Procedure Code provided that the parties or relevant persons to the case must pay the costs so called “costs”. The “costs” included court fees which were money paid to the court for filing a claim, proceedings, or defense. There were two types of costs, court fees and other court fees, according to schedule I and schedule II annexed to the Civil Procedure Code. Court fees were the money paid to the court for filing the claim on entry thereof. Costs stated in section 229 of the Civil Procedure Code were other court fees under schedule I and schedule II annexed therewith. What costs the party losing the case had to pay were provided in section 161 of the Civil Procedure Code. The intention behind section 229 was to secure that if finally the Court of Appeal gave the judgment that the appellant be liable to pay costs in lieu of the winning party, the latter was entitled to receive the costs deposited in the Court at the same time of appeal. The provision of section 229 of the Civil Procedure Code was equally applied to all parties to the case. In other words, all parties were equally treated and protected by the law regardless of their economic standing whatsoever. The applicants alleged that a person in poverty had no money to deposit in the Court and could not apply for stay of execution and for suits *in forma pauperis* in connection with such money. On that the person in poverty had no money to afford the Court fees, the Constitutional Court was of the opinion that section 155, section 156 and section 157 of the Civil Procedure Code provided that such person in poverty could apply for suits *in forma pauperis*. In the case where the Court granted any applicant the permission for suits *in forma pauperis*, such applicant was exempted from paying any Court fees or costs. The allegation of the applicant was unreasonable. Therefore, the provision of section 229 of the Civil Procedure Code requiring that the appellant at the same time of filing the appeal must deposit in the Court the costs he had to pay to the other party and could not apply for the stay of execution, did not constitute the unjust discrimination against the person on the ground of the difference in economic standing under section 30 of the Constitution.

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

The Constitutional Court held that section 229 of the Civil Procedure Code was neither contrary to nor inconsistent with section 30 of the Constitution.

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