

Summary of Constitutional Court Ruling No. 11/2552

Dated 3rd June B.E. 2552 (2009)*

Re: The President of the House of Representatives referred the opinion of members of the House of Representatives to the Constitutional Court for a ruling under section 185 of the Constitution in the case of whether or not the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was consistent with section 184 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

The President of the House of Representatives referred the opinion of 99 members of the House of Representatives to the Constitutional Court for a ruling on whether or not the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was consistent with section 184 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The facts in the application could be summarized as follows. The Council of Ministers under Mr. Abhisit Vejjajiva, the Prime Minister, passed a resolution approving the enactment of the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009). The Emergency Decree was published in the Government Gazette on 13th May B.E. 2552 (2009) and came in force as of 14th May B.E. 2552 (2009). The group of members of the House of Representatives petitioned to the President of the House of Representatives that the enactment of such Emergency Decree did not satisfy the conditions prescribed by section 184 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) since it was not enacted for the benefit of maintaining the economic security of the country, and not enacted in the event of an urgent and unavoidable necessity. The petition was submitted to the President of the House of Representatives for a referral to the Constitutional Court for ruling.

* Published in the Government Gazette Vol. 126, Part 77a, dated 12th October B.E. 2552 (2009)

2. Issues considered by the Constitutional Court

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the power to admit this application for trial and adjudication.

After consideration, the Constitutional Court found that as 99 members of the House of Representatives, which was a number not fewer than one-fifth of the existing members of the House of Representatives, had entered their names in an opinion submitted to the President of the House of Representatives on whether or not the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was in accordance with section 184 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and the President of the House of Representatives referred such opinion to the Constitutional Court for a ruling, the case was therefore in accordance with section 185 of the Constitution. The Constitutional Court therefore had the power to admit this application for ruling.

There were two issues which had to be ruled upon by the Constitutional Court, as follows.

The first issue was whether or not the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was enacted for the benefit of maintaining the economic security of the country as provided under section 184 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

It was a widely known fact that the global economic situation had an impact on Thailand. Apart from the external factors, domestic political problems also constituted a significant cause of Thailand's economic recession. These circumstances directly affected the confidence of consumers and investors as well as caused delays in driving forward state projects in Thailand due to such economic conditions. Hence, the external causes of such problems were namely the global recession and stall of the economy, especially the economic system, money market, capital market and insolvency of financial institutions in many countries having a direct influence on the global economy. The internal causes were namely the political instability which had affected the confidence of investors and caused hesitations in making investment decisions. As a result, the economic system lacked liquidity. Exports and revenues from the tourism industry, in particular, which previously generated high revenues for the country, were significantly lowered, since foreign tourists lacked confidence in their safety and wellbeing when travelling to Thailand. The indicators of the effects of the global financial economic crisis and domestic political crisis on Thailand were the rapid decline of export value of Thai goods, the decline of tourism revenues, the increase in business closures or dissolutions that had resulted in the rapid rise in unemployment, the increasing trend of non-performing loans in the financial institution system and the decline in the people's purchasing power of goods and services. All these effects led to a significant contraction of the gross domestic product (GDP) growth rate.

The above factors sent an impact on the country's fiscal standing. In other words, actual revenues failed to meet the set targets, consequentially resulting in the reduced ability to expend funds and provide public services of the state. Despite the Government's efforts to implement various measures, consisting of relief measures for the real estate sector, economic stimulus tax measures, relief measures for the actual financial liquidity of the economic sector, relief measures for agriculturalists and the grass root economy, measures to alleviate the people's cost of living, measures for supplemental expenditure budget for the fiscal year B.E. 2552 (2009), or measures for expediting the disbursement of public budgetary funds, there was still a lack of confidence in the ability to effectively remedy the economic crisis that continued to recede. Upon an examination of the essential substance of the Emergency Decree in conjunction with the reasons for enacting such Emergency Decree, it was perceivable that the Council of Minister enacted the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) in order to remedy the country's economic crisis from further deterioration from the contemporary situation. Moreover, the State, in its capacity as the economic driver, in order to urgently promote purchasing power in the system at a time when foreign and domestic purchasing powers contracted due to the global economic crisis, found it necessary to expeditiously implement measures to remedy the economic crisis so as to prevent the problem from spreading to every sector. Such actions constituted the performance of the State's fundamental economic duties in building the country's economic security. The actions were therefore already undertaken for the benefit of maintaining the country's economic security under section 184 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The second issue was whether or not the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was enacted in the event of an urgent and unavoidable necessity as provided under section 184 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Upon consideration of the problems pertaining to the country's contemporary economic security, whether the collapse of Thai export value, decline in revenues from tourism, the rise in business closures or dissolution, the rapid increase in unemployment rate or the increasing trend of non-performing loans in the financial institution system, where all factors contributed a threat to the country's economy crisis, it was found that those problems caused the Government to implement urgent measures to remedy such a crisis by implementing relief measures for the real estate sector, economic stimulus measures, relief measures for actual liquidity in the economic sector, relief measures for agriculturalists and the grass root economy, measures for alleviating the cost of living burden of the people, measures to prepare a supplemental budget for the fiscal year B.E. 2552 (2009), and other measures to remedy such economic crisis. However, the global and the country's economic conditions continued to decline, thus the case could be deemed as a case of the occurrence of an urgent and unavoidable necessity.

Therefore, upon examining the above causes constituting an urgent and unavoidable necessity, in conjunction with the essential substance and implementation framework under the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009), there was no cause for a finding that the Council of Ministers had enacted the Emergency Decree dishonestly or exercised discretion in a way that distorted the constitutional principles. Hence, the Constitutional Court found that the enactment of the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) was already a case of an urgent and unavoidable necessity under section 184 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

3. Ruling of the Constitutional Court

The Constitutional Court, by a unanimous resolution, therefore held that the Emergency Decree Empowering the Ministry of Finance to Borrow Funds for Economic Restoration and Security B.E. 2552 (2009) had been enacted for the benefit of maintaining the country's economic security as provided under section 184 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and a case of an urgent and unavoidable necessity under section 184 paragraph two of the Constitution.
