

Constitutional Court Ruling

No. 30/2563 (2020)

Dated 2nd December B.E. 2563 (2020)

Between	{	Dusit Municipal Court	Applicant
		-	Respondent

Re: Whether or not the Announcement of the National Council for Peace and Order No. 29/2557, Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557, Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014), were contrary to or inconsistent with section 4, section 26, section 27 paragraph one and paragraph three and section 29 paragraph one of the Constitution.

Dusit Municipal Court referred the objection of a defendant (Mr. Worachet Pakeerut) requesting for a Constitutional Court ruling under section 212 of the Constitution. The application could be summarized as follows. Bangkok Military Court Prosecutor, Ministry of Defense, as prosecutor, prosecuted a defendant in Bangkok Military Court on charges of violation or non-compliance with a summons to report to authorities under Order of the National Council for Peace and Order No. 5/2557 and No. 57/2557. The defendant violated or failed to comply with a summons to report to the National Council for Peace and Order within the stipulated period, and was thereby liable to an imprisonment term not exceeding 2 years or a fine not exceeding 40,000 baht, or both, pursuant to the Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014). Thereafter, the case was transferred to Dusit Municipal Court. The defendant objected that Announcements of the National Council for Peace and Order No. 29/2557 and No. 41/2557 restricted rights and liberties of persons, contrary to the rule of law, since the provision prescribed criminal penalties which were disproportionate to the cause,

contrary to or inconsistent with section 26 of the Constitution. In addition, Announcement of the National Council for Peace and Order No. 29/2557 was a law which prescribed criminal penalties retrospectively with respect to the defendant, contrary to or inconsistent with section 29 of the Constitution. Furthermore, it was asserted that this Announcement had the characters of a threat, a violation of human dignity and an unfair discrimination against a person, contrary to or inconsistent with section 4 and section 27 of the Constitution. The Constitutional Court accepted this case for consideration and determined that the issue which required a ruling was whether or not National Council for Peace and Order No. 29/2557, Re: Persons Who Shall Report to Authorities under Order of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557, Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014), were contrary to or inconsistent with section 4, section 26, section 27 paragraph one and paragraph three and section 29 paragraph one of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 4 was a provision in Chapter 1, General Provisions. Paragraph one provided that “human dignity, rights, liberties and equality of persons enjoyed protection.” Paragraph two provided that “Thai people enjoyed equal protection under the Constitution.” Section 26, section 27 paragraph one and paragraph three, and section 29 paragraph one were provisions in Chapter 3, Rights and Liberties of the Thai People. Section 26 paragraph one provided that “the enactment of a law which results in the restriction of a right or liberty of a person shall be in accordance with conditions provided in the Constitution. In the case where the Constitution did not provide conditions, such law shall not be inconsistent with the rule of law, not increase a burden or restrict a right or liberty of a person disproportionately to a cause, and shall not affect the human dignity of a person, and the reasons of necessity for the restriction of rights and liberties must also be specified.” Paragraph two provided that “a law under paragraph one must have general application and not be specifically directed to any particular case or person.” Section 27 paragraph one provided that “persons are equal under the law, have rights and liberties and enjoyed equal protection under the law.” Paragraph three provided that “unfair discrimination against a person whether on the grounds of differences in birthplace, race, language, sex, age, disability, physical or health conditions, personal status, economic or social standing, religious faith, education and training or political ideology not inconsistent with the provisions of the Constitution, or any other grounds, is prohibited.” And section 29 paragraph one provided that “a person shall not be liable to a criminal penalty,

except for the commission of an act prescribed as an offence carrying a penalty by a law in force at the time of commission, and the penalty imposed on such person shall not be heavier than as provided by law in force at the time of commission of offence.”

Announcement of the National Council for Peace and Order No. 29/2557, Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), paragraph one provide that “pursuant to Order of the National Council for Peace and Order No. 1/2557 Re: Persons Who Shall Report to Authorities, dated 22nd May B.E. 2557 (2014), Order of the National Council for Peace and Order No. 2/2557 Re: Additional Persons Who Shall Report to Authorities and Date and Place for Reporting, dated 22nd May B.E. 2557 (2014), Order of the National Council for Peace and Order No. 3/2557 Re: Additional Persons Who Shall Report to Authorities, dated 22nd May B.E. 2557 (2014), Order of the National Council for Peace and Order No. 5/2557 Re: Additional Persons Who Shall Report to Authorities, dated 24th May B.E. 2557 (2014), Order of the National Council for Peace and Order No. 6/2557 Re: Additional Persons Who Shall Report to Authorities, dated 24th May B.E. 2557 (2014).” Paragraph two provided that “a person whose name is listed in such Order who does not report to the authority within the stipulated time must be liable to a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 baht, or both, and shall be prohibited from committing an act or ordered to perform an act in relation to a financial transaction or actions relating to the properties of a person or juristic person insofar as is necessary to maintain national security and safety of lives and properties of public in general.” Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014) provided that “pursuant to the National Council for Peace and Order issue of summons to persons to report to the National Council for Peace and Order, it appears that certain persons violated or failed to comply with such National Council for Peace and Order summons; therefore, to ensure strict and absolute compliance with the Order of the National Council for Peace and Order relating to the summons of persons to report to the National Council for Peace and Order, this Announcement is hereby issued, as follows: 1. Any person who violates or fails to comply with a summons to report to the National Council for Peace and Order shall be liable to a term of imprisonment not exceeding 2 years or a find not exceeding 40,000 baht, or both, and shall be prohibited from committing an act or ordered to perform an act in relation to a financial transaction or actions relating to the properties as announced by the National Council for Peace and Order...”

The transitory provisions in section 279 of the Constitution recognised the status of the Announcements and Orders of the National Council for Peace and Order in force on the day prior to the effective date of this Constitution, which remained valid under this Constitution and the law, and continued to be constitutional and in force. A repeal or amendment of such Announcement or Order had to be done by an Act, except for an Announcement or Order which had the characters of an exercise of executive power where a repeal or amendment could be done by order of the Prime Minister or Council of Ministers resolution, as the case may be. Upon the Constitution recognising the effectiveness of both Announcements of the National Council for Peace and Order, and there had not yet been a repeal through the exercise of legislative or executive power, both Announcements of the National Council for Peace and Order therefore remained in force as law even though the National Council for Peace and Order terminated. Section 210 paragraph one (1) of the Constitution provided that the Constitutional Court had the duty and power to review the constitutionality of laws, which included both Announcements of the National Council for Peace and Order.

Deliberations on a law which restricted rights and liberties of a person recognised by the Constitution had to take into account conditions of society along with the ways of lives of the people at the time of enactment of the law and at the time of enforcing the law. It was discernible that at the time of promulgation of both laws, the National Council for Peace and Order successfully took powers of national administration on 22nd May B.E. 2557 (2014) and annulled the Constitution of the Kingdom of Thailand B.E. 2550 (2007). There was a change in authorities, whereby the National Council for Peace and Order exercised both executive and legislative powers. At the same time, in order to maintain peace and order until the promulgation of a Constitution in line with the democratic form of government with the King as head of state, whilst the National Council for Peace and Order assumed national administration duties, there was a need to maintain public peace to avoid disturbances which could affect national security. It was therefore necessary to restrict certain rights and liberties of the people.

Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), provided that a person stipulated by Order of the National Council for Peace and Order, which included Order of the National Council for Peace and Order No. 5/2557 Re: Additional Persons Who Shall Report to Authorities, dated 24th May B.E. 2557 (2014), listing the defendant in this case as a person require to report to authorities. The defendant, however, failed to report to authorities within the stipulated period and was liable to

a criminal penalty. Subsequently, the National Council for Peace and Order issued Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons of Persons to Report to Authorities, dated 26th May B.E. 2557 (2014). Article 1 of the said Announcement provided that a person who violated or failed to comply with a summons to report to the National Council for Peace and Order should be liable to a criminal penalty. The defendant's name was listed as a person required to report to the National Council for Peace and Order No. 57/2557 Re: Additional Persons Who Shall Report to Authorities, dated 9th June B.E. 2557 (2014). Both Announcements of the National Council for Peace and Order provided that failure to report to authorities carried a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 baht, or both. The intent was to ensure strict and absolute compliance with an Order of the National Council for Peace and Order relating to the summons of a person to report to authorities. This was evident in the preamble to the Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014). It was thus necessary to impose a criminal penalty for a person who committed a violation, which was a restriction of rights and liberties of a person, so as to maintain national security and public order, being essential during times of a coup d'état.

Nevertheless, when society returned to peace, the ways of lives of individuals would change from such situation. In particular, upon the promulgation of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) on 6th April B.E. 2560 (2017). The Constitution recognized rights and liberties under section 29 paragraph one, whereby a person was not liable to a criminal penalty except for the commission of an act stipulated by law at the time of commission to be an offence which carried a penalty, and the penalty imposed on such person should not be heavier than as provided by law in force at the time of commission of the offence. These provisions safeguarded the fundamental rights and liberties of a person in the criminal justice process, being a universal principle recognized since the Constitution of the Kingdom of Thailand B.E. 2492 (1949), and similarly provided in all constitutions. The restriction of rights and liberties recognized by the Constitution should be in accordance with the principle for protection of rights and liberties under section 26. In other words, when enacting a law to restrict the rights and liberties of a person, the legislature or organ exercising state powers had to take into account a fundamental principle, which was the principle of proportionality, being an essential principle for scrutiny or limitation of state powers to prevent the exercise of an unfettered discretion in the promulgation of a law enforced on the people. The

enactment of a law to restrict a right or liberty of a person under such principle had to be appropriate, necessary and proportional or balanced between public or common interests and the right or liberty of a person lost as a consequence of such law.

Even though both Announcements of the National Council for Peace and Order had the objective or necessity of ensuring that persons reported to authorities under Order of the National Council for Peace and Order, as the exerciser of sovereign powers at that time, to maintain peace and resolve problems in society in a peaceful and orderly manner, since the law restricted rights and liberties of a person, the prescription of a criminal penalty for an offender also had to take into account suitability in accordance with the principle of proportionality to the case. Although such prescription of criminal penalty constituted a measure which enabled the achievement of the objective of requiring a person stipulated in a summons to report to the National Council for Peace and Order in order to preserve peace and order in society, being a public and common interest, when compared to the case of a person who had not yet committed an offence but there was only a cause for suspicion that such person would cause harm or unrest, section 46 of the Penal Code provided for safety procedures in lieu of criminal sanctions. Furthermore, upon a comparison of non-reporting constituting a violation of an Order of the National Council for Peace and Order carrying a criminal penalty and the case of violating an order of an officer under other laws, such act constituting a violation or non-compliance with both Announcements of the National Council for Peace and Order did not result in serious harm or affected society peace and order to the extent which required a criminal penalty in the form of an imprisonment term not exceeding 2 years or a fine not exceeding 40,000 baht, or both. Also, there were other legal measures which authorized an officer in the criminal justice process to enforce the law in line with the intent to preserve peace and resolve society's problems in a peaceful and orderly manner, namely section 368 paragraph one of the Penal Code, which provided a penalty for a person who violated an order of an officer without reasonable cause or excuse, carrying a penalty of imprisonment not exceeding ten days or a fine not exceeding five thousand baht, or both, being a minor offence appropriate for such violation of officer's order. The state was in a position to find a suitable method of enforcing the law against a person who violated or failed to comply with an order of an offer, by imposing a burden or liability only to the extent that was necessary and reasonable for the circumstances. Therefore, upon consideration of the protection of rights and liberties of a person recognized by the Constitution and the public or common interests pursuant to the objective of both Announcements, it was found that the Announcement of the National Council

for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014), only with respect to the criminal penalties, where no reason for summons was given and where the only cause relied upon for the prescription of criminal penalty was the failure to report to authorities pursuant to an Order of the National Council for Peace and Order, were not appropriate for the nature of the offence, not in accordance with the principle of proportionality, constituted a law which restricted rights and liberties of a person in excess of reasonability, and was inconsistent with the rule of law. The provisions were therefore either contrary to or inconsistent with section 26 of the Constitution.

Moreover, when the National Council for Peace and Order issued Order of the National Council for Peace and Order No. 5/2557 Re: Additional Persons Who Shall Report to Authorities, dated 24th May B.E. 2557 (2014), specifying persons who had to report to authorities on 24th May B.E. 2557 (2014) at 13.00 hours, with this case's defendant's name mentioned therein, the Order did not prescribe a criminal penalty for those who failed to report to authorities. However, thereafter on the same day, the National Council for Peace and Order issued Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), which provided that a person whose name was listed in an Order of the National Council for Peace and Order who failed to report to authorities on the stipulated day should be liable to a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 baht, or both. The summons of persons to report to authorities was issued prior to the announcement prescribing an offence for such act in the Government Gazette as public knowledge (29th May B.E. 2557 (2014)). The Announcement therefore prescribed a criminal penalty having retrospective effect on a person who failed to report to authorities pursuant to an Order of the National Council for Peace and Order that was issued beforehand, inconsistent with the rule of law that "no offence and no penalty without any law". Hence, the Announcements were contrary to or inconsistent with section 29 paragraph one of the Constitution.

Upon a ruling that both Announcements of the National Council for Peace and Order were contrary to or inconsistent with the provisions of the Constitution, both Announcements of the National Council for Peace and Order were unenforceable pursuant to section 5 of the Constitution. Thus, it was no longer

necessary to decide on whether or not they were contrary to or inconsistent with section 4 and section 27 paragraph one and paragraph three of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court held that Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014), only with respect to the criminal penalty, were contrary to or inconsistent with section 26 of the Constitution, and only Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), was also contrary to or inconsistent with section 29 paragraph one of the Constitution.
