

Emergency Decree on Public Administration in State of Emergency, BE 2548 (2005)



EMERGENCY DECREE

ON PUBLIC ADMINISTRATION IN STATE OF EMERGENCY,

BE 2548 (2005)

BHUMIBOL ADULYADEJ, R.

GIVEN UNDER OUR HAND THIS 16TH DAY OF JULY, BE 2548 (2005);

BEING THE 60TH YEAR OF OUR REIGN.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is desirable to revise the law on public administration in state of emergency;

And whereas it is aware that this Emergency Decree contains certain provisions giving rise to the restriction of personal rights and liberties, in respect of which section 29 incorporating sections 31, 35, 36, 37, 39, 44, 48, 50 and 51 of the Constitution of the Kingdom of Thailand so permit by means of the legal provisions;

Be it decreed by the King's most Excellent Majesty, by virtue of section 218 of the Constitution of the Kingdom of Thailand, as follows:

§ 1

This Emergency Decree shall be cited as the "Emergency Decree on Public Administration in State of Emergency, BE 2548 (2005)".

§ 2

This Emergency Decree shall come into force as from the day following the date of its publication in the Government Gazette.¹¹¹

§ 3

The Act on Public Administration in State of Emergency, BE 2495 (1952), shall be repealed.

§ 4

In this Emergency Decree:

"State of emergency" means a situation which affects or may affect public order, may be adverse to the state security, may expose the Nation or any part thereof to a state of crisis, or involves the commission of an offence of terrorism under the Criminal Code, fight or war, and in which certain urgent measures need to be taken for the purpose of maintaining the government under the democratic regime with the King as Head of State pursuant to the Constitution of the Kingdom of Thailand, independence and territorial integrity, national interest, obedience to laws, popular safety, peaceful lives of the people, protected rights and liberties, or common peace or interest, or for the purpose of averting or remedying any loss in consequence of an immediate and serious public calamity;

"Competent authority" means a person appointed by the Prime Minister to enforce this Emergency Decree.

§ 5

Once it appears that a state of emergency does come to pass and the Prime Minister finds expedient to exercise the combined forces of the administrative or police officers, civil officers or military officers, for the sake of prevention, resolution, withholding, abatement or suppression of the situation, or rehabilitation of or providing of assistance to the people, the Prime Minister, with the approval of the Council of Ministers, may declare a state of emergency throughout the Kingdom or in certain parts thereof according to the necessity of the circumstances. In cases the approval of the Council of Ministers may not be obtained in time, the Prime Minister may declare a state of emergency and later seek for such approval within three days. Should such approval not be obtained within the time limit or should the Council of Ministers withhold its approval, the declaration of state of emergency shall come to an end.

The declaration of state of emergency under paragraph 1 shall be in force throughout a period of time designated by the Prime Minister, but not in excess of three months from its issuance. In case of necessity, the Prime Minister, with the approval of the Council of Ministers, may announce several successive extensions not exceeding three months each.

Upon cessation of the state of emergency, disapproval of the Council of Ministers, or termination of the period of time under paragraph 2, the Prime Minister shall lift the declaration of such state of emergency.

§ 6

There shall be a State of Emergency Administration Board, consisting of: the Deputy Prime Minister designated by the Prime Minister as Chairperson; the Minister of Defence, the Minister of Interior and the Minister of Justice as Vice Chairpersons; the Permanent Secretary for Defence, the Permanent Secretary for Foreign Affairs, the Permanent Secretary for Social Development and Human Security, the Permanent Secretary for Interior, the Permanent Secretary for Justice, the Director of the National Intelligence Agency, the Attorney General, the Chief of the Defence Staff, the Chief of the Land Staff, the Chief of the Maritime Staff, the Chief of the Air Staff, the Chief of the National Police, the Director General of the Department of Provincial Administration and the Director General of the Department of Disaster Prevention and Mitigation as Members; and the Secretary General of the National Security Council as member and secretary. The Board shall be invested with the authority to pursue and examine the events occurring inside and outside the Nation and likely to give rise to a state of emergency, and to render to the Prime Minister an opinion as to whether a state of emergency under section 5 or serious state of emergency under section 11 should be declared and which of the measures under this Emergency Decree should be taken for the purpose of preventing, remedying or abating such state of emergency.

The provisions of this section shall not debar the Prime Minister from exercising his power under section 5 to declare a state of emergency in case of an urgent need to deal with an immediate danger against the Nation or its people.

§ 7

In the area where a state of emergency is declared pursuant to section 5, all the existing legal authority vested in or taken charge of by one Minister or more, only in respect of the giving of approval, endorsement, instructions, commands or support as to the prevention, resolution, withholding, abatement or suppression of the state of emergency, or rehabilitation of or providing of assistance to the people, shall

provisionally be transferred to the Prime Minister, for the sake of consistent, expeditious and efficacious administration and resolution of the situation.

The Council of Minister shall issue an announcement as to which existing legal authority vested in a Minister is to wholly or partially be transferred to the Prime Minister pursuant to paragraph 1.

The Prime Minister shall be empowered to appoint any person as a competent authority enforcing this Emergency Decree and carrying out any function transferred to the Prime Minister according to paragraph 1. It shall be taken that such competent authority is also competent under the law concerned. In this regard, the Prime Minister may authorise a government agency or competent authority under the law concerned to continue to exercise its existing authority, but subject to the criteria laid down by him.

In cases the Prime Minister appoints a civil, police or military officer ranking not lower than director general, police commissioner, military commander or its equivalent as a competent authority and chief officer in charge of the resolution of a state of emergency and of the government officers and competent authorities inside a specific area, the relevant government agencies and government officers, as well as the competent authorities, shall discharge their duties in conformance to the instructions of such chief officer; prescribed, however, that the military operations shall be subject to the regulations, rules or ordinances governing the exercise of military forces, and the guidance given by the chief officer.

In case of necessity, the Council of Ministers may set up a special agency to enforce this Emergency Decree until the declaration of the state of emergency is lifted.

The Prime Minister may authorise one Deputy Prime Minister or Minister or more to on his behalf exercise the authority under paragraph 1, 3 or 4, or to supervise the performance of duties of the relevant government agencies, competent authorities under paragraph 3, chief officers under paragraph 4 and agencies under paragraph 5. In this respect, the person so authorised shall be deemed as the commander of the chief officers, government agencies and competent authorities concerned.

§ 8

In order that the cooperation on the performance of duties inside the area of the state of emergency be conducted appropriately and in line with the nature of the situation and the lives of the local people, the Prime Minister or his designee may authorise a group of persons or a person to render to the competent authorities the advices concerning or assistance in the enforcement of this Emergency Decree.

The persons authorised under paragraph 1 shall enjoy the same protection as the competent authorities, to the extent of their authorised functions.

§ 9

In case of need to put an end the state of emergency without delay or to prevent the increase of its seriousness, the Prime Minister shall be invested with the power to lay down the following ordinances:

- (1) A person is prohibited from staying outside his residence during a period of time indicated, save where the permission of a competent authority or the exemption is obtained;
- (2) The meetings or gatherings at any place, or whatever acts giving rise to unrest are prohibited;
- (3) The presentation, distribution or circulation of news, writings, printed materials or any other media the contents of which are likely to terrify the public, or are intentionally distorted with a view to bringing about a misunderstanding as to the state of emergency, to such an extent that the national security or public policy would be impaired, is prohibited, either inside the area of the state of emergency only or throughout the Kingdom;
- (4) The use of any means of communication or any vehicle is prohibited or is subject to the conditions stipulated;
- (5) The use, entry into or presence in any building or place is prohibited;
- (6) The people are to be evacuated from an area indicated, for the sake of their safety, or no person is permitted to enter an area indicated.

The execution of any ordinance mentioned in paragraph 1 may be subject to a time clause. And in enforcing such ordinance, the competent authorities may be placed under certain conditions or may be authorised to specify the area and further details, so as to prevent the public from any immoderate difficulty.

§ 10

For the purpose of promptly dealing with any problem inside the area of the state of emergency, the Prime Minister may authorise a competent authority designated as a chief officer under section 7, paragraph 4, to issue the ordinances under section 9 on his behalf. Upon their issuance, the ordinances must be referred to the Prime Minister without delay, and shall cease to be in force had they failed to be affirmed by the Prime Minister within forty eight hours from their issuance.

§ 11

Where a state of emergency involves an act of terrorism, act of forcible violence against life, body or property, or reasonably suspected act of violence against the national security or safety in life or property of the State or private citizens, and certain measures need to be taken for the purpose of effectively and promptly put an end thereto, the Prime Minister, with the approval of the Council of Ministers, may declare such state of emergency as a serious state of emergency, and the provisions of sections 5 and 6, paragraph 2, shall *mutatis mutandis* apply.

Upon the declaration under paragraph 1, the Prime Minister shall, in addition to the power granted by sections 7, 8, 9 and 10, also be invested with the following power:

- (1) To, by an announcement, authorise a competent authority to arrest and restrain a person suspected of having taken part in the provocation of the state of emergency, being a principal, inciter or aider therein or thereof, or concealing certain information in connection therewith; prescribed that the arrest or restraint must be made only for the purpose of preventing the person in question from committing or partaking in any action likely to worsen the situation or extracting his cooperation on the abatement of the serious situation;
- (2) To, by an announcement, authorise a competent authority to direct any person to report to him or furnish him with any statement, document or evidence concerning the state of emergency;
- (3) To, by an announcement, authorise a competent authority to seize or attach any weapons, goods, consumption goods, chemical substances or other objects reasonably suspected of having been used or being likely to be used for the provocation of the state of emergency or aid therein;
- (4) To, by an announcement, authorise a competent authority to search, disassemble, remove or destroy any building, structure or barrier to the extent necessary for the implementation of his duty to straightaway put an end to the serious situation, unless the prompt resolution thereof would be unsuccessful;
- (5) To, by an announcement, authorise a competent authority to censor the communication through letters, writings, printed materials, telegraphs, telephones or by any other means, as well as to suppress or suspend any kind of contact or communication, for the purpose of preventing or abating the serious situation; prescribed that the criteria under the law on special investigation shall *mutatis mutandis* apply;
- (6) To, by an announcement, direct any act to be withheld or to be carried out, to the extent necessary for the maintenance of national security, national safety or popular safety;
- (7) To, by an announcement, authorise a competent authority to debar any person from leaving the Kingdom, upon a reasonable belief that it would affect the national security or safety;
- (8) To, by an announcement, authorise a competent authority to remove an alien from the Kingdom, upon a reasonable belief that he aids in the provocation of the serious situation; prescribed that the law on immigration shall *mutatis mutandis* apply;
- (9) To, by announcement, require the buy, sale, use or possession of any weapon, goods, medical goods, consumption goods, chemical substance or other appliance likely to be employed in the provocation of unrest or commission of an act of terrorism to be referred to or permitted by a competent authority, or to be subject to the conditions laid down by the Prime Minister;
- (10) To, by announcement, direct the military forces to assist the administrative or police officers in abating the serious situation or restoring the order without delay; prescribed that in executing their duty, the military officers shall enjoy the same authority as the competent authorities under this Emergency Decree, and that the exercise of military forces shall be under the conditions and time clauses determined by the Prime Minister and shall not exceed the point subject to the Martial Law.

Upon cessation of the serious situation under paragraph 1, the Prime Minister shall without delay cancel the announcements issued in virtue of this section.

§ 12

So as to arrest and restrain any suspect pursuant to the announcement under section 11 (1), the competent authority shall seek for the permission of the jurisdictional court or Criminal Court. Upon such approval,

the competent authority may arrest and restrain the suspect for not more than seven days; required that the restraint must be held in a designated place not being a police station, detention chamber, prison or penal institution, and that the suspect may not be treated as an offender. In cases the restraint needs to be continued for the sake of the resolution of the state of emergency, the competent authority shall request the court for several successive extensions not exceeding seven days each; prescribed, however, that the total extended period of restraint may not be in excess of thirty days. If such time limit does expire but the restraint is still required, the Code of the Criminal Procedure shall then be proceeded with.

In carrying out the proceedings under paragraph 1, the competent officer shall submit to the court granting the permission a record of arrest and restraint. He shall also make available at his office a copy of such record, in order that the relatives of the person restrained would be able to inspect it at any time in the course of the restraint.

The provisions of the Code of Criminal Procedure on application for criminal warrant shall *mutatis mutandis* apply to the seeking for judicial permission mentioned in paragraph 1.

§ 13

Should a thing or appliance announced according to section 11 (9) be a communication device or part thereof, the Prime Minister may also have the announcement effective throughout the Kingdom or over the localities not subject to the declaration of the state of emergency.

§ 14

Upon their entry into operation, the ordinances, announcements and orders referred to in sections 5, 7, 8, 9, 11 and 15, shall be published in the Government Gazette.

§ 15

The competent authorities under this Emergency Decree or persons invested with the same authority as them shall become the public officers under the Criminal Code and, to the extent determined by the Prime Minister, shall enjoy the authority of administrative or police officer under the Code of Criminal Procedure.

§ 16

The ordinances, announcements, orders or actions under this Emergency Decree shall not be subject to the law on administrative procedure and the law on establishment of administrative courts and procedure thereof.

§ 17

The competent authorities under this Emergency Decree or persons invested with the same authority as them shall incur no civil, criminal or disciplinary liability for their performance of duties to suppress or prevent any unlawful act, if such performance is rendered in good faith, does not give rise to discrimination and does not exceed the reasonability or necessity of the circumstances, without prejudice to the right of the victims to claim damages from the public sector pursuant to the law on tortious liability of authorities.

§ 18

Any person who contravenes any ordinance, announcement or order given by virtue of section 9, 10, 11 or 13, shall be liable to imprisonment for not more than two years, or a fine not exceeding forty thousand baht or both.

§ 19

The Prime Minister shall be in charge of this Emergency Decree.

COUNTERSIGNED BY:

Police Lieutenant Colonel Thaksin SHINAWATRA,
Prime Minister.

Statement of Grounds

The grounds for promulgation of this Emergency Decree are as follows: Since the law on public administration in state of emergency has been in force for so long, its existing provisions do not permit the expeditious resolution of various forms of the situations jeopardising the national security, as well as the handling of problems arising from public calamities and the rehabilitation of the lives of the people injured, while the troubles as to the national security and their seriousness which could not be remedied through the ordinary form of public administration are now increasing and likely to impair the independence and territorial integrity, bring about civil unrest and expose the public to a certain danger or difficulty to such an extent that peaceful livelihood is impossible. It is expedient to determine certain special measures for the public administration in a state of emergency, so that the State would be allowed to promptly maintain its security and safety, protect the rights and liberties of every person, and restore order. This is such an urgent and inevitable need to preserve the national or popular safety and to avert the public calamities. It is therefore necessary to enact this Emergency Decree.