

Emergency Decree on Public Administration in Emergency Situation 2005

Unofficial Translation

Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) BHUMIBOL ADULYADEJ, REX;

Given on the 16th Day of July B.E. 2548 Being the 60th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to revise the law on public administration in emergency situations;
Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29 in conjunction with section 31, section 35, section 36, section 37, section 39, section 44, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

By virtue of section 218 of the Constitution of the Kingdom of Thailand, an Emergency Decree is hereby enacted, as follows:
Section 1. This Emergency Decree is called "Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005)".

Section 2. This Emergency Decree shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. The Act on Public Administration in Emergency Situation, B.E. 2495 (1952) shall be repealed.

Section 4. In this Emergency Decree:

"Emergency situation" means a situation, which affects or may affect the public order of the people or endangers the security of the State or may cause the country or any part of the country to fall into a state of difficulty or contains an offence relating to terrorism under the Penal Code, a battle or war, pursuant to which it is necessary to enact emergency measures to preserve the democratic regime of government with the King as Head of State of the Kingdom of Thailand under the Constitution of the Kingdom of Thailand, independence and territorial integrity, the interests of the nation, compliance with the law, the safety of the people, the normal living of the people, the protection of rights, liberties and public order or public interest, or the aversion or remedy of damages arising from urgent and serious public calamity.

"Competent official" means a person appointed by the Prime Minister to perform an act under this Emergency Decree.

Section 5. In the event of the occurrence of an emergency situation and the Prime Minister considers that it is appropriate to use the force of administrative officials or police officers, civil officials or military officers to jointly provide assistance, prevent, remedy, suppress, withhold the emergency situation, rehabilitation or provide assistance to the people, the Prime Minister upon the approval of the Council of Ministers is empowered to declare an emergency situation applicable to the whole Kingdom or in some area or locality as necessary for the situation. In the case where the approval of the Council of Ministers cannot be obtained in a timely manner, the Prime Minister may declare the emergency situation immediately and shall subsequently seek the approval of the Council of Ministers within three days. If approval of the Council of Ministers is not obtained within the time prescribed, or the Council of Minister refuses approval, such declaration of emergency situation shall cease to be in force.

The declaration of emergency situation under paragraph one shall be in force for the duration prescribed by the Prime Minister but not shall not exceed three months from the date of declaration. In the case where it is necessary to extend such period, the Prime Minister upon the approval of the Council of Ministers shall have the power to declare the extension of duration of enforcement provided that each extension shall not exceed three months.

At the end of the emergency situation or upon the disapproval of the Council of Ministers or upon the lapse of the period under paragraph two, the Prime Minister shall declare the annulment of such emergency situation.

Section 6. There shall be a Public Administration in Emergency Situation Committee consisting of a Deputy Prime Minister assigned by the Prime Minister as Chairperson, Minister of Defence, Minister of Interior and Minister of Justice as Vice Chairpersons, Permanent Secretary for Defense, Permanent Secretary for Interior, Permanent Secretary for Social Development and Human Security, Permanent Secretary for Justice, Director-General of the National Security Council, Attorney-General, Supreme Commander, Commander in Chief of the Royal Thai Army, Commander in Chief of the Royal Thai Navy, Commander in Chief of the Royal Thai Air Force, Commissioner-General of the Royal Thai Police, Director-General of the Department of Provincial Administration and Director-General of the Department Disaster Prevention and Mitigation as members, and National Security Council as member and secretary, having the powers and duties to monitor and

inspect domestic and international situations which may arise from the emergency situation in order to advise the Prime Minister in the case where it is necessary to declare an emergency situation under section 5 or in the case of a serious situation under section 11 and for the implementation of appropriate measures under this Emergency Decree in order to prevent , remedy and withhold such emergency situation.

The provisions of this section shall not prejudice the exercise powers of the Prime Minister under Section 5 in the declaration of emergency situation when there is a necessary and urgent situation which may endanger the country or the people.

Section 7. In an area or locality prescribed in a Declaration of Emergency Situation under section 5, powers and duties of a Minister, Ministry or several Ministries or having charge and control of the execution of any law or is empowered under any law, only in relation to the provisions on the issue of a permission, approval, order, command or aid in the prevention, remedy, suppression or withholding in an emergency situation or rehabilitation or provision of assistance to the people, shall be temporarily transferred as powers and duties of the Prime Minister in order that instructions and remedies during the situation can achieve in an integral, expedient and efficient manner.

The prescription of all or part of powers and duties of Ministers under paragraph one as powers and duties of the Prime Minister shall be in accordance with a Notification issued by the Council of Ministers.

The Prime Minister shall have the power to appoint competent officials to perform duties under this Emergency Decree and to carry out functions under laws which have been transferred to the powers and duties of the Prime Minister under paragraph one. A person appointed as a competent official shall be deemed to have the powers under such law. In this regard, the Prime Minister may authorize any governmental agency or competent official under such law to continue to exercise existing functions, provided that the exercise of functions shall be in accordance with the rules laid down by the Prime Minister.

In a case where the Prime Minister appoints a civil servant, a police officer or a military officer holding a position not lower than Director-General, Police Commander in Chief, Commander General or the equivalent thereof as a competent official and prescribed as a Chief Official responsible for remedying the emergency situation in an area and to have charge and control over other officials and competent officials in this regard, the exercise of functions by relevant governmental agencies and officials, including competent official, shall comply with instructions of the Chief Official, except for the exercise of military functions, which must be in accordance with by-laws, rules and Regulations concerning the use of military force, provided that this must be consistent with guidelines stipulated by the Chief Official.

In the case of necessity, the Council of Ministers may set up an ad-hoc Special Task Force to provisionally exercise functions under this Emergency Decree until the Declaration of Emergency Situation has been annulled.

The Prime Minister may authorise a Deputy Prime Minister or one or more Ministers to exercise powers under paragraph one, paragraph three or paragraph four on his/her behalf or may entrust such persons as supervisors for the exercise of functions by the relevant governmental agencies, competent official under paragraph three, Chief Official under paragraph four and the agency under paragraph five and shall be deemed to be the superior official of the Chief Official, government officials and relevant competent officials.

Section 8. For the benefit of coordinating the exercise of functions in an appropriate manner and consistent with the circumstances of the situation and well-being of the people in the area which an Emergency Situation has been declared, the Prime Minister or the designated Minister may issue an order appointing a group of persons or a person as an advisor for the exercise of functions of the competent official or as an assistant to the competent official in the exercise of functions under this Emergency Decree.

A person appointed under paragraph one shall acquire protection to the same extent as in the exercise of functions by a competent official within the scope of the appointed functions.

Section 9. In the case of necessity in order to remedy and promptly resolve an emergency situation or to prevent the worsening of such situation, the Prime Minister shall have the power to issue the following Regulations:

- (1) to prohibit any person from departing from a dwelling place during the prescribed period, except with the permission of a competent official or being an exempted person;
- (2) to prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest;
- (3) to prohibit the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom;
- (4) to prohibit the use of routes or vehicles or prescribe conditions on the use of routes or vehicle;
- (5) to prohibit the use of buildings or enter into or stay in any place;
- (6) to evacuate people out of a designated area for the safety of such people or to prohibit any person from entering a designated area.

Regulations under paragraph one may prescribe a time condition for the compliance of Regulations or conditions for the exercise of functions by the competent official, or authorize a competent official to designate an area and additional details, so as not to perform any act which causes unreasonable hardship to the people.

Section 10. For the benefit of promptly resolving the problems in the emergency situation area, the Prime Minister may authorize a competent official appointed as a Chief Official under section 7 paragraph four to exercise the powers to issue the Regulations under section 9 on his/her behalf. However, upon the exercise of such powers, a report shall forthwith be submitted to the Prime Minister and if the Prime Minister does not issue Regulations on the same subject matter within forty-eight hours as from the issue of such Regulations by the competent official, such Regulations shall be cease to be in force.

Section 11. In the case where an emergency situation involves terrorism, use of force, harm to life, body or property, or there are reasonable grounds to believe that there exists a severe act which affects the security of state, the safety of life or property of the state or person, and there is a necessity to resolve the problem in an efficient and timely manner, the Prime Minister, upon the approval of the Council of Ministers, shall have the power to declare that such emergency situation is a serious situation, and the provisions of section 5 and section 6 paragraph two shall apply *mutatis mutandis*.

Upon a declaration under paragraph one, in addition to powers section 9 and section 10, the Prime Minister shall also have the following powers:

- (1) to issue a Notification that a competent official shall have the power of arrest and detention over persons suspected of having a role in causing the emergency situation, or being an instigator, a propagator, a supporter of such act or concealing relevant information relating to the act which caused the emergency situation, provided that this should be done to the extent that is necessary to prevent such person from committing an act or participating in the commission of any act which may cause a serious situation or to foster cooperation in the termination of the serious situation;
- (2) to issue a Notification that a competent official shall have the power to summon any person to report to the competent official or to give an oral statement or submit any documents or evidence relating to the emergency situation;
- (3) to issue a Notification that a competent official shall have the power to seize or attach arms, goods, consumer products, chemical products or any other materials in the case where there are reasonable grounds to suspect that such objects have been used or will be used to commit or support an act which causes an emergency situation;
- (4) to issue a Notification that a competent officials shall have the power to issue a warrant for the search, removal, withdrawal or demolition of buildings, structures or obstructions as necessary for the exercise of functions in order to promptly terminate a serious situation where a delay might render the situation beyond control;
- (5) to issue a Notification that a competent official shall have the power to issue an order to inspect letters, books, printed matters, telegraphic transmissions, telephone communications or any other means of communication as well as to cancel or suspend any contact or communication in order to prevent or terminate the serious incident provided that the rules prescribed in the law on special investigation are complied with *mutatis mutandis*;
- (6) to issue a Notification the prohibition of any act or any instruction to perform an act to the extent that is necessary for maintaining the security of the state, the safety of the country or the safety of the people;
- (7) to issue a Notification that a competent official shall have the power to issue an order to prohibit any person from leaving the Kingdom where there are reasonable grounds to believe that the departure from the Kingdom will affect the security of the state or the safety of the country;
- (8) to issue a Notification that a competent official shall have the power to instruct an alien to leave the Kingdom in the case where there are reasonable grounds to believe that such person is a supporter in causing the emergency situation, provided that the law on immigration shall apply *mutatis mutandis*;
- (9) to issue a Notification that the purchase, sale, use or possession of any arms, goods, medical products, consumer products, chemical products or any equipment which may be used for causing unrest or terrorism shall be reported to or permitted by the competent official or comply with any conditions set by the Prime Minister;
- (10) to order the use of military force in order to assist administrative officials or police officers in terminating the serious situation or controlling the situation so as to promptly secure order, provided that the performance of functions by military officers shall be made pursuant to identical powers and duties of a competent official under this Emergency Decree, whereas the scope of the use of such powers and duties of the military shall be in accordance with the conditions and time condition prescribed by the Prime Minister but shall not exceed the powers under martial laws in the case where martial laws apply.

Upon the termination of the serious situation under paragraph one, the Prime Minister shall issue a Notification to annul the Notification under this section forthwith.

Section 12. In arresting and taking suspected persons into custody under section 11(1), the competent official shall apply for leave of a court of competent jurisdiction or the Criminal Court. Upon obtaining leave of the court, the competent official shall be empowered to arrest and take the suspected persons into custody for a period not exceeding seven days. The suspected persons shall be taken into custody at a designated place which is not a police station, detention centre, penal institution or prisons and shall not be treated as a convict. In case where it is necessary to continue the detention in order to remedy the emergency situation, the competent official shall apply for the leave of the court to extend such detention period by seven days at a time, provided that the total period shall not exceed thirty days. Upon the expiration of such period, if the detention is still required, the competent official shall proceed under the Criminal Procedure Code.

In proceeding under paragraph one, the competent officials shall file a report on the arrest and detention of such suspected persons for submission to the court issuing the order under paragraph one. A copy of such report shall be deposited at the

office of the competent official so that relatives of the suspected persons may access such reports for the entire duration of such detention.

The provisions on the procedures governing the issue of a warrant under the Criminal Procedure Code shall apply mutatis mutandis to the application for leave of the Court under paragraph one.

Section 13. If an object or equipment stipulated in a Notification under section 11(9) is a communication device or a part thereof, the Prime Minister may issue a Notification to implement such measure throughout the Kingdom or in any other areas not prescribed in a Declaration of Emergency Situation.

Section 14. A Regulation, Notification and order issued under section 5, section 7, section 8, section 9, section 11 and section 15 shall also be published in the Government Gazette upon coming into force.

Section 15. A competent official or a person having identical powers and duties to a competent official under this Emergency Decree shall be a competent official under the Penal Code and shall have the powers and duties of an administrative official or police officer under the Criminal Procedure Code as prescribed by the Prime Minister.

Section 16. A Regulation, Notification, order or an act under this Emergency Decree shall not be subject to the law on administrative procedures and the law on the establishment of Administrative Court and Administrative Court Procedure.

Section 17. A competent official and a person having identical powers and duties as a competent official under this Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act if such act was performed in good faith, non-discriminatory, and was not unreasonable in the circumstances or exceed the extent of necessity, but this does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.

Section 18. Any person who violates a Regulation, Notification or order issued under section 9, section 10, section 11, or section 13 shall be liable to imprisonment for a term not exceeding two years or to a fine not more than forty- thousand baht, or to both.

Section 19. The Prime Minister shall have charge and control of the execution of this Emergency Decree.

Countersigned by:

Pol. Lt. Col. Thaksin Shinawatra Prime Minister Note : Whereas the law on Public Administration in Emergency Situation has been in force for a considerable period of time, certain provisions could not be applied to achieve an expedient remedy against a wide range of situations which affect the security of State; and owing to the fact that at present there are problems pertaining to the security of the State which affect the independence and territorial integrity of the State and acts which cause public disorders in the country, endangering life or causing distress to the extent that interferes with peaceful living of the people, which cannot be resolved by an ordinary form of public administration. Hence, there is a need to enact special measures for the administration of emergency situation to maintain the security of the State and the people's safety to resume promptly to normal life. Therefore, for the purpose of maintaining national or public safety or averting public calamity, it is necessary to issue this Emergency Decree.

* Government Gazette Vol. 122, Part 58a, dated 16th July B.E. 2548 (2005).