

Summary of Constitutional Court Ruling

No. 2/2562 (2019)

Dated 27th February B.E. 2562 (2019)*

Re: Whether or not the Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), only with respect to the prescription of offence and penalties, was contrary to or inconsistent with section 3, section 26, section 28 paragraph one and section 29 paragraph four of the Constitution.

1. Summary of background and facts

Pathumwan District Court referred the objection of a defendant in a criminal case to the Constitutional Court for a ruling under section 212 of the Constitution. The defendant objected that Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), was contrary to or inconsistent with section 3 of the Constitution. The reasons stated were that the Council for Democratic Reform was a group of persons who had acquired national governing powers through a coup d'état that was not in accordance with the democratic form of government with the King as Head of State, and that the Constitution did not grant such group of persons legislative powers to enact laws to restrict rights and liberties of a person. It was also argued that there was an inconsistency with section 26 since the Announcement contained provisions contrary to the rule of law and constituted a legal measure to disproportionately restrict rights and liberties in the life and body of a person under section 28 paragraph one of the Constitution, and compels a person to self-incriminate, which was prohibited under section 29 paragraph four of the Constitution. Pathumwan District Court therefore ordered the referral of the defendant's objection to the Constitutional Court for a ruling under section 212 of the Constitution.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court had the competence to accept the defendant's objection for a ruling under section 212 of the Constitution.

After deliberations, the Constitutional Court found as follows. This was a case where Pathumwan District Court referred a defendant's objection to the Constitutional Court for a ruling under section 212 that the Announcement of the Council for

* Published in the Government Gazette Vol. 136, Part 37a, dated 22nd March B.E. 2562 (2019).

Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice was contrary to or inconsistent with section 3, section 26, section 28 paragraph one and section 29 paragraph four of the Constitution. Such provision of law was to be applied by Pathumwan District Court to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision of law. The case was therefore in accordance with the rules under section 212 paragraph one of the Constitution in conjunction with section 41 paragraph three and section 50 of the Organic Act on Constitutional Court Procedures B.E. 2561 (2018). The Constitutional Court ordered the acceptance of this case for consideration.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court were whether or not the Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), only with respect to the prescription of offences and criminal penalties, was contrary to or inconsistent with section 3, section 26, section 28 paragraph one and section 29 paragraph four of the Constitution.

After deliberations, the Constitutional Court found as follows. Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), paragraph one stated “whereas it is expedient to prescribe a duty for suspects in criminal cases to provide fingerprints pursuant to orders of officers in the criminal justice process to ensure efficiency in the prevention and combat of legal infringements, the Council for Democratic Reform hereby announces as follows” and paragraph two stated “a person alleged to have committed a criminal wrongdoing is under a duty to provide a fingerprint, handprint or footprint pursuant to the order of a state attorney, prosecutor or an inquiry officer; any violator shall be held to have committed the offence of wrongdoing relating to justice and liable to a term of imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both.” The purpose behind these provisions were to promote the efficient prevention and combat of legal infringements by prescribing a duty on a suspect or person alleged of having committed a criminal wrongdoing to provide a fingerprint, handprint or footprint as identification pursuant to an order of an officer in the criminal justice process, namely a state attorney, prosecutor or inquiry officer. Such officer would apply the collected fingerprint, handprint or footprint to search for criminal history for the benefit of investigations and inquiries, as well as to collect evidence in the event of a crime occurring.

Upon consideration of such Announcement, with respect to the prescription of offence and criminal penalty under paragraph two, which was the issue in this case,

the prescription of penalty on a suspect in the event of failure to provide a fingerprint, handprint or foot print pursuant to an order of a state attorney, prosecutor or inquiry officer, by stipulating that such violator had committed a justice related offence and was liable to a term of imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both, constituted a restriction of right and liberty of a suspect with the purpose of promoting efficiency in the criminal justice process to prevent and combat legal infringements that would affect state security and public order. This was a necessary measure at the time when the public was in a period of coup d'état, as stated in the preamble to the Announcement. However, during normal times, the ways of lives of the people were different from such a situation. In particular, subsequent to the promulgation of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) on 6th April B.E. 2560 (2017), the Constitution recognised the people's rights and liberties. The rights and liberties of a person in life and body were recognised under section 28 paragraph one. In a criminal case, a person could not be compelled to self-incriminate pursuant to section 29 paragraph four. These provisions protected the person's fundamental rights in the justice process. Any restriction of right and liberty of a person recognised by the Constitution should be in accordance with the principle of right and liberty protection provided under section 26. The performance of duties by an organ exercising state powers should also be in accordance with the Constitution, laws and rule of law pursuant to section 3 paragraph two. Any action in violation or non-compliance with such Announcement did not constitute a serious act or effect on public order to the extent of requiring the enactment of an offence punishable by a criminal penalty of an imprisonment term of up to six months according to the principle of harm, being the parameters for setting offences carrying criminal penalties. In addition, it was found that there were other legal measures concurrently in force which empowered officers in the criminal justice process to carry out enforcement in line with the underlying intent. Namely, section 368 paragraph one of the Penal Code provided a measure for penalising a person who violated an order of an officer without reasonable cause or excuse, carrying a penalty of an imprisonment term not exceeding ten days or a fine not exceeding five thousand baht, or both, which was a petty offence appropriate to such violation of officer's order. The prescription of a duty on a suspect in a criminal case to provide a fingerprint, handprint or footprint pursuant to an order of an officer in the justice process also constituted a restriction of right and liberty in the body of a person for the benefit of investigations to find a wrongdoer in a criminal case. However, the provision of a fingerprint was a fundamental right of an individual, no different from the provision of a signature. Even if such person was a suspect or a defendant, so long as no judgment had been rendered such person was deemed as innocent. Such right was protected

even where the law prescribed a duty in the justice process, but a criminal offence could not be stipulated merely for the action of refusal to provide a fingerprint, handprint or footprint. The state could employ an appropriate procedure to compel a suspect who had refused to comply with the order of a competent officer which could cause a burden or liability only to the extent necessary and proportionate to the case. This principle was recognised by law, as stipulated under section 131/1 of the Criminal Procedure Code. The provision stated that where it was necessary to collect a sample of blood, flesh, skin, head or body hair, saliva, urine, faeces, bodily fluid, genetic material or body part of a suspect, if the suspect refused to comply without reasonable cause, the law provided a solution by stipulating a presumption of facts to be found to the detriment of the suspect, assuming that test results had been performed. Such legal measure in force was appropriate. The Announcement thus constituted an unreasonable restriction of rights and liberties in life and body of a person, not in accordance with the level of necessity and disproportionate or presented an imbalance between public interest or common interests received compared to the deprivation of the people's rights and liberties due to such law. Also, there were alternative legal measures already available. The Announcement was therefore inconsistent with the rule of law under section 3 paragraph two of the Constitution. Although reasons of necessity for the restriction of rights and liberties had already been specified, the mandatory restriction of rights and liberties in life and body of a person was inconsistent with section 28 paragraph one of the Constitution. In addition, the stipulation of conditions and burden on innocent people accused of a wrongdoing was unnecessary, even if ultimately such persons were not found guilty of the accusation. Furthermore, although compliance by a person accused of committing a criminal wrongdoing to provide a fingerprint, handprint or footprint pursuant to an order of a state attorney, prosecutor or inquiry officer was not difficult, such duty could become a channel for innocent people to be subject to the exercise of state powers by an official without reasonable cause. It was apparent that such restriction of rights and liberties did not confer benefits to state security or maintenance of public order in the current situation. Furthermore, the need to maintain public order had changed and the measure was no longer suitable to the prevailing ways of lives. Hence, the Announcement constituted a restriction of rights and liberties recognised by the Constitution which exceeded the extent of necessity, prejudiced human dignity and inconsistent with the rule of law, contrary to section 3 paragraph two and section 26 paragraph one in conjunction with section 28 paragraph one of the Constitution. Upon a ruling that such provision of law was contrary to or inconsistent with the Constitution, the provision was no longer enforceable under section 5 of the Constitution. Thus, a

ruling that section such provision of law was contrary to or inconsistent with section 29 paragraph four of the Constitution was no longer needed.

4. Ruling of the Constitutional Court

The Constitutional Court held that the Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), only with respect to the prescription of offences and criminal penalties, was contrary to or inconsistent with section 3 paragraph two, section 26 paragraph one and section 28 paragraph one of the Constitution.
