

**(Unofficial Translation)**

**Judgment of the Civil Court on the Legality of the Issuance of Emergency Decree**

On 19 February at 15:30 hours, at courtroom 712, the Civil Court, Ratchadaphisek Road, the Court delivered its judgment in Black Case No. 275/2557 where Mr. Thavorn Seniam, core leader of the PDRC, was the plaintiff filing a complaint against Ms. Yingluck Shinawatra, caretaker Prime Minister and Minister of Defence; Police Captain Chalerm Yubamrung, caretaker Minister of Labour and the Director of Centre for Maintaining Peace and Order (CMPO); and Pol. Gen. Adul Saengsingkaew, National Police Chief and Deputy Director of the CMPO, as defendants nos. 1 – 3, for violation as a result of declaring a state of emergency in Bangkok areas, Nonthaburi, and some districts in Pathumtani and Samut Prakarn on 21 January 2014, effective from 22 January; and for issuing regulations under Sections 9 and 11 of the Emergency Decree on Public Administration in State of Emergency (2005) on 23 January 2014, which were illegitimate and not yet necessary.

As the aforementioned declaration and regulations were aimed at restricting the freedom of assembly of the plaintiff, and as defendant no. 1 had already announced the dissolution of Parliament on 9 December 2013, and could remain in office only as caretaker, and also in holding the general elections the defendant, as member of the Pheu Thai party, received an unfair advantage, the plaintiff asked the court to revoke the Emergency Decree and to prohibit the government from using force to disperse the protest.

Moreover, at the end of the complaint, the plaintiff asked the court to issue an order prohibiting the enforcement of the Decree and relevant regulations on the following twelve points:

1. To prohibit the three defendants from using force, or from authorising the use of force or weapons, to disperse the protest held by the plaintiff and the public;
2. To prohibit the three defendants from ordering seizure of goods, consumer goods, chemical substances or other materials used in the protest organised by the plaintiff;
3. To prohibit the three defendants from issuing an order to search, remove, or demolish buildings, structures or barriers put up by the plaintiff;
4. To prohibit the three defendants from issuing an order requesting all sales, use or possession of goods, medical supplies, consumer goods which might be used in the protest held by the plaintiff, to be reported or given permission from relevant officers;

5. To prohibit the three defendants from banning any act that could block roads and traffic, or any act that could disrupt the normal use of public roads, in all the areas used by the plaintiff to organise the protest;
6. To prohibit the three defendants from banning gatherings of five persons or more;
7. To prohibit the three defendants from banning the use of roads or vehicles, or from setting conditions on the use of roads for the purposes of the protest;
8. To prohibit the three defendants from banning the use of buildings by the plaintiff, or banning the plaintiff from entering or residing in any place, or from entering into any areas;
9. To prohibit the three defendants from ordering the plaintiff and the protesters to leave the protest sites, or from banning entry into those areas;
10. To prohibit the three defendants from using force, or authorising the use of force by other officers, to disrupt the protest organised by the defendants
11. To allow the plaintiff and the general public to use or remain in the areas where the Decree is in force;
12. To allow the plaintiff to use roads or vehicles, or to park vehicles in the areas where the Decree is in force.

The defendants, meanwhile, argued that the plaintiff and others held prolonged protests which included occupying the government complex, organising rallies which blocked 14 roads in Bangkok, cutting off electricity and water supplies, causing inconvenience for others, and organizing security arrangements to replace the police, which are in violation of the law. Before the Emergency Decree was declared, violence had occurred at the Thai-Japan Youth Centre on 26 December 2013 and other areas. Meanwhile, giant firecrackers and explosive devices (so-called ping pong bombs) were used in the protests, causing injuries and deaths. Although the responsible parties cannot yet be established, there have been provocations of violence which potentially led to clashes during the protest, or clashes between the police and protestors. Such is not a peaceful protest. Thus, the executive branch, responsible for the restoration of peace and order to the country as soon as possible, had to declare a state of emergency on 21 January.

Deliberation by the Court: After having considered the complaint, submissions and witness statements, and evidence on both sides, the Court is of the opinion that the

plaintiff has the right to submit a complaint since the issuance of some regulation in questions have affected the plaintiff's rights as enshrined in the Constitution. With regard to the argument of defendants nos. 2 and 3 that the Court does not have jurisdiction over the matter, the Court is of the opinion that, according to Judgment No. 9/2553 of the Constitutional Court, the exercise of power to issue declarations and regulations pursuant to the Emergency Decree is not within the usual public administration procedure. Therefore, the Civil Court, a court of justice, has jurisdiction over the matter. Regarding the petition by defendants nos. 2 and 3 to dismiss the case against them on grounds that they were not the ones issuing the declaration and regulations in question, but merely operational officers; the Court is of the opinion that, since the Prime Minister issued the Emergency Decree and set up the CMPO, granting powers to defendant no. 2 as Director, and defendant no. 3 as Deputy Director, if the issuance of declaration and regulations are found to be in violation of the plaintiff's rights, defendants nos. 2 and 3 must also be held accountable.

Upon questioning the witnesses, the plaintiff called three witnesses, namely, Mr. Atthawit Suwanpakdee, former member of the Democrat Party; Mr. Abhisit Vejjajiva, former Prime Minister; and Mr. Tawin Pleansri, former Secretary General of National Security Council. All three witnesses stated, similarly, that the protest held by the plaintiff and the protesters was based on three justifications:

1. The government proposed the draft Amnesty Bill, in which defendant no. 1 likely had a conflict of interest, since some content related to financial cases had been inserted. Defendant no. 1 had had over 982 million baht in assets seized following the ruling by the Supreme Court's Criminal Division for Persons Holding Political Positions to seize 46 billion baht worth of assets from Pol. Lt. Col. Thaksin Shinawatra, former Prime Minister.
2. The proposal to amend the law on the origin of senators is a violation of the Constitution.
3. The amendment to Section 190 of the Constitution on the making of international treaties violated Section 68 of the Constitution. After defendant no. 1 called for the dissolution of Parliament on 9 December 2013, attempts were made to seek loans worth 130 billion baht to resolve the problems concerning the rice pledging scheme. The Office of the National Anti-Corruption Commission (NACC) has collected evidence and brought formal charges against defendant no. 1 for breach of duty in violation of Section 157 of the Criminal Code.

The protest held by the plaintiff and others is peaceful and unarmed. The Constitutional Court has previously ruled on this matter as evidenced from the case in which Mr. Prompong Nopparit, electoral candidate from Pheu Thai Party, submitted a petition asking the Court to rule that the protest organised by Mr. Suthep Thaugsuban, Secretary-General of the PDRC, and others since 31 October 2013 was an act to overthrow the government which violated Section 68 of the Constitution. The Constitutional Court has ruled in this case that it was a peaceful protest, the right to which is enshrined in the Constitution. Therefore, it was not a violation of Section 68.

Mr. Abhisit further explained that during the protest staged by the red-shirts, violence erupted near Ramkhamhaeng University. The executive branch, however, turned a blind eye to the incident and did not proceed with an investigation to find those responsible. The spokesperson of the CMPO argued that the incident was likely caused by a third party or the opposition group. Thus, the declarations and regulations issued pursuant to the Emergency Decree was not aimed at controlling or resolving the situation, but used as a tool to restrict the plaintiff's exercise of freedom of assembly in their political movement.

Although the Executive has the power to issue declarations and regulations under the Emergency Decree, justice and equality must be observed in the process for the purpose of the law to be fulfilled. Any act of the Executive must comply with Section 3 paragraph 2 of the Constitution. This clause stipulates that, in carrying out their duties, the Parliament and the Cabinet, the courts and other institutions under the Constitution must adhere to the rule of law - a principle vital to human dignity and equality according to Section 4 which protects the rights, freedom and equality of the people.

The facts gathered from witness statements suggest that the Constitutional Court has previously ruled that the protest organised by the plaintiff and other protesters is peaceful and unarmed. The rights and freedom of the plaintiff and other protesters, thus, must be protected under the Constitution. Declarations and regulations which prohibit entry into buildings and areas, or prohibit the use of vehicles and roads, including those which require the protesters to leave the protest site, affect and violate the rights of the plaintiff and other protesters under the Constitution which is the highest law of the land. Therefore, those declarations and regulations have no effect on the plaintiff and other protesters.

Since the plaintiff and other protesters are holding a peaceful and unarmed demonstration, as the Constitutional Court has ruled, defendant no. 1 cannot use force or weapons to disperse the protest. As it was alleged that there was an order to bring

police officers into Bangkok to break up the protest, the Court saw it fit to deliver this judgment to protect the rights and freedom of peaceful assembly.

The Court hereby rules that: the three defendants are prohibited from enforcing the Emergency Decree and from issuing declarations and regulations pursuant thereto. Those declarations and regulations are not to be enforceable against the plaintiff and protesters from 21 January 2014 onwards.

In addition, the three defendants are prohibited from the following:

1. Using force, or authorising the use of force and weapons to break up a peaceful protest organised by the plaintiff and other protesters, in accordance with Section 63, paragraph 1, of the Constitution of Thailand B.E. 2550;
2. Ordering seizure of goods, consumer goods, chemical substances or other materials which have been used, or will be used, for any act, or to support any act, by the plaintiff and the people;
3. Issuing orders to search, remove or demolish buildings, structures, or barriers set up by the plaintiff and the people;
4. Prohibiting the sales, use, or possession of medical supplies, consumer goods, chemical substances or any other material or equipment which could be used by the plaintiff and the protesters;
5. Banning any act that amounts to blocking traffic and roads, any act that causes disruption to the normal use of roads in all areas that the plaintiff and the people occupy for the purposes of the protest;
6. Prohibiting public gatherings of the plaintiff or of five or more people in certain areas;
7. Prohibiting the use of roads or vehicles, or setting restrictions on the use of roads or vehicles by the plaintiff and the people for the purposes of the protest;
8. Prohibiting the use of buildings, entry into or residing within any building or place; or prohibiting entry into any area by the plaintiff and the people;
9. Ordering the evacuation of the plaintiff and the people out of the protest sites; or prohibiting the plaintiff and other protesters from entering the protest sites.

However, two out of five judges gave dissenting opinions, stating that the Court should revoke all declarations and regulations issued under the Emergency Decree of 21 January 2014. They were of the opinion that those regulations were aimed to be enforced

only against certain groups, namely the plaintiff and the protesters. With regard to the protest, the Constitutional Court had previously held that demonstrations by the plaintiff and the protesters against the draft Amnesty Bill was peaceful and unarmed. In addition, it stemmed from the public's lack of confidence in the country's administration by the government, and was the exercise of freedom according to the Constitution. The issuance of those regulations, therefore, curtailed the rights of the plaintiff and the protesters under the law.