

Recommendation No. 1/2561: Recommendations on measures or guidelines for promotion and protection of human rights, including improvement of laws, in case of sale with the right of redemption according to Civil and Commercial Code

The National Human Rights Commission of Thailand has recommendations on measures or guidelines for promotion and protection of human rights, including improvement of laws, rules, regulations or orders in order to make them consistent with human rights principles according to Section 247 (3) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and Section 26 (3) of the National Human Rights Commission Act B.E. 2560 (2017) on recommendations on measures or guidelines for promotion and protection of human rights, including improvement of law in case of sale with the right of redemption according to the Civil and Commercial Code with important content as follows:

1. Background

The National Human Rights Commission of Thailand received petitions from fourteen complainants complaining on behalf of the National Council for Debtors Rights Reform claiming that they had not been treated fairly in interest setting and compulsory execution by providing facts that indebtedness of the people was caused by lack of knowledge and understanding about financial and debt management, unfair contract, proceedings and compulsory execution, lack of access to formal financial sources, increasing costs of living and not having enough income to cover expenses in the household, borrowing of money from the informal sector, collection of interests higher than the rates determined by law, sale with the right of redemption of land and house, and when performance could not be done, land and house would be seized. The National Human Rights Commission of Thailand took these petitions into consideration and saw that indebtedness problem in the people sector that led to the problem of sale with the right of redemption according to the Civil and Commercial Code may affect the liberty to engage in an occupation of farmers because land and house were important factors for livelihood, and thus came up with recommendations on measures or guidelines for promotion and protection of human rights, including improvement of any laws, rules, regulations or orders to make them consistent with human rights principle according to Section 247 (3) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and Section 15 of the National Human Rights Commission Act B.E. 2542 (1999) which was in effect at that time.

2. Important contents of the case

The National Human Rights Commission of Thailand took the petitions into consideration and saw that Section 73 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) provides a duty of the state that “the state should provide measures or mechanisms to enable farmers to efficiently carry out agriculture”. As farmers faced problems from being unable to get access to sources of funds which were often limited to entrepreneurs who had high capacity to pay debts, they therefore needed to depend on channels that were easy and fast, such as borrowing money from the informal sector, giving unsecured personal loan, resulting in debt payment was being unfairly pursued. Using sales with the right of redemption contract instead of mortgage contract caused continuous problem that was when a sale on redemption contract was made, the buyers on redemption often set other remunerations or set fees for property

redemption higher than interests or set a special agreement that sellers on redemption must pay buyers on redemption at a rate higher than appropriate or avoidance of property redemption or property redemption beyond the defined period of time must pay fees equal to ordinary sale, resulting in most sellers on redemption of land suffered. To achieve the intention of the Constitution according to those provisions, farmers must have land and incomes enough for living with dignity. Moreover, many farmers who were debtors from money borrowing and registered sale on redemption of a property with creditor agreeing to period of time for redemption of land that had been sold on redemption within six months or one year from the date of sale on redemption registration which was a short period of time comparing with the amount of money agreed to borrow in contract. When sellers could not pay back, sale on redemption law resulted in sellers lost their right for redemption of land sold on redemption; the sale on redemption sellers were deprived of right over land for residence or land for agriculture. Nevertheless, even if Book 3, Title 1 Buy and Sell, Chapter 4 Buy and Sell of Specific Thing, Part 1 Sale with the right of Redemption of Section 496 of the Civil and Commercial Code provides that contract could be made to extend period of time for redemption, the contract party have to make an agreement. Sellers on redemption who have no bargaining power may not have the contract period extended before the period of time in the sale on redemption contract expires. Also as the contract party agreed on too short period of time for property redemption comparing with the amount of money, even if the act is legal, it may not be consistent with the principle of reasonability because the buyers on redemption have higher bargaining power by using law as a tool to make sellers on redemption unwillingly agree on matters, such as period of time for redemption for example. This resulted in sellers on redemption easily losing their land. The Civil and Commercial Code on the part about sale on redemption that is in effect at present, therefore, is still unsuitable for current situation and has given a chance for the advantaged party to use this law to gain benefits from debtors. The National Human Rights Commission of Thailand then sees as appropriate to come up with recommendations on measures or guidelines for promotion and protection of human rights, including improvement of laws on sale on redemption according to the Civil and Commercial Code and submitted them to the Cabinet as follows:

3. Recommendations on measures or guidelines for promotion and protection of human rights

(1) The Cabinet and Ministry of Justice should consider designing measures or mechanisms to provide assistance by having state's financial institutes to help debtors who are sellers on redemption in case that they could not find property for redemption of property that they sold on redemption within the fixed period of time by becoming subrogee of the creditor who bought on redemption at the real price of sale on redemption not higher than the market price.

(2) The Cabinet, Ministry of Justice and Land Department should set up a system for checking sale on consignment contract in order to prevent a contract party taking advantage of the other party.

4. Recommendations on improvement of law

The Cabinet, Ministry of Justice and the Court of Justice Office should together consider improve Book 3, Title 1 Buy and Sell, Chapter 4 Buy and Sell of Specific

Thing, Part 1 Sale with the right of redemption of Section 496 of the Civil and Commercial Code in order to make this law updated appropriate to present situation and fair for debtors / sellers on redemption who have no bargaining power with creditor / buyers on redemption, especially in setting a period of time for redemption of the sale on redemption property and in setting appropriate period of time in order that the sellers on redemption could bring money or property to redeem of the sale with the right of redemption property, such as setting the period of time for redemption to a minimum of one year or according to farmers' harvesting season.