

Summary of Constitutional Court Ruling* No. 2/2556 (2013)

Dated 27th February B.E. 2556 (2013)

Re: Whether or not section 158 of the Labour Protection Act B.E. 2541 (1998) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

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1. Summary of background and facts

The Bangkok South Criminal Court referred the objection of a defendant (Mr. Phillip Newton) in Black Case No. 4531/2554 to the Constitutional Court for a ruling under section 211 of the Constitution. The objection stated that section 158 of the Labour Protection Act B.E. 2541 (1998) provided that in the event of an offence committed by a juristic person, any person who ordered or neglected order, or acted or omitted the duty of a managing director or person responsible for the operations of such juristic person, should also be liable to the penalties applicable to such an offence. The prosecution was not required to prove the person's participation in the commission of the offence. It was argued that the provision was either contrary to or inconsistent with section 39 paragraph two of the Constitution which aimed to safeguard the rights of a suspect or a defendant in a criminal proceeding by presuming his or her innocence until a final conviction. It was contended further that the provision was contrary to or inconsistent with the rule of law, stating that the prosecution had the burden of proving all the elements of the defendant's wrongdoing. Hence, the application stated that section 158 of the Labour Protection Act B.E. 2541 (1998) was contrary to or inconsistent with section 39 paragraph two of the Constitution, analogous to the precedent set by Constitutional Court Ruling No. 12/2555 (2012).

The Bangkok South Criminal Court found that the defendant's objection was in accordance with section 211 of the Constitution. The opinion was therefore transmitted through official channels to the Constitutional Court for a ruling.

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit the application for a ruling under section 211 paragraph one of the Constitution.

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The Constitutional Court found that the application raised an objection that section 158 of the Labour Protection Act B.E. 2541 (1998) was contrary to or inconsistent with section 39 paragraph two of the Constitution. The Bangkok South Criminal Court was going to apply the provision of law 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 section 211 paragraph one of the Constitution in conjunction with clause 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore admitted the application for a ruling.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 158 of the Labour Protection Act B.E. 2541 (1998) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

The Constitutional Court found as follows. Section 158 of the Labour Protection Act B.E. 2541 (1998) was a provision of law which laid down a presumption that any conduct or action of a person under a duty or responsibility relating to the commission of wrongdoing by a juristic person should be liable for the outcome of his or her actions. This provision was not a presumption of guilt of a managing director or a person under the duty pertaining to the operations of a juristic person from the commencement of proceedings. The prosecution still had the burden of proving an act or omission of a duty by such a person, that there was an order or silence, or action or omission of a mandatory duty, and that an offence was committed under the Labour Protection Act B.E. 2541 (1998). This provision was consistent with the general rules of criminal liability which stated that a wrongdoer should be liable for the outcome of an act or omission when there was a provision of law stipulating the offence, and where the act or omission satisfied all the elements of the offence. Furthermore, when a juristic person is alleged of a wrongdoing, the prosecution had to prove to the court beyond reasonable doubt that the wrongdoing was caused by an order or silence or action or omission of the managing director or person responsible for the operations of such juristic person. The prosecution was also under a burden of proof as provided under section 227 of the Criminal Procedure Code. The Court could convict a defendant only where there was certainty of commission of a wrongdoing as prescribed by law. During court trial or other agencies in the judicial process, the managing director or a person responsible for the operations of the juristic person would be regarded as innocent until a final conviction of a court. Therefore, section 158 of the Labour Protection Act B.E. 2541 (1998) was neither contrary to nor inconsistent with section 39 paragraph two of the Constitution. This case was dissimilar from section 54 of the Direct Sales and Marketing Act B.E. 2545 (2002) considered in Constitutional Court Ruling No. 12/2555 (2012).

4. Ruling of the Constitutional Court

The Constitutional Court held unanimously that section 158 of the Labour Protection Act B.E. 2541 (1998) was neither contrary to nor inconsistent with section 39 paragraph two of the Constitution.
