

Summary of Constitutional Court Ruling*

No. 5/2556 (2013)

Dated 16th May B.E. 2556 (2013)

Re: The Ombudsman referred a matter to the Constitutional Court for a ruling under section 245(1) of the Constitution on whether or not section 74 of the Copyright Act B.E. 2537 (1994) raised a constitutionality question pursuant to section 39 paragraph two of the Constitution.

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1. Summary of background and facts

The Ombudsman, applicant, received a complaint from Mr. Wisit Laohapoonrungsee, Chairman and Chief Executive Officer, Mrs. Niphapat Romerattanaphun and Mr. Thun Thiansuwan, executive directors of Areeya Property Public Company Limited, stating that they had been subject to a search, seizure and confiscation of computers, compact discs or other relevant objects installing or storing computer programmes that infringed copyrights of literary works; and the search, seizure and confiscation of evidence were recorded, and the results of the search of the company's computers were reported. Thereafter, a copyright infringement petition was filed and summons of suspects were issued by the Economic Crime Suppression Division and served on the company and all company's directors as suspects. In this regard, the complainants were of the opinion that section 74 of the Copyright Act B.E. 2537 (1994), stipulating that "in the case where a juristic person commits an offence under this Act, all directors or managers of such juristic person shall be deemed as participators in the juristic person's wrongdoing, unless it can be proven the juristic person's action was committed without one's knowledge or acquiescence," was a provision inconsistent with the rule of law and contrary to or inconsistent with section 39 paragraph two of the Constitution. The applicant was requested to submit this matter to the Constitutional Court for a ruling under section 245(1) of the Constitution.

The applicant was of the opinion that section 74 of the Copyright Act B.E. 2537 (1994) raised a constitutionality question under section 39 paragraph two of the Constitution. The matter, together with an opinion, was therefore submitted to the Constitutional Court for a ruling.

* Published in the Government Gazette Vol. 130, Part 75a, dated 3rd September B.E. 2556 (2013).

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 245(1) of the Constitution.

The Constitutional Court found that this application was a case where the Ombudsman referred a matter together with an opinion to the Constitutional Court for a ruling on whether or not section 74 of the Copyright Act B.E. 2537 (1994) raised a constitutionality question under section 39 paragraph two of the Constitution. The case was therefore in accordance with section 245(1) of the Constitution in conjunction with clause 17(18) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Hence, the Constitutional Court had the competence to admit his application for a ruling.

3. The issue considered by the Constitutional Court

The Constitutional Court found that section 74 of the Copyright Act B.E. 2537 (1994) was intended to enable the initiation of legal proceedings against all directors and managers of a juristic person. Such persons were deemed as participators in a juristic person's wrongdoing. This provision was a legal presumption which resulted in a presumption of the defendant's guilt. The prosecution did not have to prove any action or intent of the defendant. The wrongdoing committed by another person was applied as a condition for presumption of the defendant's guilt and criminal liability. The presumption that if a wrongdoer was a juristic person, all directors or managers of the juristic person shall be jointly liable with such infringing juristic person, unless it could be proven that one did not conspire with the so-called juristic person's wrongdoing. A plaintiff was not required to prove that the actions or intent of all directors or managers was related to the juristic person's wrongdoing. The plaintiff only had to prove the juristic person's offence under this Act and that the defendants were directors or managers of such juristic person. Hence, there was a presumption that all directors or managers of such juristic person had also participated in the juristic person's wrongdoing. As a consequence, the burden of proving one's innocence was shifted to all directors or managers of the juristic person. This provision of law was thus a presumption of guilt of a suspect or defendant in criminal proceedings on the basis of a person's status. This was not a presumption of facts constituting certain elements of an offence after the plaintiff had proven certain acts relating to the offence alleged to have been committed by the defendant. Moreover, the provision was also inconsistent with the rule of law, where the plaintiff in criminal cases had the burden of proving all the elements of the defendant's commission of an offence. Furthermore, such provision of law brought a person into criminal proceedings as a suspect or defendant, causing a restriction of rights and liberties of such person, such as by arrest or detention, without reasonable preliminary evidence where such person acted or had any intent relating to the alleged offence. Such provision of law, with respect to the presumption of criminal wrongdoing of a suspect or defendant without any finding of any commission or intent of the suspect or defendant in relation to such an offence, was therefore inconsistent with the rule of law and contrary to or inconsistent with section 39 paragraph two of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court, by a majority of 6 to 3, held that section 74 of the Copyright Act B.E. 2537 (1994), only with respect to the presumption that all directors or managers of a juristic person had participated in the juristic person's offence without a finding of any connection with the commission of such juristic person's commission of an offence, was unconstitutional due to the provision being contrary to or inconsistent with section 39 paragraph two of the Constitution. The provision was therefore unenforceable under section 6 of the Constitution.
