

Summary of Constitutional Court Ruling* No. 11/2556 (2013)

Dated 31st July B.E. 2556 (2013)

Re: Whether or not section 28/4 of the Entertainment Place Act B.E. 2509 (1966) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

.....

1. Summary of background and facts

The Court of Appeal, Region V referred an opinion to the Constitutional Court for a ruling under section 211 of the Constitution. The facts in the application and supporting documents could be summarized as follows.

The Supreme Court remanded a case to the Court of Appeal, Region V for an appeal decision on whether a defendant had committed an alleged offence. It was found that the defendant was a person under section 28/4 of the Entertainment Place Act B.E. 2509 (1966), who was deemed to be an offender together with a juristic person having committed an offence. The provisions in the section stipulated that in the event that an offence under this Act was committed by a juristic person, the director, manager or any person responsible for the operations of the juristic person shall also be liable to the penalties provided for such an offence unless it could be proven that one did not have any involvement in the commission of offence by the juristic person. The case was analogous to Constitutional Court Ruling No. 12/2555 (2012), which held that such a provision was inconsistent with section 39 paragraph two of the Constitution. The Court of Appeal Region V found that the plaintiff in a criminal case had the burden of proving beyond any doubt that a defendant had committed all elements of an offence. The opinion was submitted through official channels to the Constitutional Court for a ruling under section 211 of the Constitution on whether or not section 28/4 of the Entertainment Place Act B.E. 2509 (1966) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

2. Preliminary issue

On the preliminary issue of whether or not the Constitutional Court had the competence to admit this application for a ruling under section 211 paragraph one of the Constitution, the Constitutional Court found as follows. Under this application, the Court of Appeal, Region V was going to apply section 28/4 of the Entertainment Place Act B.E. 2509

* Published in the Government Gazette Vol. 130, Part 104a, dated 7th November B.E. 2556 (2013).

(1966) to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision. The case was 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 ordered the admittance of this application for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 28/4 of the Entertainment Place Act B.E. 2509 (1966) was contrary to or inconsistent with section 39 paragraph two of the Constitution.

The Constitutional Court found as follows. Section 28/4 of the Entertainment Place Act B.E. 2509 (1966) provided a legal presumption which resulted in a presumption of the defendant's criminal wrongdoing without the plaintiff's proof of any action or intent of the defendant. The wrongdoing of another person was applied as a prerequisite for the resumption of the defendant's guilt and criminal liability. The plaintiff merely shall prove that the juristic person had committed an offence under this Act and that the defendant was a director, manager or any person responsible for the operations of the juristic person. Thus, there was a presumption that the director, manager or any person responsible for the operations of the juristic person conspired with the juristic person, thereby shifting the burden of proving innocence to the director, manager or all persons responsible for the operations of the juristic person. Such section therefore presumed that an offence had been committed by a suspect and defendant in a criminal case by virtue of the person's status. The provision did not presume facts constituting certain elements of the offence after the plaintiff's proof of certain actions relating to the offence pursuant to the allegations against the defendant. The presumption was inconsistent with the rule of law which stated that the plaintiff in a criminal case had the burden of proving a defendant's wrongdoing with respect to all elements of the offence. Moreover, the provisions in such section also drew a person into the criminal justice process as a suspect or defendant, potentially imposing restrictions on such person's rights and liberties, e.g. by arrest or detention without reasonable preliminary evidence of any action or intent relating to the alleged person's wrongdoing. Section 28/4 of the Entertainment Place Act B.E. 2509 (1966) in regard to the presumption of criminal offence of the suspect or defendant without a finding of any action or intent of the suspect or defendant in relation to the offence was therefore inconsistent with the rule of law and contrary to section 39 paragraph two in conjunction with section 3 paragraph two of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 28/4 of the Entertainment Place Act B.E. 2509 (1966) with regard to the presumption that a director, manager or any person responsible for the operations of a juristic person was also liable to the penalties provided

for such offences without a finding of any action or intent in relation to the offence committed by the juristic person, was a provision that was contrary to or inconsistent with section 39 paragraph two in conjunction with section 3 paragraph two of the Constitution. The provision was invalid under section 6 of the Constitution.
