

# **Summary of Constitutional Court Ruling\* No. 19-20/2556 (2013)**

**Dated 18<sup>th</sup> December B.E. 2556 (2013)**

**Re: Whether or not section 72/5 of the Fertilizer Act B.E. 2518 (1975) was contrary to or inconsistent with section 39 paragraph two, section 40(5) and section 30 of the Constitution.**

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## **1. Summary of background and facts**

The Sa Kaeo Provincial Court and the Min Buri Provincial Court referred the objections of defendants in criminal cases to the Constitutional Court for a ruling under section 211 of the Constitution in a total of two applications. The defendants in both applications stated that section 72/5 of the Fertilizer Act B.E. 2518 (1975), of which provision to be applied by the court to those cases, provided a legal presumption which resulted in a presumption of the defendants' guilt. The plaintiffs were not required to prove any act or intent of the defendants from the outset. The provisions relied on the wrongdoing of another person as a basis for a presumption of the defendants' wrongdoing and criminal liability. The presumption stated that where the wrongdoer was a juristic person, the managing director, managing partner, juristic person's authorised officer or any person responsible for the operations of the juristic person shall be jointly liable with the juristic person committing the offence, unless there was proof that one did not have any involvement in the wrongdoing of such juristic person. The applications further argued that this presumption was inconsistent with the principle under the rule of law, which stated that the plaintiff in a criminal case had the burden of proving the commission of wrongdoing of a defendant with respect to all elements of the offence. The applicants therefore motioned for a referral of the matter to the Constitutional court for a ruling under section 211 of the Constitution on whether or not section 72/5 of the Fertilizer Act B.E. 2518 (1975) was contrary to or inconsistent with section 39 paragraph two, section 40(5) and section 30 of the Constitution.

## **2. Preliminary issue**

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

The Constitutional Court found as follows. Both applications raised an objection on whether or not section 72/5 of the Fertilizer Act B.E. 2518 (1975) was contrary to or

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inconsistent with section 39 paragraph two, section 40(5) and section 30 of the Constitution. The Sa Kaeo Provincial Court and the Min Buri Provincial Court were going to apply such provisions of law to the cases, and there had not yet been a ruling of the Constitutional Court in relation to such provisions. 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 had the competence to admit both applications for consideration.

### **3. The issues considered by the Constitutional Court**

The issues considered by the Constitutional Court were whether or not section 72/5 of the Fertilizer Act B.E. 2518 (1975) was contrary to or inconsistent with section 39 paragraph two, section 40(5) and section 30 of the Constitution.

The Constitutional Court found as follows. Section 72/5 of the Fertilizer Act B.E. 2518 (1975) provided a legal presumption which resulted in the presumption of criminal wrongdoing by a defendant. The plaintiff was not required to prove from the outset any act or intent of a defendant who was a managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of the juristic person, which showed involvement in the commission of the wrongdoing by the juristic person. The wrongdoing of another person was relied upon as a basis for a presumption of the defendant's wrongdoing and criminal liability. The plaintiff only had to prove that the juristic person had committed an offence under this Act and that the defendant was a managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of such juristic person, even if there was no direct connection to the acts of the managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of the juristic person committing the wrongdoing. The case was therefore a presumption that the managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of the juristic person had jointly committed the offence with the juristic person. The burden of proving innocence was shifted to the managing director, managing partner, juristic person's authorized officer and all persons responsible for the operations of such juristic person. Furthermore, the fundamental principle on criminal liability under section 59 of the Criminal Code stated that "a person shall be criminally liable upon committing an act..." Section 72/5 of the Fertilizer Act B.E. 2518 (1975), however, provided that a managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of the juristic person shall be jointly liable with the juristic person committing an offence under this Act. The plaintiff was not required to prove from the outset that such persons, as defendants, had acted or omitted, or failed to act in a manner which constituted a wrongdoing under the law. The provision in such section was therefore a presumption of guilt of a suspect or defendant in a criminal case on the basis of a person's status. This was not a presumption of facts constituting certain elements of an offence after the plaintiff's proof of any act relating to the defendant's alleged wrongdoing. The presumption was also inconsistent with the rule of law

principle which stated that the plaintiff had the burden of proving a defendant's wrongdoing in regard 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, which could result in a restriction of rights and liberties of such person, such as by arrest or detention without reasonable preliminary evidence that such person had acted or had any intent relating to the alleged offence. Section 72/5 of the Fertilizer Act B.E. 2518 (1975), in regard to the presumption of guilt of a suspect or defendant without any finding that the suspect or defendant had committed an act or had any intent relating to such a wrongdoing 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 held that section 72/5 of the Fertilizer Act B.E. 2518 (1975), only in regard to the presumption that a managing director, managing partner, juristic person's authorized officer or any person responsible for the operations of a juristic person shall also be liable for penalties provided for such offences without any finding of an act or intent relating to the commission of the offence by the juristic person, was a provision of law contrary to or inconsistent with section 39 paragraph two of the Constitution and therefore unenforceable under section 6 of the Constitution. Upon such a finding, it was no longer necessary to reach a decision on whether or not such provision of law was contrary to or inconsistent with other sections of the Constitution.

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