

The Enchained Prisoners versus Rights and Liberties^{*}

Supreme Administrative Court Judgment No. A. 283/2557, dated 26 June B.E. 2557 (2014)

Mr. S. et al. (P)

v.

Department of Corrections

According to Section 9 paragraph one (1) of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the term “other acts” means an act exercising administrative power in compliance with the law other than the issuance of a rule or an administrative order. In other words, “other acts” is the physical exercise of administrative power or the administrative real act. When the Department of Corrections enchained prisoners under Section 14 paragraph one (3) of Penitentiary Act, B.E. 2479 (1936), it was the physical act, not the issuance of rule or administrative order. The treatment to the prisoners always deprived their rights and liberty as restricted by law. Even though Thailand, as the State party, has an obligation to practice in accordance with Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, the treatment for the prisoners shall be in compliance with the domestic laws unless the laws were amended in accordance with such Convention. Although the use of instruments of restraint was inconvenience to the prisoners, this act was restricted by laws and under the scope of necessity. In addition, the types and sizes of instruments of restraints depending on the prisoners’ behavior did not deprive of the prisoners’ rights and liberty. Therefore, when the Department of Corrections enchained death row prisoners, it was not unlawful.

Legal Principles : *The Exercise of Discretion, Rights and Liberty, Wrongful Act, Human Dignity*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B. E. 2542 (1999) : Section 9 paragraph one (1), (3) and Section 42 paragraph two*

Legal Provisions : *Constitution of the Kingdom of Thailand, B.E. 2550 (2007): Section 26 Section 29 and Section 32*

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*Constitution of the Kingdom of Thailand, B.E. 2540 (1997): Section 26
Section 29 and Section 31*

Administrative Procedure Act, B.E. 2539 (1996): Section 44

Civil and Commercial Code: Section 420

Penitentiary Act, B.E. 2479 (1936): Section 14 paragraph one (1) and (2)

*Rule of the General Assembly of Judges of the Supreme Administrative
Court on Administrative Court Procedure, B.E. 2543 (2000): Clause 101*

*Ministerial Regulation of the Ministry of Interior: Clause 25, Clause 26 and
Clause 28 paragraph one*

*Optional Protocol to the Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment, 1984*

Judgment (Summary)

The thirty-nine Plaintiffs claimed that while being prisoned at Klong Prem Central Prison, Department of Corrections (the Defendant) applied the instruments of restraints (chains) in massive weight with prisoners in order to prevent the escape from custody. The Plaintiffs argued that the enchainment as such violated basic human rights under the Constitution, and against the law and UN Charter on human rights. The Plaintiffs then filed a case with the Administrative Court to cease the enchainment, and to consider if the Defendant had power to enchain the Plaintiffs under Section 14 paragraph one (3) of Penitentiary Act, B.E. 2479 (1936). The enchainment would violate the Plaintiffs' rights and be wrongful act, if the Defendant had acted without power.

The Administrative Court of First Instance decided that when the Department of Corrections enchainned death row prisoners under Section 14 of Penitentiary Act, B.E. 2479 (1936), the enchainment violated rights and liberties of the Plaintiffs against the Constitution of Thailand, and was the wrongful act, under Section 420 of Civil and Commercial Code.

The Supreme Administrative Court held that the Defendant filed an appeal, arguing that the Klong Prem Central Prison's order to enchain the thirty-nine Plaintiffs was the administrative order, which required the exhaustion of remedies according to Section 44 of Administrative Procedure Act, B.E. 2539 (1996). When the Plaintiffs did not make a petition against such order prior to the case filing, the Plaintiffs were not entitled to file the case with the Administrative Court. However, the Court viewed that the case was under the competence of the Court because the appeal related to the public interest can be invoked at any time during the currency of appeal, according to Clause 101 paragraph two of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative

Court Procedure, B.E. 2543 (2000). In addition, this case involved the unlawful act of the administrative agency or State official, and the wrongful act of the administrative agency or State official within the competence of the Administrative Court, according to Section 9 paragraph one (1) and (3) of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), respectively. In this case, even though the term “other acts” under Section 9 paragraph one (1) of the said Act was not clearly defined, the term generally means an act exercising administrative power in compliance with the law other than the issuance of a rule or an administrative order. In other words, “other acts” is the physical exercise of administrative power or the administrative real act. When the Klong Prem Central Prison applied the instruments of restraints with the thirty-nine Plaintiffs in compliance with the law, it was the physical act not the issuance of rule or order. When the dispute of this case was under Section 9 paragraph one (1) and (3) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the exhaustion of remedies under Section 42 paragraph two of the same Act was not applied in this case. The Plaintiffs were able to file the case with the Administrative Court without making the petition before. Another question is whether or not the enchainment conducted by the Department of Correction was against the Constitution. According to the Constitution of Thailand, the restriction of rights and liberties of a person as recognised by the Constitution shall not be imposed except by virtue of law. When the thirty-nine Plaintiffs were death row prisoners, they were deprived of their rights and liberty as restricted by law. In terms of the international law, even though the UN Charter on human rights was not the international convention, Thailand is the State party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, which has an objective to protect and promote the human rights. Thailand then has an obligation to practice under the Convention. However, the treatment for the prisoners shall be in accordance with the domestic laws unless the laws were amended to be in compliance with the international agreement. Therefore, Thailand’s domestic law on this matter is Section 14 paragraphs one and two of the Penitentiary Act, B.E. 2479 (1936) and Clauses 25, 26, and 28 paragraph one of Ministerial Regulation of the Ministry of Interior issued under Section 58 of the Penitentiary Act. The Court opined that the use of instruments of restraints depended on the prisoners’ behavior and motivation to escape from custody. When the thirty-nine Plaintiffs were death row prisoners, the Defendant applied the instruments of restraints depending on the prisoners’ behavior in accordance with the law. The Defendant then legally exercised the discretion under the law. In addition, the Plaintiffs were enchained by the smallest size of chains, as prescribed by the Ministerial Regulation. Even though the enchainment may affect rights and liberties of the Plaintiffs, it was a necessary measure to prevent the escape

from custody or doing harm to themselves or others. The types and sizes of the instrument of restraints depending on the thirty-nine Plaintiffs' behaviors did not deprive of their rights and liberties beyond necessity. Therefore, when the Department of Corrections enchained death row prisoners, it was not unlawful and not the wrongful act.