

A Wrongful Act of an Administrative Agency and a State Official Arising from the Neglect of Official Duties Required by Law*

Supreme Administrative Court Judgment No. A. 318/2554, dated 15th August B.E. 2554 (2011)

Ms. Suwatthichai Thongrat (P) v Commissioner General of Royal Thai Police (D1) and Royal Thai Police (D2)

“The Project of Lay Your Home in Cop’s Hand” established and approved by the Defendant is the measure with a purpose to prevent crimes and maintain public order which are the duties and powers of a police force under Law. According to this project, a red box signifying a police checkpoint and a check book had to be installed in front of each house participating in this project. Also, the police officers were assigned to patrol around the participating houses and sign their names in the check books. There was, however, no police officer performing such assigned duty suitably; the Plaintiff’s house was broken in and some property belongings were stolen. The acts of the Defendants were considered as a wrongful act arising from the neglect of official required by the law under Section 9 (3) of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542. In this case, according to Section 5 Paragraph one of the Act on Liability for Wrongful Act of Official B.E. 2539 the Plaintiff cannot file a case against the Defendant No.1 but shall directly sue to the Defendant No.2 which is a government agency liable to an aggrieved person for the result of a wrongful act by its officer in the performance of his or her duties

Legal Principle: *A Wrongful Act Arising from the Neglect of Official Duties Required by Law*

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

Legal Provision: *Reorganization of the Ministries Act B.E. 2545 : Section 46 (7)*

Act on Establishment of Administrative Courts and Administrative Procedure B.E. 2542 (1999) : Section 9 (2) and (3)

Act on Liability on Wrongful Act of Officials B.E. 2539 : Section 5 Paragraph one

* Summarized and translated by Mr. Preeda Showtimanon, Administrative Case Official Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of Administrative Courts.

Judgment (Summary)

The Plaintiff claimed that the Defendant No.1 and No.2 neglected their official duty by not supervising a police force subject to their authorities to suitably perform the duties under the project “The Project of Lay Your Home in Cop’s Hand” established and approved by the Defendants. The in-charge police officers had not installed the red box on the Plaintiff’s fence; they merely inserted the check box at the fence gap. Even though the signature of the in-charge police officer was presented on the check book on the date that the Plaintiff’s house was broken in, such signature was not the clear and convincing evidence to prove that the police officer had actually patrolled around the Plaintiff’s house, because most of police officers were deployed to do the security role in the APEC conference during that time. Such neglected action brought on the housebreaking of the Plaintiff’s house and loss of his property belongings. The Plaintiff filed a case to the Administrative Court pleading the Court to order the Defendants to pay damages for the Plaintiff.

The Central Administrative Court had an opinion that the in-charge police officers subject to the Defendants’ authority did perform their duties under the project, house patrol and house guarding, with more intensively attention compared to the performance of their regular duties. With a manpower shortage situation at that time, such police officers had attentively and suitably performed their duties as it should be under such circumstance. The Defendants did not neglect the duty of protecting the Plaintiff’s house and property. The Central Administrative Court dismissed the case. The Plaintiff filed an appeal to the Supreme Administrative Court.

The Supreme Administrative Court held that the Defendant No.2 has duties and power to maintain public order including other duties as specified by law according to Section 46 (7) of the Reorganization of the Ministries Act B.E. 2545, and the Defendant No.1 and police officers subject to the Defendant No.2’s authority are the ones who fulfill such duties. “The Project of Lay Your Home in Cop’s Hand” established and approved by the Defendant is the measure with a purpose to prevent crimes and maintain public order; the police officers under the Defendants thus have duties to protect the safety and property of citizens participating in the project. The Defendants admitted that there was no installation of red box in front of the Plaintiff’s house and most of the police officers were deployed to do the security role in the APEC conference during that time. Hence, it could be believed that there was no police officer sent to patrol around the Plaintiff’s house when the house was broken in. The acts of Defendants were considered as a wrongful act arising from the neglect of official duties required by law under Section 9 (3) of the Act on Establishment of Administrative Courts and Administrative Procedure B.E. 2542 (1999). In this case, according to Section 5 Paragraph one of the Act on Liability for Wrongful Act of

Official B.E. 2539 the Plaintiff cannot file a case against the Defendant No.1 but shall directly sue to the Defendant No.2 which is a government agency liable to an aggrieved person for the result of a wrongful act by its officer in the performance of his or her duties.

The Supreme Administrative Court reversed the judgment of the Central Administrative Court and ordered the Defendant No.2 to pay compensation to the Plaintiff.