

Requiring The Compensation for The Damage Arising from The Police's Performance of Duties^{*}

Supreme Administrative Court Order No. C. LW. 83/2560, dated 30th August B.E. 2560 (2017)

Mr. S. (P)

v.

Royal Thai Police (D1) and

Fact-Finding Committee on Liability for wrongful Act of Royal Thai Police (D2)

The action of the State Official in exercising the power under the Criminal Procedure Code or other laws, which prescribes the rules and procedure for punishing the person committing an offence, was a proceeding in accordance with the criminal justice process. It was not the exercise of administrative power which fell under the competence of the Administrative Courts. According to Section 11 paragraph one of Liability for Wrongful Acts of Officials Act, B.E. 2539 (1996), when the Plaintiff was aggrieved or injured in consequence of using the arrest warrant to the wrong person by the Inquiry Official, the Plaintiff had the right to file the application with the State agency to consider the payment of compensation for such damage. In the case where the State agency refused the payment thereof, the Plaintiff had to file the case with the Court of Justice, the Court that had the competence to try and adjudicate this case.

Legal Principles : *Administrative Court Competence, Locus Standi (Standing to Sue)*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) : Section 9 paragraph one (1) and (3), Section 106*

Legal Provisions : *Liability for Wrongful Acts of Officials Act, B.E. 2539 (1996) : Section 11 paragraph one*

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Judgment (Summary)

The Plaintiff complained that according to the arrest warrant issued by Thon Buri Criminal Court, the Plaintiff was arrested by the Inquiry Official of Metropolitan Police Station and had been detained for four days at Thon Buri Criminal Court. The Plaintiff then applied a collateral as a guarantee for bailing him out and had to present himself seven times to Thon Buri Criminal Court. Afterwards, the fact was found that the Plaintiff was not the alleged offender, however having the similar face to the alleged offender in the said criminal case which caused the Inquiry Official requesting the arrest warrant to the wrong person. The Plaintiff subsequently filed the application with Defendant No.1 requiring the payment of the compensation for the damage arising from the police's performance of duties. Nevertheless, Defendant No.1 notified the Plaintiff the result of fact-finding inquiry that such wrongful act of the police was not committed in the performance of his duties; yet, it was the result from a confirmation by the injured person that the Plaintiff had committed an offence. Consequently, the Plaintiff appealed the mentioned fact-finding result to the Commissioner – General and the President of Fact-Finding Committee on Liability for wrongful Act; nonetheless, the Metropolitan Police Bureau informed in writing that if the Plaintiff was dissatisfied with the fact-finding result, the Plaintiff had the right to file an action with the Court. Therefore, the Plaintiff filed the case to the Administrative Court.

The Supreme Administrative Court held that according to Section 9 paragraph one (1) and (3) of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the Administrative Courts have the competence to try and adjudicate or give orders over the case involving a dispute in relation to an unlawful act by an administrative agency or a State official, whether in connection with the issuance of a rule or order or in connection with other acts and the case involving a dispute in relation to a wrongful act or other liability of an administrative agency or a State official arising from the exercise of power under the law. Therefore, it could be seen that a wrongful act in the case of filing the case involving a dispute in relation to a wrongful act of a State Official had to arise from the exercise of administrative power. However, the action of the State Official in exercising the power under the Criminal Procedure Code or other laws, which prescribes the rules and procedure for punishing the person committing an offence, was a proceeding in accordance with the criminal justice process. It was not the exercise of administrative power which fell under the competence of the Administrative Courts. Furthermore, the trial and adjudication of such case had to examine the use of criminological and penal discretion which was unique and different to the use of administrative discretion; hence, the mentioned case fell under the competence of the Court of Justice.

In this case, the Plaintiff was aggrieved or injured in consequence of the arrest by the Inquiry Official of Metropolitan Police Station, and then it was found that the Plaintiff

was not the alleged offender. Although the Official committed a wrongful act against the Plaintiff, such wrongful act arose from the process of using the arrest power by the Inquiry Official. It was deemed that the mentioned wrongful act was the performance of the Official's duties in the criminal justice process under the Criminal Procedure Code, not being the exercise of the administrative power or the carrying out of administrative act. This case was thus not under the competence of the Administrative Courts according to Section 9 paragraph one (3) of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). When the Plaintiff filed the application with Defendant No.1 to consider the payment of compensation for the damage caused to him pursuant to Section 11 paragraph one of Liability for Wrongful Acts of Officials Act, B.E. 2539 (1996), Defendant No.1 however refused to pay such compensation. Therefore, in the case where the Plaintiff was dissatisfied with the consideration of Defendant No.1, the Plaintiff had the right to file an action with the Court of Justice requesting the Court to order Defendant No.1 to pay compensation for the Plaintiff.