

## Official Duties on Controlling GMO Contamination (GMO Papaya Case)\*

Supreme Administrative Court Judgment No. A. 384/2557, dated 21<sup>st</sup> October B.E. 2557 (A.D. 2014)

*Greenpeace SEA (P) v. Department of Agriculture (D1) and  
Director-General of the Department of Agriculture (D2)*

According to Sections 17, 18 and 20 of the Plant Quarantine Act, B.E. 2507 (A.D. 1964) the Defendants have power and duties to declare a plant pest control area and to inspect and destroy the plant pest which caused serious damage. In this case Defendant No.2 had already announced a plant pest control area for the purpose of inspection and eradication of the GMO contamination of papayas in affected areas. Also Defendant No.1 had ceased field trials, cut down GM papayas, and regularly inspected samples of papayas sold at markets, department stores and farms from September 2004 to May 2005. Therefore, the Defendants had already fulfilled their official duties required by law to inspect and eradicate the GMO contamination of papayas.

Legal Principles : *Negligence, Strict Liability*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure, B. E. 2542 (A.D. 1999) : Section 9 paragraph one (2)*

Legal Provisions : *Plant Quarantine Act, B.E. 2507 (A.D. 1964) : Section 8, 17, 18 and 20*

*Ministerial Regulation on the Organizational Division of the Department of Agriculture, Ministry of Agriculture and Cooperatives, B.E. 2545 (A.D. 2002) : Clause 1(1)*

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### Judgment (Summary)

The Plaintiff claimed that Defendant No.1 conducted field trials of genetically modified (GM) papayas in open fields without appropriate measures or equipment to prevent the transfer of genetic materials, causing the dissemination of GM genes to papayas grown in nearby farms. Moreover, measures used by Defendant No.2 to examine the contamination by genetically modified organisms (GMO) in farmers' fields were insufficient to control the spread of GMOs.

The Supreme Administrative Court held that the field trials of transgenic papayas was a research project conducted within the scope of powers and duties of Defendant No.1 under permission granted by Defendant No.2 pursuant to Section 8 of the Plant Quarantine Act, B.E. 2507 (A.D. 1964) and Clause 1(1) of Ministerial Regulation on the Organizational Division of the Department of Agriculture, Ministry of Agriculture and Cooperatives, B.E. 2545 (A.D. 2002). Therefore, Defendant No.1 was not acting beyond the scope of powers and duties when authorizing officials under Defendant No.1 to conduct open field trials of GM papayas. As the possessor of transgenic papayas which were prohibited or restricted materials comparable to plant pests, the Defendants shall be liable for the damage causing from GMO contaminations unless the Defendants can prove that the contaminations were not caused by any action of the Defendants or resulted from other causes for which the Defendants were not liable according to the Principle of Strict Liability. In this case there were GMO contamination spreading in the farmers' fields which caused from papaya seeds that farmers received from the Office of Agricultural Research and Development Region 3 – an agency under the Defendants. The Defendants then was negligent in performing official duties required by law to oversee the operation of field trials of GM papayas in order to prevent the spread of GMO contamination from such operation. However, Sections 17, 18 and 20 of the Plant Quarantine Act, B.E. 2507 (A.D. 1964) stipulates that if there is a plant pest causing serious damage, the Defendants have powers to declare a plant pest control area and to inspect and destroy the plant pest. It appeared that Defendant No.2 had already announced a plant pest control area for the purpose of inspection and eradication of the GMO contamination of papayas in affected areas. Also Defendant No.1 had ceased field trials, cut down GM papayas, and regularly inspected samples of papayas sold at markets, department stores and farms from September 2004 to May 2005. After inspecting and eradicating transgenic papayas in accordance with the notification of plant pest control area, Defendant No.2 revoked the notification of plant pest control area. Therefore, the Defendants had already fulfilled their official duties required by law to inspect and eradicate the GMO contamination of papayas.

The Supreme Administrative Court dismissed the plaint.