



The Chained Prisoners versus Rights and Liberties^{*}

The thirty-nine prisoners who were sentenced to death (the 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 prisoners argued that such enchainment violated basic human rights under the Constitution and against the law and UN Charter on human rights. The prisoners filed a case with the Administrative Court to cease the enchainment, and to consider if the enchainment would violate the prisoners' human rights and be wrongful act.

The Supreme Administrative Court held that under Section 9 paragraph one (1) of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), when the Klong Prem Central Prison applied the instruments of restraints with the thirty-nine prisoners, it was the physical act not the issuance of rule or order. When the thirty-nine prisoners were sentenced to death, they were deprived of their rights and liberty as restricted by law. As the State party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Thailand has an obligation to practice under this 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. The Court therefore decided that the use of instruments of restraints depended on the prisoners' behavior and motivation to escape from custody. In this case, Department of Corrections applied the instruments of restraints depending on the prisoners' behavior in accordance with the law. Hence, Department of Corrections legally exercised the discretion under the law. In addition, the prisoners were chained by the smallest size of chains, as prescribed by law. Even though the enchainment may affect rights and liberties of the prisoners, 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 prisoners' behaviors did not deprive of their rights and liberties beyond necessity. Thus, the act of Department of Corrections in the enchainment of such prisoners was not unlawful and not the wrongful act.

(Supreme Administrative Court Judgment No. A. 283/2557)

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