

## Liability of the Royal Thai Police for a Wrongful Act committed by its Officials<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 57/2562, dated 18<sup>th</sup> January B.E. 2562 (2019)

*Ms. A by Ms. T (The Legal Representative) (P1)*

*Ms. N by Ms. T (The Legal Representative) (P2)*

*Mrs. T (P3)*

*Mr. P (P4)*

v.

*The Royal Thai Police (D)*

Police officials and commanding officials performing duties at the local police station have responsibilities prescribed by the Regulations of the Royal Thai Police on Non-Case Code of Conduct for safety of life, body, and health of the alleged offender at all times. The fire incident has started from the first floor of a police station and has spread to the detention cells on the second floor causing the death of all alleged offenders being held in custody in the cells. In fact, the police officials had adequate time to unlock the cells. Therefore, such ignorance to the safety of life and body of the alleged offenders is the neglect of official duties required by the law to be performed or performing such duties with unreasonable delay. When such act directly resulted in the death of the alleged offenders, the Royal Thai Police shall be liable for the compensation to the heirs of the alleged offenders.

**Legal Principles:** *A Wrongful Act arising from the Neglect of Official Duties*

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

**Legal Provisions:** *Civil and Commercial Code: Section 420*

*Criminal Procedure Code: Section 84, Section 84/1, Section 87 paragraph three*

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*Regulations of the Royal Thai Police on Non-Case Code of Conduct:  
Title 12 and Title 25*

*Liability for Wrongful Act of Officials Act B.E. 2539 (1996): Section 5  
paragraph one*

### **Judgment (Summary)**

The Plaintiffs claimed that the Plaintiffs No. 1 and No. 2 are illegitimate children of Mr. V. Later, the Nonthaburi Juvenile and Family Court gave an order for both Plaintiffs to become legitimate children of Mr. V., and the Plaintiffs No. 3 and No. 4 to become legitimate Father and Mother of Mr. V. The four Plaintiffs are aggrieved or injured in consequence of an act of the on-duty police officials at the local police station neglecting official duties and let Mr. V., who was arrested for drunk driving on 6<sup>th</sup> of July B.E. 2556 (2013), died in a fire in a cell on 7<sup>th</sup> of July B.E. 2556 (2013). A fire caused by a transformer near the detention cells. The on-duty police officials at the said police station neglected to unlock the cells causing the death of all four alleged offenders inside the cells, including Mr. V., a 21 year-old company employee who had earned a salary of 10,500 baht with 6,000 baht overtime wage per month. The Plaintiffs filed a plaint with the Administrative Court to adjudicate or order the Defendant (The Royal Thai Police) to compensate the Plaintiffs No. 1, No. 2 and No. 3 in the amount of 2,200,000 baht per person, and to the Plaintiff No. 4 in the amount of 2,460,000 baht, including additional interest at a rate of 15 percent per year.

The Supreme Administrative Court decided that Section 84 of the Criminal Procedure Code provides that the official or private citizen conducting the arrest shall without hesitation bring the arrested person to the local office of inquiry pursuant to Section 83 where the arrested person shall be delivered to an administrative or police official attached to such office... Section 84/1 provides that the administrative or police official receiving the arrested person may provisionally release or restrain the arrested person. If it is the arrest by the Court's warrant, it shall be proceeded under Section 64 immediately, and in case that the arrested person must be forwarded to the Court, but one may not be forwarded at the moment because the Court is closed or will be nearly closed, the administrative or police official receiving the arrested person may provisionally release him or restrain him until the Court is open. Further, Section 87 paragraph three prescribes that in the event that the arrested person has not been granted a provisional release and it is necessary to have an inquiry or prosecution taking place, he shall be brought before the Court within forty eight hours after he has been brought to the office of inquiry under Section 83... According to the said provisions, restraint of the arrested person or the alleged

offender at the detention cells at the local police station is the official duty of police official. In addition, Title 12 Chapter 22 and 23 of the Regulations of the Royal Thai Police on Non-Case Code of Conduct provides that Head of the local police station shall have responsibilities of all missions within jurisdiction, and Rule 2.1.3, 2.2.4, and 2.2.12 specifies that an Administration and Crime Control Inspector has responsibility to set police officials to guard duty, to restrain the alleged offender at the detention cells of the police station, and to keep or feed the detainee. Title 25 Chapter 1 Rule 1 paragraph two of the said Regulations provides that every police official has a responsibility for monitoring public safety and Chapter 5 Rule 1 (2) provides that police guards are responsible for monitoring of the alleged offenders. Further, Title 18 Rule 2 (5) and (10) also provides that Commission Duty Officer is responsible for monitoring of the alleged offenders and emergency suspension.

When considering the investigation report of the Nonthaburi Forensics of the crime scene, plan of the building, photos of the corpses, including evidence report, it showed that the fire started from the spark or arc of the light bulb socket at the lower floor and the flame spread to the motorcycles, which were impound at the police station. At the beginning of the fire, police officials had sufficient time to be aware of the smoke coming up to the second floor. Moreover, the said building was built from reinforced concrete. On the second floor, there were several sealed rooms, which there was no way for the flame to easily spread to another room. The wall of the second floor had no windows and had only ventilators. Therefore, when the fire started at the lower floor, it took time to spread to the second floor. Police guards, who were sitting in between the lower floor and the detention cells, should have been aware of the flame and had enough time to unlock the cells to help the alleged offenders. Furthermore, the physical condition of the corpses at a scene showed that all of them were trying to open the cells and shout for help. The Defendant claimed that Police Sub-Lieutenant S. was trying to unlock the cells to help the alleged offenders but could not do it because of the smoke. It appeared that he was not trying to help at the beginning of the fire, yet at the later stage when the fire has already become intense. Thus, considering the building structure, a scene, a point where police officials were at, the physical condition of the corpses, and other evidences, it is indicated that the on-duty police officials at the said police station, including commanding officials ignored the safety of life and body of the alleged offenders inside the cells, which caused the death of all alleged offenders. According to Section 84, 84/1, and 87 paragraph three of Criminal Procedure Code and the Regulations of the Royal Thai Police on Non-Case Code of Conduct Title 12 and Title 25, such act of the said police officials is the neglect of official duties required by the law to be performed or performing such duties with unreasonable delay. When such act directly resulted in the death of Mr. V., it is considered as a wrongful act of State officials arising from the neglect of official duties required by the law to be performed

or performing such duties with unreasonable delay. The Defendant, a State agency, shall be liable for the compensation for the consequence of such wrongful act of its officials undertaken in their official duties under Section 420 of the Civil and Commercial Code in accordance with Section 5 paragraph one of the Wrongful Liability for Wrongful Act of Officials Act B.E. 2539 (1996). The Supreme Administrative Court affirmed, as modified in part of a judgment of the Administrative Court of First Instance, holding that the Defendant is liable for the compensation to the Plaintiff No. 1 in the amount of 872,000 Baht, to the Plaintiff No. 2 in the amount of 956,000 Baht, to the Plaintiff No. 3 in the amount of 430,000 Baht, and to the Plaintiff No. 4 in the amount of 596,000 Baht.

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