

The illegal destruction of Karen village in Kaeng Krachan National Park*

Supreme Administrative Court Judgment No. A.E. 4/2561, dated 31st May B.E. 2561 (2018)

Mr. K. (P1)

Mr. J (P2)

Mr. M (P3)

Mr. G (P4)

Representative of a deceased Plaintiff (P5)

Mr. D (P6)

v.

Department of National Parks, Wildlife and Plant Conservation (D1)

Ministry of Natural Resources and Environment (D2)

The Plaintiffs were a group of ethnic Karen villagers living in Kaeng Krachan National Park. The Plaintiffs were forcibly evicted and burned residences and assets by the Park officials in May 2011. The Plaintiffs said that they had been living in the said areas before it was declared as a national park in B.E. 2524 (1981), therefore, they should have had the right of possession. The Supreme Administrative Court decided that the Karen villagers illegally encroached into protected areas. The competent officers of the Defendant No.1 had the right to enact measures to destroy and demolish houses and assets of the Plaintiffs under Article 22 of the National Park Act, B.E. 2522 (1961). However, the provision did not allow the competent officers to abuse their discretion in choosing administrative measures. The action of the Defendants was undertaken with knowledge of destructive effects and constituted the use of excessive force without

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any reasonable response. The Supreme Administrative Court held that the Defendants were liable for compensation to the Plaintiffs and the Court could not issue an order for returning to their previous lands since the Plaintiffs did not have the document of land rights or the utilization certificate.

Legal Principles: *Wrongful Act*

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

Legal Provisions: *Constitution of the Kingdom of Thailand: Section 33 paragraph one*
 Liability for Wrongful Act of Officials Act, B.E. 2539 (1996): Section 5
 Civil and Commercial Code: Section 420, Section 438
 National Park Act, B.E. 2504 (1961): Section 16 (1), Section 22
 Cabinet Resolution of 3 August 2010 regarding the Policy Guideline for the Restoration of Traditional Karen Livelihood

Judgment (Summary)

The six Plaintiffs claimed that they were a group of ethnic Karen villagers living in the areas of Baan Bang Kloy Bon, Haui Mae Phriang Subdistrict, Kaeng Krachan District, and Baan Jai Phan Din, Yang Nam Klat Nuea Subdistrict, Nong Ya Plong District, Phetchaburi Province for decades. From 5th to 9th May B.E. 2554 (2011), a Chief of Kaeng Krachan National Park along with other park officials accused them of encroaching on protected areas. They were forcibly evicted and burned their houses and assets. The Plaintiffs said that they had been living in the said areas before it was declared as a national park in B.E. 2524 (1981), therefore, they should have had the right of possession and have been protected. The act of the Defendants was unlawful. As a result, the Plaintiffs filed a complaint with the Administrative Court to adjudicate or order the Defendants (1) to make compensation for damages caused by the violation of constitutional rights, the destruction and burning of their residences, rice barns, and other property, lacking benefits from using their agricultural lands, natural resources, and losing ethnic identity and potential of cultural inheritance (2) to allow the Plaintiffs to return to their lands in the national park.

The Supreme Administrative Court held that the six Plaintiffs had been living and using the lands in Baan Bang Kloy Bon and Baan Jai Phan Din near the Thailand - Myanmar border which were situated within Kaeng Krachan National Park without the document of land rights or the utilization certificate. Therefore, it was prohibited according to Section 16(1) of the National Park Act, B.E. 2504 (1961). The facts appeared that the competent officers of the Defendant No.1 used the power under Section 22 of the said Act to destroy and demolish buildings and assets of the Plaintiffs, by claiming that they had already explained and provided enough time for the Plaintiffs to demolish houses and collect their assets. While using force under Section 22 of the said Act was an effective way to protect and prevent the illegal encroachment of lands in the national park boundaries, the provision did not allow the Defendants to abuse their discretion in choosing administrative measures which had seriously affected the property rights and other rights of the Plaintiffs. The competent officers of the Defendant No.1 should have issued an administrative order to notify the Plaintiffs to manage their buildings and assets before the eviction, but it did not appear that the Defendants issued an order to demolish and notified in writing to move the Plaintiffs' property. The action of the Defendants was undertaken with knowledge of destructive effects and constituted the use of excessive force without any reasonable response, including not conforming to the necessary process specified under Section 22 of the National Park Act, B.E. 2504 (1961). In addition, this was not in conformity with the Cabinet Resolution of 3 August 2010 regarding the policy guideline for the restoration of traditional Karen livelihood, which aimed for a cessation of arrests and protection of existing Karen villagers in disputed areas. Thus, the act of the competent officers of the Defendant No.1 was unlawful and caused losses to the Plaintiffs. It was considered as wrongful act of State officials arising from performing official duties. The Defendant No.1, 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 of the Wrongful Liability for Wrongful Act of Officials Act, B.E. 2539 (1996).

Regarding the compensation for damages caused by the destruction and burning of their residences, rice barns, and other property, the Court has a power to determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act under Section 438 of the Civil and Commercial Code. The Supreme Administrative Court held that the Defendant No.1 was liable for compensation to the Plaintiff No.1 in the amount of 41,407 Baht, to the Plaintiff No.2 in the amount of

41,032 Baht, to the Plaintiff No.3 in the amount of 41,407 Baht, to the Plaintiff No.4 in the amount of 35,302 Baht, to the Plaintiff No.5 in the amount of 40,807 Baht, and to the Plaintiff No.6 in the amount of 41,032 Baht. For the compensation regarding to other property, the Court determined that the Defendant No.1 was liable to compensate each of the Plaintiffs in the amount of 10,000 Baht.

Regarding compensation for damages caused by the violation of constitutional rights, the Court already determined it when considered the compensation for other property because such compensation included damages for any injuries caused.

For the argument regarding damages caused by violation of the liberty of dwelling, lacking of benefits from using their agricultural lands and natural resources, and losing ethnic identity and potential of cultural inheritance, the Court ruled that the Plaintiffs had no document of land rights or the utilization certificate. It was illegal holding or possession of lands in the national park. Therefore, the Plaintiffs had no legitimate claim for these damages.

Regarding the request to reside in their lands, the Court ruled that the six Plaintiffs had no right to live on the protected areas. Therefore, the Court could not issue an order for returning to previous lands. As the Administrative Court of First Instance decision, the Defendants had to pay 10,000 Baht in compensation to each of the six Karen villagers for the loss of their property within thirty days since the final judgment is made. The Supreme Administrative Court affirmed, as modified in part of a judgment of the Administrative Court of First Instance, holding that the Defendant No.1 was liable for compensation to the Plaintiff No.1 in the amount of 51,407 Baht, to the Plaintiff No.2 in the amount of 51,032 Baht, to the Plaintiff No.3 in the amount of 51,407 Baht, to the Plaintiff No.4 in the amount of 45,302 Baht, to the Plaintiff No.5 in the amount of 50,807 Baht, and to the Plaintiff No.6 in the amount of 51,032 Baht.
