

Constitutional Court Ruling No. 3/2559 (2016)

Supreme Court

Applicant

-

Respondent

Constitution (Interim) B.E. 2557 (2014), section 4;

Act on the Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999), section 9.

Section 9 of the Act on the Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999) provided a presumption of defendant's criminal guilt that if an offence had been committed in the interest of a juristic person, the managing partner, managing director, executive officer or authorised person of the juristic person or person responsible for the operations of the juristic person on such matter would also be a principal in the commission of such offence, unless such person could prove that he/she did not have knowledge of the commission of the offence. As a consequence, the prosecution did not have to prove the action or intent on such matter, but merely prove that an offence had been committed for the juristic person and the defendant had the status of a person provided by law. Such presumption not only presumed the person as a principal in the commission of offence along with the juristic person, but also presumed that such person was a joint principal with any person who committed an offence in the interest of the juristic person. This presumption was more extensive than joint liability with the juristic person. In order for a person to have criminal liability, such person had to commit an act, including an omission, neglect, or failure to act where otherwise required to do so. Section 9 provided such person to become a joint principal without the prosecution having to first prove an act or omission or failure to act which constituted the offence under the law. The provision therefore provided a presumption of guilt of a suspect or defendant in a criminal case merely by virtue of a person's status. This prerequisite was inconsistent with the rule of law that a criminal prosecutor had the burden of proving all the elements of a defendant's commission of offence. The provision also brought a person into the criminal process as a suspect or defendant, potentially restricting the rights and liberties of such person without preliminary reasonable evidence that such person had committed an act or had any intent relating to the alleged wrongdoing. The provision was therefore contrary to or inconsistent with section 4 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014).