

Constitutional Court Ruling No. 9/2564 (2021)

Narathiwat Provincial Court

Applicant

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Respondent

Constitution, section 26, section 27 paragraph one and paragraph three, section 29 paragraph one and section 40;

Emergency Decree on Fisheries, B.E. 2558 (2015), section 151 paragraph three and section 166.

On the question of whether or not section 151 paragraph three and section 166 of the Emergency Decree on Fisheries, B.E. 2558 (2015) was contrary to or inconsistent with section 26, section 27 paragraph one and paragraph three, section 29 paragraph one and section 40 of the Constitution, it was held as follows. Section 151 paragraph three of the Emergency Decree on Fisheries, B.E. 2558 (2015) provided that a person who committed the offence of using a vessel from sixty gross tonnage but less than one hundred and fifty gross tonnage in violation of the requirement to install a vessel monitoring system and maintaining the operability of such system at all times was liable to a fine of one million baht. Such prescription of fine and fine rate were based on the same concept and principle in a previous ruling in Constitutional Court Ruling No. 14/2563. The provision was also in accordance with the principle of prescription of severity of penalty according to the size of vessel, which was consistent with the value of catch obtained from the commission of offence.

Section 166 was an important measure which deterred a person assisting or facilitating another person in the commission of illegal fishing from aiding or abetting the commission of offence. Upon a calculation of the return or benefit obtainable from the commission of offence in the same way as the principal, the detriment suffered from the commission of offence exceeded the benefits to be obtained. Such provision was not an absolute provision. The Court had the competence to grant a waiver to an offender who was a seaman in the case where the Court found that the act was done pursuant to an order of the vessel owner or master. In such a case, the Court could refrain from imposing a penalty or impose any lesser penalty on such person than as provided by law for the offence concerned. The prescription of penalty would be appropriate under the circumstances and characters of the offender. Hence, the provision was neither contrary to nor inconsistent with section 26, section 27 paragraph one and paragraph three, section 29 paragraph one and section 40 of the Constitution.