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For Court use only

Judgment

Royal Emblem

Undecided Case No. Or517/2556

Decided Case No. Or2949/2559

รับรองสำเนาถูกต้อง

(นางสาวอำพร พิษเขียว)
เจ้าพนักงานศาลยุติธรรมชำนาญการ
- 7 พ.ย. 2559¹

In the Name of the King

Southern Bangkok Criminal Court

20th September 2016

Criminal Case

Between	{	Natural Fruit Company, Limited	Prosecutor ¹
		Mr. Andy Hall	Defendant

Subject: Defamation, offence against the Computer Crime Act

The Prosecutor charged and revised the charge that from 19th December 2012 to 23rd January 2013, continuously throughout the daytime and nighttime, the Defendant and Finnwatch organization had disseminated false findings of a research on the website of Finnwatch as:

“CONFIDENTIAL COMMUNICATION 19th December 2012

From: Finnwatch

To: Ministry of Social Development and Human Security, Thailand Ministry of Foreign Affairs, Thailand Delegation of the European Union to Thailand Embassy of Finland, Thailand Ministry for Foreign Affairs, Finland, departments for trade policy and the Americas and Asia Ministry of Employment and the Economy, Finland Ministry of Labor, Myanmar International Labor Organization ILO, Regional Office for Asia and the Pacific International Organization for Migration, Bangkok office United Nations Office on Drugs on Crime, trafficking expert, Bangkok Office of the United Nations High Commissioner for Human Rights, Bangkok State Enterprises Workers' Relation Confederation SERC, Thailand

¹ [Inserted by ICJ: Pursuant to section 2(14) of the Thai Criminal Procedure Code, “**Prosecutor**” is defined as “either the Public Prosecutor or the injured person who has instituted a criminal case in Court, or both, in a case where the Public Prosecutor and the injured person are joint prosecutors.”]

International Trade Union Confederation ITUC, Human and Trade Union Rights International Union for Food, Farm and Hotel Workers, Regional Secretariat for Asia and the Pacific Amnesty International, Thailand Human Rights Watch, Thailand Migrant WorkerRights Network, Thailand Thai Labor Solidarity Committee Friedrich-Ebert-Stiftung American Center for International Labor Solidarity.

Subject: Serious human rights violations at Natural Fruit plant in Thailand

Dear recipient,

Finnwatch, a Finnish non-profit organization focusing on global corporate responsibility issues, conducted field research in three locations in Thailand in October-November 2012 relating to the responsibility of Finnish retail companies' supply chain management.

One part of the research concerned the production and employment conditions of Natural Fruit, a maker of pineapple products, in its processing facility at 172/12, M.11 T. Nhontatam, A. Pranburi, Prachuap Khiri Khan 77120.

Based on the documented and structured interviews of 12 workers, we have reason to suspect that serious violations of basic human and labor rights are commonplace at the said facility. We urge you to use all means at your disposal to address these violations and to protect the rights of the workers.

The research was conducted by a team managed by Mr. Andy Hall, migration expert at Mahidol University. Its key findings, which will be made public on 22 January 2013, include:

1) There were a significant number of undocumented laborers and an estimated 20–30 undocumented child laborers, some of whom were not older than 14 years of age.

The employment of children under 15 is unlawful as is the employment of 15–18-yearold children under normal full-time conditions. It is also illegal to employ unregistered workers.

2) All of the workers interviewed said that their hourly, daily or monthly wages or overtime compensations were lower than those defined in Thai labor laws. No holiday benefits or bonuses were provided to workers as required by the legislation.

3) All Myanmar migrant workers interviewed reported that Natural Fruit unlawfully confiscated their original passports, even when they had paid back all debts relating to their employment. Generally the workers did not have the right to access their passports, except in most exceptional circumstances, and never in instances where the worker still had debt remaining to the company.

Similarly, neither original nor photocopied work permits were provided to workers by the factory.

If the workers wished to leave Natural Fruit and/or change employer, they were forced to flee without these documents, thus losing all their investments in registration costs. This presents a significant psychological barrier to leaving.

These practices are illegal. The confiscation of personal documents is one sign of the type of behavior that can be categorized as trafficking in persons.

Some newly arrived workers also reported being placed in situations of severe debt bondage with no documents and no ID cards so they could not leave. These workers may be trafficking victims.

4) There were a significant number of random and unexplained deductions from worker salaries for electricity and water, litter, transport (that was not used), uniform, registration and NV, toilet breaks, sleepiness, ID cards, bank cards and other miscellaneous items. In addition,

the workers said that Natural Fruit deducted more than what was legally allowed for their registration costs unless they informed the company of excessive social security deductions. Unauthorized deductions from workers salaries are unlawful.

5) When work was not available or a full day's work was not provided, the workers were not paid at all. Thai law generally requires a 70 percent payment of daily wages when an employer does not provide work.

6) All workers said that they were in practice forced to work overtime. Some workers also reported overtime work in excess of the legally allowed 36 hours per week.

The workers said they were fined for falling asleep during late shifts and hit around the head or arms if they were sleepy. Most workers reported workers, particularly younger ones, sometimes fainting or crying as a result of excessive work.

7) Many non-Thai workers reported that they had no social security card or health insurance as required by law, although some did have these benefits. Those who were in possession of SSO cards were not allowed to choose their hospital, as legally entitled, and their SSO costs were randomly deducted in different amounts, whatever their salary. Nor did the workers understand their social security rights.

One female worker who was pregnant said she would have to pay her own delivery costs and that she would not get any maternity benefits.

This suggests illegality on behalf of the factory in not complying with social security and health laws.

8) There were not enough toilets for workers, particularly men, at the factory. If workers had to wait too long for the toilet or spend too long in the toilet, they were illegally deducted 30 minutes' worth of overtime compensation.

9) The workers reported that Natural Fruit did not provide work accident compensation as required by Thai law.

Contacts

With regard to the findings of the field research conducted in Thailand, please contact

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The aforementioned document can be translated into Thai language as “.....”

Furthermore, on 21st January 2013 at daytime, the Defendant presented such research report to the Thai media, foreign media, business people and general public at the press conference held inside Maneeya Center Building, located at No. 518/5 Ploenchit Road,

Lumpini, Pathumwan District, Bangkok, by distributing the English summary of the false research findings to the participants, page 16 item B thereof stated that:

“EXECUTIVE SUMMARY

IN TIMES OF ECONOMIC STRESS consumers often turn to less expensive items. A key trend in retail chains' price competition is developing and introducing their own private label products. This refers to goods that are produced by an external supplier but sold under the retail company's own brand. Other motivations behind private label products may relate to strengthening customer relations, developing and differentiating the company brand, increasing profit margins on products and boosting the chain's market share. In Europe, private label items cost on average 30 percent less than similar brand products. Their share of private label goods is showing a steady increase globally. In Spain and Switzerland, for example, over 70 percent of all frozen and canned food items carry a private label. In Finland, the share is 40 percent.

From a corporate responsibility viewpoint, the production of private label items entails several challenges. As retail companies pool their resources and set up international joint procurement companies, their bargaining power vis-à-vis suppliers increases. One result of this is the weakening of the position of suppliers, especially those from developing countries. Constant search for the cheapest price may also mean that the responsibility and sustainability of production in the global South does not receive sufficient attention in the procurement process.

Other problematic aspects relating to growing purchaser power include delaying payments, demanding absolute certainty of supply (if contractual obligations are not met in full, the contract ceases to apply), buy-back requirements, dumping, conditional purchase agreements and extremely high (cosmetic) quality standards.

This report by Finnwatch, an independent Finnish non-profit research NGO focusing on global corporate responsibility issues, analyses the responsibility of the procurement process of the biggest Finnish retail chains' private label products. The chains included in the analysis are Ruokakesko, SOK, SuomenLähikauppa and the German-based Lidl.

Except for Lidl, which to a large extent handles its international procurement through its German head unit in a centralized manner, all chains were members of large international joint procurement companies and heavily integrated into the global food market. Ruokakesko is a member of the pan-European AMS Sourcing. SOK co-owns Coop Trading through its procurement subsidiary Inex Partners together with its Nordic partners. Tuko Logistics, whose clients include SuomenLähikauppa and Stockmann, is a part of the European EMD and United Nordic that brings together a number of Nordic retail chains.

The responsibility challenges related to the supply chain management of private label goods are illustrated through three in-depth case studies. The data was assembled through fieldwork with workers, employers and NGOs in the provinces of SamutSakorn and Prachuap Kiri Khan in Thailand between October and December 2012.

The field research was carried out by a team managed by Andy Hall, migration expert at Mahidol University in Thailand in accordance with Finnwatch's research guidelines. Mr. Hall has ten years of experience working on similar issues in Thailand.

The investigation covered two tuna companies, Unicord and Thai Union Manufacturing, as well as a pineapple processing company called Natural Fruit. Tuna and pineapple production for international export to global consumer markets are important sources of external revenue and providers of jobs in Thailand.

However, the research confirmed, the success and prosperity of these labor intensive export sectors, too often rests on the exploitation of a mainly non-Thai migrant workforce – mostly vulnerable workers from neighboring Myanmar. Forced labor, human trafficking, child labor, low wages and other serious violations continue to characterize the operations of some pineapple and tuna companies in Thailand, despite growing national and international criticism of such practices.

In the course of the research process it also became obvious that the responsibility practices of the Finnish retail chains included in the report, as well as those of the Netherlands-based Refresco (see below), were insufficient.

The report was produced as part of Finnwatch's Decent Work programme.

WIDE INTERNATIONAL IMPLICATIONS

As the factories investigated also produce for other international brands, the findings of the report are of a wider relevance.

For example, Refresco, the company that supplies pineapple concentrate from the Natural Fruit factory where basic rights are grossly violated to Finland for further processing, is a leading global player in its field with notable customers in Europe. According to some estimates, Refresco controls 20 percent of the European private label soft drink and fruit juice market, for example. In 2010 the company recorded EUR 1.22 billion in revenues. After this it has acquired several smaller companies and presently has 26 production facilities in eight European countries.

In addition to the Finnish retail chains mentioned above, Refresco's clients include Lidl, Aldi, Carrefour, Dia, Morrisons, Edeka, Rewe, Superunie, Ahold and Système U. It has the exclusive right to produce PepsiCo, Coca-Cola, Schweppes and Unilever in a number of European countries.

VIOLATIONS OF MIGRANTS RIGHTS ARE COMMON IN THAILAND

It is estimated that there are around 2.5 million migrant workers from Laos, Myanmar and Cambodia in Thailand, about 1–2 million of whom are registered or in the process of registration in order to receive legal documentation. The flow of migrants to Thailand began in the late 1980s. Since then migrants from Thailand's neighboring countries have been recruited to work in physically hard conditions on fishing boats and fish factories as well as agricultural, construction and domestic work. Over 80 percent of Thailand's migrant workers are from Myanmar. Migrant workers are treated as temporary workers who are granted a work permit for a few years. Irregular or undocumented migrants are punished with different penalties and sanctions.

Thailand has signed various international human rights conventions that bind the state to protect people's wellbeing and rights. Thailand has ratified five ILO core conventions. It has not ratified conventions 87 and 98 regarding freedom of association and the right to collective bargaining or convention 111 on discrimination at workplace. However, as a member of ILO Thailand is committed to the Fundamental Principles and Rights at Work. The provisions on minimum wage and working time in the Thailand Labor Protection Act 1998 do not,

however, apply to agricultural or domestic workers. In addition, migrant workers do not have the right to form their own unions, and the employers and the state object their joining existing unions. Thailand has not ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their families. The convention highlights the equal human rights of all migrant workers, including irregular migrants.

Migrant workers have reportedly experienced violence and exploitation by the police, authorities and employers. Irregular migrants are particularly vulnerable and they are intimidated with threats to expose them to the authorities which would lead to deportation. Child labor is believed to be common, but there are no comprehensive statistics on the topic. Forced labor has also been reported to be commonplace.

The wellbeing of migrant workers is threatened due to inadequate health care and housing. Many migrant workers do not, for example, have access to pure water.

Registered migrant workers with work permits have better opportunities to protect their rights. They are, for example, entitled to social security and health care. Nevertheless, their working conditions are in general bad and they are paid less than the legal minimum wage. In addition, changing jobs has been made very difficult (the registration system requires the worker to identify the employer) and employers have reportedly confiscated workers' passports and work permits. In five provinces, migrants' freedom of movement and communication is limited by decrees prohibiting cell phone and vehicle use.

B. FINDINGS RELATING TO NATURAL FRUIT

The field research was conducted in the province of Prachuap Kiri Khan in November 2011 in order to assess the production circumstances of private label juices sold in Finland.

The Natural Fruit factory in question produces pineapple juice concentrate and a variety of canned pineapple products. The employees interviewed for this report worked in various departments.

There were approximately 800 workers in the factory, of whom about 100 were Thai and 700 from Myanmar. According to the interviewed workers and NGO estimates, there were some 200 irregular migrants who had come to the country without proper documentation in the factory.

The research revealed serious human rights offences and illegal activities. Finnwatch has reported the findings to the authorities of Finland, EU and Thailand, as well as several labor and human rights organizations in December 2012. The factory refused all collaboration with the research team during the field investigation and would not meet the researchers.

“No one wants to work here”

The working conditions in the factory producing pineapple juice concentrate differed significantly from the tuna factories. For example, when the researchers asked about the factory's practices with recruitment fees, the employees said that the factory did not collect such fees as no one wanted to work there in the first place.

The investigated factory has various ways of keeping workers in the factory. The employer had confiscated passports and work permits from most of the migrant workers interviewed. The factory does not give back the workers' identity papers even when specifically asked. Some of the workers get their passports back temporarily, for example, in order to visit their home country during the holidays with the condition that they leave a substantial sum (1,000 baht, 33 dollars) as a deposit to the employer. The majority of the workers were irregular

migrants who had come to Thailand with the help of a smuggler and were completely dependent on the factory and its illegal collaboration with the local police.

When starting work the workers are not offered any work equipment on behalf of the employer. The workers must buy shoes for 125 baht (4.2 dollars), gloves for 35 baht (1.2 dollars), a hat for 75 baht (2.5 dollars), a t-shirt for 158 baht (5.3 dollars), an apron for 45 baht (1.5 dollars) and a hairnet for 25 baht (0.9 dollars). Some of the equipment wears out quickly and after that they have to be replaced with new ones by the workers at their own expense. In addition, the factory requires that all workers have a factory ID-card, which the workers have to buy for 20 baht (0.7 dollars).

Illegally low wages and excessive overtime work.

All the interviewed workers were paid less than the local minimum wage (240 baht per day. The minimum wage varied from 200- 230 baht. The wages differed, for example, in relation to the status of the employee: the irregular migrants were paid less than the regular migrants. The workers did not have written work contracts and no right to annual leave.

The majority of workers worked six day weeks but sometimes they were made to work also on Sundays. Depending on the season, overtime hours could increase a lot. The interviewed workers told that they worked up to 5-10 hours overtime per day and that working overtime was compulsory. According to the workers it is usual that overtired workers cry, fall asleep or faint in the middle of their work. The workers cannot leave in the middle of their overtime due to illness, for example, unless they get a signed note from their boss. Otherwise they lose the whole day's pay. On the other hand, the wage was so small that many workers wanted to do overtime work in order to survive. The overtime compensation was 30–35 baht per hour. The legal overtime compensation in the region is 45 baht per hour.

The factory did not pay any bonuses.

The workers said that various unclear deductions were made from their wages. They did not get payslips and did not understand all the deductions. A few of the interviewees told that the factory deducted work permit fees endlessly if the worker did not pay attention and notify the factory when the whole work permit had been paid for. The factory also fined workers. For example, if a migrant worker spent more than 10 minutes in the toilet, half an hour's wage was deducted from the salary.

The workers were paid twice a month to a bank account opened by the company for each worker. For this the employer charged an opening fee of 200 baht (7 dollars).

When the factory does not have enough production orders it is closed and the workers are sent home in the middle of the day. The workers are not paid anything when the factory is closed. It is regularly closed from July to September during which the workers do not have any sources of income.

There is no trade union in the factory.

Migrant workers face discrimination and violence.

The migrant workers interviewed said that their superiors often treated migrant workers in a more uncivilized manner than Thai workers. They also face violence from guards and their superiors. The interviewed workers said that sometimes the workers were hit due to language barriers or disagreements. The interviewed workers also said that all members of the work safety committee were Thai. Dangerous working conditions.

The interviewed workers told that the temperature inside the factory was very high but there was no air conditioning. Heatstrokes and fainting were common among the workers. The factory had only two water fountains that did not have enough cold water for all.

The workers performed monotonous tasks for long hours in one position without any breaks. Strong cleaning chemicals were used in the production lines and some workers had allergic reactions from the chlorine.

According to the workers some of the factory's machines are dangerous. Three interviewees reported a case in which a worker had died from an electric shock from a machine. The family of the deceased worker had been compensated with 20-30,000 baht (670-1000 dollars), although according to the law the compensation should have been 300,000 baht (10,000 dollars). One worker told that his fellow worker had lost a finger to a machine in the factory but had not been given any compensation.

The factory did not have enough toilets for men. There were only six lavatories for hundreds of male workers.

CONCLUSIONS

The findings of the report are alarming and must be addressed without delay.

It is the responsibility of Thai officials and companies to guarantee that no laws or labor right standards are violated in the production process and that working conditions are appropriate.

The customers of the Thai companies analyzed in this report, as well as their other international customers, must ensure that their responsibility practices are adhered to throughout their supply chain. This calls for more rigorous monitoring and auditing, but also cooperation with the suppliers and relevant authorities.

Refresco, for example, states that it has audited the Natural Fruit factory covered in this report in 2010, 2011 and 2012, which is proof enough of inadequate monitoring standards.

The aforementioned document can be translated into Thai language as “...B....”

That the Defendant, in participation with Finnwatch, disseminating the false findings of the research on the website and holding the press conference along with the distribution of the summary of the abovementioned findings constituted an act of slandering the Prosecutor to the third party by advertisement with documents containing false information in a manner that is likely to cause the Prosecutor to lose reputation, be insulted or be hated by the public, domestically and internationally, thereby defaming the Prosecutor. The incident occurred in all sub-districts and districts of Bangkok as well as all sub-districts, districts, provinces within Thailand and all countries worldwide. Accordingly, it is hereby requested that the Defendant be punished pursuant to Articles 90, 91, 326, 328 and 332 of the Criminal Code and that the Defendant advertise the Court's Judgment, in Thai and English versions, on the internet websites namely www.finnwatch.org, www.ipser.mahidol.ac.th, www.prachathai.com, www.thairath.co.th, and www.nationmultimedia.com for a period of 30 days as from the date of Judgment and at the expenses of the Defendant. Furthermore, it is requested that the Defendant advertise the Court's Judgment on page 27 of Thai Rath newspaper, page 14 of Daily News newspaper, page 5 of Matichon newspaper, the business news page of Thansetthakij newspaper, the business news page of The Nations newspaper,

the business news page of KrungthepThurakij newspaper, page B2 of Bangkok Post newspaper, with the size of 4 inches in width and 5 inches in length for a period of 7 consecutive days, and advertise in the local newspapers in PrachuapKirikhan Province with the size of 4 inches in width and 5 inches in length for a period of 30 consecutive days. In the event where any newspaper is unable to post such advertisement on the specified page, the advertisement shall be posted on any available page. The Defendant shall post the advertisement in the newspapers within 7 days from the date of Judgment and at the expenses of the Defendant.

The Court conducted a preliminary examination and found it to be a *prima facie* case whereby the charge was accepted.

The Defendant pleaded not guilty.

During the proceeding, the Prosecutor adduced that the Prosecutor was a juristic person of the type of company, limited, which produced canned pineapple and pineapple juice for export to other countries. From 19th December 2012 until 21st January 2013, the Defendant had disseminated an English article on the Finnwatch's website which could be summarized in Thai language that "Serious violations of human rights existed in the Prosecutor's company where there were a number of unregistered workers and about 20 – 30 unregistered child workers, some of whom were under 14 years old. The Prosecutor's company paid wage and overtime compensation lower than the rate provided by the law and there were no holiday benefits or bonuses provided to workers. Migrant workers were confiscated of their passports and if they wished to resign they would not obtain any document. Their salaries were randomly deducted with no given explanations. When work was not available, the workers were not paid at all. All workers were forced to work overtime and if they fell asleep during late shifts they would be fined and hit. Some migrant workers had no social security card and health insurance as required by law and those who were in possession of SSO cards were not allowed to choose their hospitals. No workers understood their social security rights. There were not enough toilets for male workers and if workers spent too long in the toilet they were deducted 30 minutes' worth of overtime compensation. The workers were not provided by the Prosecutor's company with work accident compensation as required by the law". The details are contained in the article, exhibit Jor.2, with the translation attached. On 23rd January 2013, the Defendant had held a press conference inside Maneeya Center Building, Lumpini, Pathumwan District, Bangkok, and distributed the article, exhibit Jor.2 and the English executive summary, exhibit Jor.3, which could be summarized in Thai language that "There were approximately 200 migrant workers in the Prosecutor's company who had entered into Thailand without proper documents. The company refused all collaboration with the research team during the field investigation and would not meet the researchers. No one wanted to work at the Prosecutor's company. The company had confiscated passports of migrant workers and paid workers lower wages than those specified by the law. The workers did not have written work contracts. They had no right to annual leave and there were no bonuses. Migrant workers faced discrimination and violence. Workers had to performed monotonous tasks for long hours. One worker had lost a finger to a machine but had not been given any compensation". Such

contents in the article, exhibit Jor.2, and the English executive summary, exhibit Jor.3, were untrue. The act of the Defendant caused the Prosecutor's company to be insulted, be hated and to lose reputation. Some customers cancelled their purchase contracts and set more conditions resulting in the Prosecutor's loss of 29 million Baht.

The Defendant adduced that he was an advisor to the network for the rights of migrant workers and an international advisor. During the time of the incident, the Defendant was an expert on migrant worker at Mahidol University commissioned by Finnwatch organization, which was an organization registered in Finland that monitored human rights outside the country, to conduct a research on migrant workers in the Prosecutor's company based on the interview topics determined by Finnwatch. The Defendant then coordinated with a team of 3 Myanmar to interview workers in the Prosecutor's company where a total of 12 workers were interviewed with voices being recorded in CDs and the interviews being documented and signed by them. Afterwards, the Defendant and Finnwatch tried to contact the Prosecutor for explanations but could not reach. The Defendant thus sent a report on the findings to Finnwatch thereafter it used his report to produce an article, exhibit Jor.2, for dissemination on the website as well as forwarding to various agencies without his involvement. His name was shown in the end of the article as Finnwatch wanted the readers to enquire more information from the Defendant if they had questions. As regards the press conference on 21st January 2013, Finnwatch entrusted the Foreign Correspondent Club to organize such event and the Defendant only acted as a speaker to present the summary by Power Point. The Defendant did not produce the executive summary, exhibit Jor.3, as it was Finnwatch that assigned someone to put it on the table in front of the conference room without his involvement.

Having considered the evidence produced by the Prosecutor and the Defendant, the preliminary fact can be established that the Prosecutor is a juristic person of the type of company, limited, producing canned pineapple and pineapple juice for export to other countries. Its headquarters is located at No. 179/12, Moo 11, Nongtatom Sub-district, Prانبuri District, Prachuap Khiri Khan Province as shown on the certificate, exhibit Jor.1. Finnwatch is an organization registered in Finland as shown on the document of the Finland Office of Registration and Patent, exhibit Lor.61, along with the translation. It has the mandate to monitor human rights outside Finland. Concerning the Defendant, he is an expert on migrant workers and used to work at Mahidol University, according to his personal information in exhibit Lor.14. Presently, the Defendant is an advisor to the Government of Myanmar in regard to migrant workers. The Defendant provided to Finnwatch the information about the Prosecutor's company as contained in the article, exhibit Jor.2, and the executive summary, exhibit Jor.3. The article of exhibit Jor.2 can be translated into Thai language that "...Serious human rights violations at Natural Fruit plant in Thailand....Based on the interviews of 12 workers, we have found that serious violations of basic human and labor rights are commonplace at the said facility.... The research was conducted by a team managed by Mr. Andy Hall....The key findings will be made public on 22 January 2013 which include:

1) There were a number of undocumented laborers and estimated 20–30 undocumented child laborers, some of whom were not older than 14 years of age....

2) All of the workers interviewed said that their hourly, daily or monthly wages or overtime compensations were lower than those defined in Thai labor laws. No holiday benefits or bonuses were provided as required by the legislation.

3) All Myanmar migrant workers interviewed stated that the Natural Fruit Company unlawfully confiscated their original passports..... Similarly, neither original nor photocopied work permits were provided to workers by the factory.If the workers wished to leave the Natural Fruit or change employer, they were forced to flee without these documents, thus losing all their investments in registration costs. This presents a significant psychological barrier to leaving.These practices are illegal. The confiscation of personal documents is one sign of the type of behavior that can be categorized as trafficking in persons.

4) There were random and unexplained deductions from worker salaries with the claim that they were for electricity and water, litter, transport (that was not used), uniform, registration, toilet damage, sleepiness fine, ID cards, bank cards and many other miscellaneous items. In addition, the workers said that Natural Fruit deducted more than what was legally allowed for their registration costs unless they informed the company of excessive social security deductions.....

5) When work was not available, the workers were not paid...

6) All workers said that they were forced to work overtime. Some workers said that they had to do overtime work in excess of the legally allowed 36 hours per week.The workers also said that they were fined for falling asleep during late shifts and hit around the head or arms if they were sleeping. Furthermore, some child laborers fainted or cried as a result of excessive work.

7) Many non-Thai workers reported that they had no social security card or health insurance as required by law. Only some had these benefits. Those who were in possession of SSO cards were eliminated by not being allowed to choose their hospital and their SSO costs were randomly deducted in different amounts, regardless of their salaries. None of the workers understood their social security rights.

8) There were not enough toilets for workers, particularly men. If workers had spent too long in the toilet, they were illegally deducted 30 minutes' worth of overtime compensation.

9) The workers reported that Natural Fruit did not provide work accident compensation as required by Thai law...”.

The executive summary, exhibit Jor.3, related to the Prosecutor’s company can be translated into Thai language that “...The findings about the Natural Fruit revealed that there were approximately 800 workers in the factory, of whom about 100 were Thai and 700 from Myanmar. According to the interviewed workers and NGO estimates, there were 200 migrant workers who had come to Thailand without proper documentation in the factory...The factory refused all collaboration with the research team during the field investigation and would not meet the researchers...No one wants to work here...The employer had confiscated passports and work permits from the migrant workers

interviewed... The majority of the workers were irregular migrants who had come to Thailand with the help of smugglers and connivance of the factory and their illegal collaboration with the local police....Illegally low wages and excessive overtime work...Irregular migrants were paid less than the regular migrants. The workers did not have written work contracts and had no right to annual leave...The factory did not pay any bonus....There is no trade union in the factory.Migrant workers face discrimination and violence.The migrant workers interviewed said that their superiors often treated migrant workers in a more uncivilized manner than Thai workers. They also face violence from guards and their superiors. The interviewed workers said that sometimes the workers were hit due to language barriers or disagreements..... Dangerous working conditions....The workers performed monotonous tasks for long hours in one position without any breaks.... Three interviewees reported a case in which a worker had died from an electric shock from a machine. The family of the deceased worker had been compensated with 20-30,000 baht (670-1000 dollars), although according to the law the compensation should have been 300,000 baht (10,000 dollars). One worker told that his fellow worker had lost a finger to a machine in the factory but had not been given any compensation...The factory did not have enough toilets for men. There were only six lavatories for hundreds of male workers....”.

The case requires adjudication of the matter whether or not the Defendant committed the offence as charged. The Prosecutor produced Mr. Khachin Khomneeyawanich, a witness who was the Vice President of the Prosecutor’s company. He testified that one official had called to inform him that the Defendant had produced a document slandering the Prosecutor’s company and disseminated it on the Finnwatch website. The witness thus accessed the website www.finnwatch.org and found the English article as shown in exhibit Jor.2 therein the contents were not true. Later on, the Defendant held a press conference inside the Maneeya Center Building, Lumpini Sub-district, Pathumwan District, Bangkok. Therefore, the witness hired Pol.Col.Nukoon Kolkij to observe such conference. Pol.Col.Nukoon brought back to him the article, exhibit Jor.2, and the executive summary, exhibit Jor.3, which had been distributed to the conference participants. Both article, exhibit Jor.2, and the executive summary, exhibit Jor.3, had the Defendant’s name on. The witness hence believed that the Defendant, in participation with Finnwatch organization, had imported such data into the internet system. The Prosecutor further produced Mr. Alongkot Wanothayaroj, an agent purchasing goods from the Prosecutor’s company for overseas sale, who testified that around the year 2013 he had been contacted by a number of overseas customers regarding the article they had seen on the Finnwatch website which was related to human trafficking acts committed by the Prosecutor’s company and had requested the witness to examine the fact. The witness thus accessed the website www.finnwatch.org and found the article as shown in exhibit Jor.2. The Court finds the testimonies of the two Prosecutor’s witnesses to attest that they checked the website www.finnwatch.org therein the article in exhibit Jor.2 appeared with the statement in its end as “in regard to the findings of the research conducted in Thailand please contact Mr. Andy Hall, a migration expert, Mahidol University” together with the telephone number and electronic mail address of the Defendant. In this connection, the Defendant testified that Finnwatch organization had commissioned him to conduct a research on migrant workers in

the Prosecutor's company and afterwards it had used information from his research report to produce the article as shown in exhibit Jor.2. The reason that the Defendant's name appeared in the end of the article was due to the Finnwatch's wish for whoever had question to be able to enquire the Defendant. Although the Defendant argued that his assignment had ended upon delivery of the research report to Finnwatch and he had no involvement with the dissemination of the article in exhibit Jor.2 on the website or with the distribution to various agencies, the circumstance where the Defendant had developed and delivered the report to Finnwatch as commissioned and consented to the Finnwatch's use of such information from his research report for the production of the article in exhibit Jor.2 as well as its dissemination on the website with his name indicated in the end for readers to enquire further information from him shall be held that the Defendant participated with Finnwatch organization in the import of article in exhibit Jor.2 into the computer system. The article as shown in exhibit Jor.2 contains the statement in a manner that the Prosecutor's company committed acts of human trafficking, employed child laborers, confiscated passports of workers, paid wages and overtime compensation lower than those specified by the law, randomly deducted salaries with no explanations, had workers work in excess of legally allowed hours, assaulted workers, provided toilets insufficient for workers, did not arrange social security for workers and workers with social security benefits could not choose the hospitals, and did not pay compensation in case of work accident as required by the law. In this relation, the Prosecutor produced Mr. Sukij Khrutkhong, a labor expert who used to serve the Provincial Office of Welfare and Labor Protection in Prachuap Kirikhan and had inspected the Prosecutor's company, to testify that in early 2013 the Provincial Office of Welfare and Labor Protection in Prachuap Kirikhan had been notified by the Department of Welfare and Labor Protection at the central level to examine the fact pertaining to the news of violation of workers' rights by the Prosecutor's company. As a result, the Provincial Office of Welfare and Labor Protection in Prachuap Kirikhan had assigned officials to inspect the Prosecutor's company for four times, thereof the witness had also taken part in the second inspection on 4th February 2013 and the fourth inspection on 17th July 2013. He learned from the first report of the officials that during the first inspection they had found no ground to pursue a case against the Prosecutor but had found that the Prosecutor failed to comply with certain practices of the Labor Protection Law such as the provision of toilets which was not enough for the number of workers and the round-off in the calculation of overtime compensation thus resulting in the workers' loss of small change. The officials had advised the Prosecutor with the proper practices. At the second inspection by the witness, it was found that such shortcomings had been resolved. In addition, at the fourth inspection, three Myanmar workers had been randomly selected for documented interviews, as appeared in the statement on sheet 11 of exhibit Lor.4. The three interviewed workers had not in any way accused the Prosecutor of violating the law. Furthermore, the witness was aware that the inspection of the Prosecutor's company had been undertaken since before 2013 whereby no illegally employed child laborer was evident. Despite the fact that during May 2013 there were two workers of 17 years of age employed, such employment was lawful. It had not been found that the Prosecutor had paid wages lower than the minimum wage and according to the questioning of workers there was no confiscation of passports, no suspension of wage payment if work was unavailable, and no evidence of an act of human trafficking committed by the Prosecutor at all. Another witness

produced by the Prosecutor was Mrs. Panun Panuthud, a former Prachuap Kirikhan Provincial Office of Social Security, who testified that, during her period of service in the province, there had never been a complaint or accusation against the Prosecutor for committing an illegal act related to social security matters. Furthermore, Mr. Ang Nieng, a worker in the Prosecutor's company who had been interviewed by the Defendant, testified as a witness that, about 1 – 2 years ago, the Defendant had taken the witness and 4 other workers of the Prosecutor to visit Hua Hin District in Prachuap Kirikhan Province where the witness had been asked if there was any person below 18 years of age working in the Prosecutor's company which he denied. He had been further asked about the wage, social security, health care, abuse within the company, and employment of migrant workers thereto he responded that he received the daily wage of 240 Baht and all workers had to pay for own social security benefits. If workers were ill, the employer would help and there was no assault within the company. Any migrant worker with no immigration document and work permit would not be employed by the Prosecutor. Afterwards, the Defendant asked the witness to sign on a paper and paid the witness and the other workers 300 Baht each. Based on these testimonies, the Court views that the article in exhibit Jor.2 is in the manner of accusing the Prosecutor's company to commit acts of human trafficking, violate human rights and commit various offences. Nevertheless, the Prosecutor produced the witness who was a government official having inspected the Prosecutor's company to testify in confirmation that the Prosecutor's company had not committed any act of human trafficking or any offence, except for some minimal shortcomings which had been resolved according to the advice of the officials, and there had not been any complaint that the Prosecutor's company had violated the social security law. In addition, the content of the article, exhibit Jor.2, is inconsistent with the answers given by Mr. Ang Nieng to the Defendant on the interview date pertaining to Mr. Ang Nieng's testimony. Since the Defendant claimed that the content of the article in exhibit Jor.2, which he had delivered to Finnwatch, had been obtained from the voice-recording interviews of 12 workers in the Prosecutor's company, the Defendant hence should have produced them as witnesses to attest the truthfulness of his claim and should have produced such CD interview records as evidence for the Court. On the contrary, the Defendant failed to do so. In relation to the exhibit Lor.24 which the Defendant produced to the Court, it is merely the document with brief notes of no meaning written by the Defendant. Concerning the photograph on exhibit Lor.23 which the Defendant claimed to have taken on the interview date, it is not evident where such location is, the faces of the persons in the photograph are not clearly seen, the number of workers is less than 12 as claimed to be interviewed by the Defendant, and the signatures of workers as shown in exhibit Lor.26 are in Myanmar language while Mr. Ang Nieng responded to the cross-examination by the Defendant's lawyer that he had signed on a plain paper. Moreover, the Defendant also responded to the cross-examination by the Prosecutor's lawyer that most workers were unable to speak or write English and thus the Defendant had recorded the interviews on CDs thereafter he had transcribed into English but had not shown it to the interviewees for review and signing. Accordingly, the evidence produced by the Defendant is not sufficient to reasonably lead to believe that the information as claimed by the Defendant to have obtained from the interviews of 12 workers in the Prosecutor's company, as appeared in the article in exhibit Jor.2, are true. The act of the Defendant as such shall be considered to be the

participation with Finnwatch in the import of false computer data into the computer system. Additionally, Mr. Khachin, the Prosecutor's witness, further testified that the act of the Defendant had caused some customers to cancel the purchase of goods and currently sets more conditions. Another Prosecutor's witness, Mr. Alongkot, also testified that once he had seen the article in exhibit Jor.2 on the website www.finnwatch.org he had contacted the Prosecutor's company and received explanations from Mr. Khachin. Afterwards, he had explained to overseas customers, some of whom understood while some others responded that they wished to cancel the purchase orders with the Prosecutor due to the concerned incident which was considered a big matter. From early 2013, when the article was published, the purchase orders via the witness who was an agent had decreased from the original orders for 30 percents and up to present some customers had refused to make any purchase order with the Prosecutor. The Court sees that the website www.finnwatch.org is publicly accessible. If the readers of the article in exhibit Jor.2 on such website understood that the Prosecutor's company had committed acts of human trafficking and other illegal acts, they would scorn and no longer want to do business with the Prosecutor, thus resulting in the damage to the Prosecutor. Consequently, that the Defendant in participation with Finnwatch posting the article in exhibit Jor.2 on the website shall be considered to constitute an act of slandering the Prosecutor to the third party, by advertisement with documents, in a manner that is likely to cause the Prosecutor to lose reputation, be insulted or be hated which is the offence of defamation pursuant to Article 328 of the Criminal Code. In respect of the press conference held inside the Maneeya Center Building in Lumpini Sub-district, Pathumwan District, Bangkok, on 21st January 2013, the Prosecutor produced Pol.Col.Nukoon Kolkij, who had been entrusted by Mr. Khachin to attend the conference, as a witness whereby he testified that there had been only the Defendant speaking at the conference and upon his arrival he had received two documents including the article, exhibit Jor.2, and the executive summary, exhibit Jor.3. He had thoroughly read the documents and called to inform Mr. Khachin about the information as appeared in such documents which stated that the Prosecutor's company had employed child laborers, assaulted workers, trafficked persons, and failed to pay the required wages. Regarding this matter, the Court finds that the executive summary, exhibit Jor.3, contains the statement accusing the Prosecutor of having committed acts of human trafficking, human rights violations, and other offences, and shall be held the offence of defamation similarly to the article in exhibit Jor.2. In particular, the Defendant testified that the cover page of the executive summary, exhibit Jor.3, indicated the Defendant's name as the author because of the tradition in Finland to honor the person participating in the collection of information and such summary contained the part related to the research conducted by the Defendant and was consistent with the information he had obtained except that it was a summary. Finnwatch assigned someone to place the executive summary, exhibit Jor.3, on the table in front of the conference room. On this basis, it shows that the Defendant was well aware of the statement defaming the Prosecutor in the executive summary, exhibit Jor.3, and of the distribution of the summary at the press conference. Although the Defendant produced that he had only acted as the recapitulating speaker without using exhibit Jor.3 therein and had not been the producer of such document, the circumstance where the Defendant making the press statement related to the information he claimed to be found during the interviews of workers in the Prosecutor's company, as appeared on exhibit

Jor.3, while knowing that such document contained the statement defaming the Prosecutor and was being distributed at the press conference shall be held that the Defendant committed an act of slandering the Prosecutor to the third party, by advertisement with documents, in a manner that is likely to cause the Prosecutor to lose reputation, be insulted or be hated which is the offence of defamation pursuant to Article 328 of the Criminal Code. With regard to the Defendant's producing that Finnwatch was an organization with the mandate to monitor human rights outside Finland and it commissioned the Defendant to conduct the research for the purpose of knowing whether or not the Prosecutor's company had violated human rights, the Court holds that the monitoring of human rights violations must be undertaken within the legal framework of each country and must not violate the rights of the parties being monitored. That the Defendant interviewing only some workers in the Prosecutor's company and jumping into conclusion by making the report to Finnwatch without hearing explanations from the Prosecutor whether or not the information obtained were true, and that Finnwatch producing the article, exhibit Jor.2, and the executive summary, exhibit Jor.3, for dissemination based on the information received from the Defendant, resulting in the damage to the Prosecutor, shall be held that the Defendant committed an act of violation of the Prosecutor's rights. That the defendant claiming that he tried to contact the Prosecutor's company by telephone, fax and electronic mail in order to acquire explanations prior to submission of such information to Finnwatch but was unable to reach it so he delivered the information to Finnwatch reveals that the Defendant was not attentive to whether or not he would receive explanations from the Prosecutor and whether or not the information delivered to Finnwatch would damage the Prosecutor. Accordingly, the act of the Defendant is not regarded a fair comment on any person or thing subjected to public criticism pursuant to Article 329 (3) of the Criminal Code. The evidence produced by the Prosecutor are of sufficient weight to establish with no doubt that the Defendant defamed the Prosecutor by means of advertisement with documents according to Article 328 of the Criminal Code, and participated with Finnwatch organization in the import of false computer data into the computer system in a manner that is likely to cause damage to another person or the public according to Article 14 (1) of the Computer Crime Act B.E. 2550.

The Court hereby finds the Defendant to be guilty pursuant to Article 328 of the Criminal Code and Article 14 (1) of the Computer Crime Act B.E. 2550. The act of the Defendant constitutes several distinct and different offences and the Defendant shall be subject to punishment for every single offence, on the grounds of committing defamation by means of advertisement and importing false computer data into the computer system in a manner that is likely to cause damage to another person or the public. The act of the Defendant is one and the same act against several provisions of the law and the Defendant shall be subject to punishment pursuant to Article 14 (1) of the Computer Crime Act B.E. 2550, which is the heaviest punishment as required by Article 90 of the Criminal Code, by imprisonment for a term of two years and a fine of 100,000 Baht, and to punishment on the ground of defaming by advertisement by imprisonment for a term of two years and a fine of 100,000 Baht, totally four years of imprisonment and 200,000 Baht fine. However, the Defendant's producing is somewhat beneficial to the adjudication and the Defendant thus shall be, according to Article 78 of the Criminal Code, allowed for reduced punishment of

one-thirds to be imprisonment for a term of three years and a fine of 150,000 Baht. In addition, the Defendant has worked on human rights issues and been an expert on migrant workers in Thailand for a long time which is considered beneficial to the society as a whole. As such, since it is not evident that the Defendant has ever been imprisoned, the punishment by imprisonment shall be suspended for a period of two years in compliance with Article 56 of the Criminal Code. In the event where the Defendant fails to pay the specified fine, Articles 29 and 30 of the Criminal Code shall apply and the Defendant shall advertise the summarized understandable Judgment on the websites namely www.finnwatch.org, www.ipsr.mahidol.ac.th, and www.prachathai.com, for a period of 30 days as from the date of Judgment and advertise the Court's Judgment in three newspapers including Thai Rath newspaper, Bangkok Post newspaper, and the local newspapers in Prachuap Kirikhan Province, with the size of 4 inches in width and 5 inches in length for a period of 7 consecutive days as from the date of Judgment. The costs of advertisements on the websites and the newspapers shall be borne by the Defendant. Other requests shall be denied.

Mr. Arkhom Nittayaporn [Signature and seal]

Mrs. Sutsiri Payakkaso [Signature and seal]