

Constitutional Court Ruling No. 6 - 7/2561 (2018)

Nakhon Sawan	Applicants
Provincial Court, 1 st	
Phetchabun Provincial Court, 2 nd	
-	Respondent

Constitution, section 5, section 26 and section 29 paragraph two;
 Narcotics (No. 6) Act, B.E. 2560 (2017), section 8;
 Narcotics Act, B.E. 2522 (1979), section 15 paragraph three, section 17 paragraph two
 and section 26 paragraph two;
 Procedure of Narcotic Case Act, B.E. 2550 (2007), section 3;
 Criminal Procedure Code, section 203, section 208 and section 225.

The Narcotics (No. 6) Act, B.E. 2560 (2017) amended section 15 paragraph three, section 17 paragraph two and section 26 paragraph two of the Narcotics Act, B.E. 2522 (1979) by changing the absolute presumption to a mere presumption which allowed a suspect or defendant to adduce evidence as proof of the truth to the court. Therefore, the application of section 8 paragraph one of the Narcotics (no. 6) Act, B.E. 2560 (2017), only with respect to the prohibition against the application of section 15 paragraph three, section 17 paragraph two and section 26 paragraph two of the Narcotics Act, B.E. 2522 (1979), as amended by the Narcotics (No. 6) Act, B.E. 2560 (2017), to a case which a court of first instance had already delivered a judgment prior to the effective date of the Act, and that the law in force on the day prior to this Act coming into force should continue to apply until such case was final, meant that upon a judgment of the court of first instance prior to this Act coming into force, although a case was not yet final and despite pending appeal in the Court of Appeal or Supreme Court, a defendant was unable to adduce evidence to prove an absence of intent to distribute, even though proceedings in the Court of Appeal or Supreme Court could allow examination of additional evidence under section 3 of the Procedure of Narcotic Case Act, B.E. 2550 (2007) in conjunction with section 203, section 208 and section 225 of the Criminal Procedure Code. Section 8 paragraph one of the Narcotics (No. 6) Act, B.E. 2560 (2017), only with respect to the prohibition against the application of such provisions to a case which was not yet final, which was contrary to or inconsistent with the rights of a defendant to defend a case, contrary to the rule of law under section 3 paragraph two of the Constitution, and treated the defendant as if as guilty of an offence without a final judgment of the court. The provision disproportionately restricted the right and liberty of the person, which was contrary to or inconsistent with section 26 and section 29 paragraph two

of the Constitution, and therefore rendered unenforceable under section 5 of the Constitution.