

Constitutional Court Ruling No. 13/2565 (2022)

Bangkok North Kwaeng Court

Applicant

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Respondent

Constitution, section 26;
Penal Code, section 208.

Section 208 of the Penal Code provided that any person who, unlawfully, wore or adorned a symbol to misrepresent to others that he/she was a Buddhist monk, novice, monk or priest of any religion would be liable to a term of imprisonment not exceeding one year or a fine not exceeding twenty thousand baht, or both. The provision was intended to safeguard the purity of religion by preventing a person from wearing attire to mock a Buddhist monk, novice, monk or priest with an intent to misrepresent to others that he/she had such a status. Such an act would cause harm to religion and the person mocking attire could rely on such status to act wrongfully or seek benefits in one way or another that would cause disorder or prejudice to the good morals of the people. The provision did not affect the liberty for religious followers to perform religious ceremonies generally. The provision was consistent with the principle of harm, as well as the prescription of a penalty in accordance with the severity of the offence by providing a maximum penalty but no minimum penalty. A court could exercise discretion to impose a penalty that was commensurate to the necessity and appropriateness of the circumstances in each case. The provision was sufficient for the necessity and proportionate to the common interests gained in comparison with the loss of rights and liberties as a consequence of such law. The provision was not contrary to the rule of law and did not disproportionately increase a burden or restrict a right or liberty of a person. Also, there was no prejudice to human dignity. The provision was generally applicable and was not directed at any particular case or person. Hence, the provision was neither contrary to nor inconsistent with section 26 of the Constitution.