

Constitutional Court Ruling No. 17-19/2565 (2022)

Civil Court

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Applicant

Respondent

Constitution, section 26 and section 29 paragraph one and paragraph two; Securities and Exchange Act, B.E. 2535 (1992), section 244/3, section 244/5, section 244/6, section 317/1, section 317/4, and section 317/5 as amended by the Securities and Exchange Act (No. 5), B.E. 2559 (2016).

Section 244/3 of the Securities and Exchange Act, B.E. 2535 (1992), as amended by the Securities and Exchange Act (No. 5), B.E. 2559 (2016), retained the previous principle. There was no change to the elements of offence and penalty. This was a case where a new law intended for the offence under an existing law to continue being a criminal offence. As for section 244/5 and section 244/6, such provisions were presumptions arising from the behaviour or actions of a person causing an offence to be liable for such actions, not a presumption of guilt of a person from the outset of a case. The provisions were consistent with the principle of proportionality and were not contrary to the rule of law. There was no disproportionate increase of burden or restriction of right or liberty of a person. The provisions did not prejudice human dignity. They were generally applicable and not directed at any particular case or person. They were not contrary to the legal principle prohibiting the retroactive effect of criminal penalties on a person and the presumption of a person's criminal liability. Hence, the provisions were neither contrary to nor inconsistent with section 26 and section 29 paragraph one and paragraph two of the Constitution.

As for section 317/1, section 317/4 and section 317/5, such provisions were civil penalties which applied only to significant wrongdoings of certain descriptions. The scope for applying such measures was clearly stated. The provisions did not provide a criminal penalty, but an alternative measure to remedy shortfalls in criminal penalties. The measures were taken separately from the criminal proceedings and subject to review by a judicial body. Hence, the provisions were not relevant to the legal principle which prohibited the retroactive application of a law containing criminal penalty to a person and the presumption of criminal liability on a person. The provisions were neither contrary to nor inconsistent with section 29 paragraph one and paragraph two of the Constitution.