

Constitutional Court Ruling No. 16/2567 (2024)

Court of Appeal, Region II

Applicant

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Respondent

Constitution, section 26 paragraph one, section 27 paragraph one, and section 29 paragraph one
Offences Related to the Issuance of Cheques Act, B.E. 2534 (1991), section 4 paragraph two,
concerning criminal penalties

A cheque was a bill used in lieu of cash to settle debts. Therefore, the credibility of cheques was crucial. If cheques lost their credibility, it could adversely affect business transactions and the national economy. The use of cheques as instruments of fraud, such as by issuing cheques without sufficient funds, undermined trust and caused harm to the financial standing of entrepreneurs. As such, the State must implement legal measures to deter fraudulent cheque issuance.

Accordingly, the Offences Related to the Issuance of Cheques Act, B.E. 2534 (1991) stipulated that a cheque drawer under any of the factual conditions set out in section 4 paragraph one (1) to (5) committed a criminal offence. This law aimed to ensure that cheque drawers exercised due care and issue cheques in good faith to settle actual, legally enforceable debts. It was not intended to penalise all cheque drawers indiscriminately.

Punishment under section 4 paragraph two may be imposed only when it was proven beyond doubt that the offender had characteristics or committed any of the act as described in section 4 paragraph one (1) to (5). The court had discretion to consider the severity of the offence. When balancing the circumstances, the public interests of maintaining trust in the cheque and national economy order outweighed any adverse impact on individuals subject to criminal liability under the law.

Furthermore, section 5 and section 7 provided that such offences were compoundable. If the offender paid the cheque amount to the holder or the bank within 30 days from receiving a cheque holder's written notice that the cheque was dishonoured, or if the underlying debt was extinguished before a final judgement was rendered, the case shall be deemed settled under the Criminal Procedure Code.

This provision was consistent with the principle of proportionality and did not violate the rule of law. It did not impose an undue burden or excessively restrict individual rights or liberties, nor did it infringe upon human dignity. Since the law imposed the different principles and enforcement of the various types of bills depending on their nature and purpose, it may constitute the dissimilarity of its protection. This did not violate the principle of equality.

Since the provision was in force at the time the offence occurred, and the penalties imposed was strictly those prescribed by law, it was not contrary to or inconsistent with sections 26 paragraph one, section 27 paragraph one and section 29 paragraph one of the Constitution.
