

J. Y. Interpretation No.204 (April 11, 1986) *

ISSUE: Does the imposition of criminal punishment under Article 142, Paragraph 2, of the Act of Negotiable Instruments on people who overdraw their checks contravene Articles 15 and 22 of the Constitution?

RELEVANT LAWS:

Articles 15 and 22 of the Constitution (憲法第十五條及第二十二條) ; Articles 126, 128 and Article 141, Paragraph 2 of the Act of Negotiable Instruments (票據法第一百二十六條、第一百二十八條及第一百四十一條第二項) .

KEYWORDS:

Checks (支票) , drawer (發票人) , bearer (執票人) , criminal punishment (刑罰) , fine (罰金) , negotiability (流通功能) , overdraw (濫行簽發) .**

HOLDING: The criminal punishment provision of Article 141, Paragraph 2, in the Act of Negotiable Instruments aims to prevent the overdrawing of checks by drawers, and to ensure the negotiability and payability of checks. Since the commencement of its operation, it has been used to improperly extend credit.

解釋文：票據法第一百四十一條第二項有關刑罰之規定，旨在防止發票人濫行簽發支票，確保支票之流通與支付功能，施行以來，已有被利用以不當擴張信用之缺失，唯僅係該項規定是否妥善問題，仍未逾立法裁量之範圍，與憲法第十五條及第二十二條尚無牴觸。

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However, the question lies in the appropriateness of the provision, and is within the legislature's authority to determine. It does not contravene Articles 15 and 22 of the Constitution.

REASONING: Article 128, Paragraph 1, of the Act of Negotiable Instruments stipulates that checks must be payable upon presentment, and any statements to the contrary shall be void. Therefore, checks are promises for payment with the important attribute of actual payment in the place of cash, and are vital instruments in transactions. Therefore Article 126 of the same Act expressly states that: "The drawer of a check shall guarantee payment of the sum of money specified on the check." In order to prevent the drawing of checks by drawers when there are insufficient funds, Article 141, Paragraph 2, of the same Act provides: "Where a person intentionally draws a check in an amount in excess of the funds remaining in the drawer's account or to the drawer's allowable credit with the drawee, and such check cannot be paid upon presentment by the bearer, the

解釋理由書：按支票限於見票即付，有相反之記載者，其記載無效，票據法第一百二十八條第一項定有明文。故支票為支付證券，貴在現實支付，有代替現金之功用，為交易上之重要工具，因此同法第一百二十六條明定：「發票人應照支票文義擔保支票之支付。」為防止發票人於資金不足時濫行簽發支票，同法第一百四十一條第二項復明定：「發票人簽發支票時，故意將金額超過其存數或超過付款人允許墊借之金額，經執票人提示不獲支付者，處三年以下有期徒刑、拘役或科或併科該不足金額以下之罰金。」予以刑罰制裁，以確保支票之流通與現實支付之功能，維持交易之安全。

drawer is liable to imprisonment for a term of less than three years and detention and/or a fine not exceeding the unpaid amount of said check.” This criminal punishment seeks to ensure negotiability of checks and their actual payability and to maintain secure transactions.

For checks which bear a date after the date of issue, Article 128, Paragraph 2, of the Act of Negotiable Instruments stipulates that: “A bearer of a check shall not present the check for payment prior to its stated date.” The issuing of a check prior to its stated date does not prohibit its negotiability. This is the nature of a check which is not entirely comparable with “payment upon presentment” under Paragraph 1 of the same Article. But for the purposes of securing the said check’s payability, if there are not sufficient funds in the account to cover a post-dated check on the stated date for payment, criminal punishment under Article 141, Paragraph 2, of the same Act shall be equally applicable. However, the adoption of criminal punishment as a means to ensure a check’s negotiability can easily lead the bearer to

至記載實際發票日後之日期為發票日之支票，票據法第一百二十八條第二項明定：「支票在票載發票日前，執票人不得為付款之提示」，惟在票載發票日前簽發之支票，並未禁止其流通轉讓，是項支票之性質，與同條第一項見票即付之支票，固非完全相同，為加強其功能，於是項支票到票載日期因資金不足，不獲支付時，亦適用同法第一百四十一條第二項科處刑罰。然以刑罰制裁確保支票之流通，易使執票人在收受支票時，忽視發票人之信用。施行以來，已有被利用以不當擴張信用之缺失，唯僅係該項規定是否妥善問題，仍未逾立法裁量之範圍，與憲法第十五條及第二十二條尚無牴觸。

overlook the drawer's credibility when receiving the check. Since the commencement of its operation, it has been used to improperly extend credit. However, the question lies in the appropriateness of the provision, and is within the legislature's authority to determine. It does not contravene Articles 15 and 22 of the Constitution.

In addition, although a check is an unconditional instrument, its drawer may still use it as evidence against the bearer when there is a dispute between the parties. Should a drawer allege the existence of a fact in dispute which causes non-payment of a check and the criminal court, without investigating the existence of criminal intention in relation to the fact in dispute as required by Article 141, Paragraph 2, of the Act of Negotiable Instruments, imposes criminal punishment under the said provision, the question is one concerning the appropriateness of the judgment and is irrelevant to the constitutionality of the said provision.

又支票雖為無因證券，發票人仍得以其與執票人間所存抗辯之事由，對抗執票人。支票發票人認有對抗執票人之事由，而使該項支票未獲兌現時，該項對抗之事由，是否涉及票據法第一百四十一條第二項所定犯罪故意有無之認定，刑事法院如未調查，遽依該項規定科處刑罰，亦係裁判妥適與否問題，與該項規定是否牴觸憲法無關，併此敘明。

Justice Yu-Ling Yang filed dissenting opinion, in which Justice Teh-Sheng Chang and Justice Chien-Tsai Cheng joined.

本號解釋楊大法官與齡、張大法官特生與鄭大法官健才共同提出不同意見書。