

31.03.2004, E.2002/101, K.2004/44

Date : 31.03.2004
Number : E.2002/101, K.2004/44
Official Gazette : 19.06.2004, 25497
Subject : Deprivation of liberty, Freedom of contract, Contract, obligation, inability to fulfil / Criminal act, intention to commit.

Headnotes:

If someone receives a service for which payment on the spot is expected at, for example, a restaurant, hotel or by means of transportation and knows that that payment cannot be made, imprisonment for those acts is not contrary to the Constitution. However, the perpetrator must have acted for his own or others' interest and must have intentionally and consciously committed the act in question.

Summary:

The Amasya Justice of the Peace Court applied to the Constitutional Court alleging that the phrase "... imprisonment from 15 days to 3 months..." in Article 521.a of the Criminal Code was contrary to the Constitution. Article 521.a of the Criminal Code provides, *inter alia*:

- "1. Persons who stay at boarding-houses, hotels, guesthouses or similar places for temporary residence,
2. Persons who have received service at restaurants or similar places, and
3. Persons who have received service in taxis or by similar transportation means and depart without any payment in spite of his/her knowledge of his/her inability to pay shall be imprisoned from 15 days to 3 months and shall receive a high fine equal to the amount of imprisonment they have served."

Article 38.8 of the Constitution (as amended in 2001) stipulates: "No one shall be deprived of his liberty merely on the ground of an inability to fulfil a contractual obligation." In this provision, the phrase "inability to fulfil" means that anyone who is not able to fulfil an obligation even if he/she wants to fulfil it. So individuals who are able to fulfil any contractual obligation and refuse to fulfil it may not benefit from this guarantee. Likewise, Article 1 Protocol 4 ECHR, the source of Article 38.8 of the Constitution, is related to an unintentional inability to fulfil a contractual obligation.

In order for the offending provision to fall within the meaning of Article 38.8 of the Constitution, that provision must state that the relationship must have followed

from a contractual obligation and the deprivation of liberty must have been prescribed by law.

Imprisonment pursuant to Article 521.a of the Criminal Code is provided for acts that are committed intentionally. The intention to commit an act must have existed in order for a sentence to be imposed.

Therefore, the legal regulation in Article 521.a of the Criminal Code is not related to inability to fulfil a contractual obligation. On the contrary, in spite of his/her knowledge about his/her financial situation, the person has acted. This criterion is mentioned at the beginning of the Article as "in spite of his/her knowledge about his/her inability to pay". Therefore, the offending provision is not contrary to the Constitution. The Constitutional Court unanimously dismissed the allegation of unconstitutionality. &SUP&

Promulgated in the Official Gazette of 31.03.2004, no. 25497.