

CONSTITUTIONAL LAW

Constitutionality of provision – Sections 3 and 4 of Sedition Act – Effect of – Whether contravened article 10(2)(a) of Federal Constitution – Sedition Act 1948, sections 3 and 4 – Federal Constitution, article 10

Mat Suhaimi bin Shafiei v Kerajaan Malaysia

[2016] MLJU 1041, Court of Appeal

Facts The appellant was charged (“the Charge”) under section 4(1)(c)¹ of the Sedition Act 1948 (“the Act”) at the Sessions Court for publishing a seditious article online. After his motion to strike out the Charge at the Criminal Court was dismissed, he applied (“the Application”) to the Civil Court for a declaration that section 3² of the Act read together with section 4, was inconsistent with article 10³ of the Federal Constitution (“the FC”). The Application was dismissed. Hence the current appeal to the Court of Appeal.

Issue The main issue was whether section 3(3)⁴ of the Act was a proportionate restriction under article 10(2)(a)⁵ of the FC.

Held In allowing the appeal, the court ruled that section 3(3) of the Act, which displaces the proof of intent for offences under the Act, is not a proportionate restriction under article 10(2)(a) of the FC, thus contravening article 10 of the FC, and rendering section 3 invalid.

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{JANUARY 2017\01409802}

¹ Any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication.

² Seditious tendency.

³ Freedom of speech, assembly and association

⁴ For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

⁵ Parliament may by law impose on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.