

**The Disciplinary Measures for Prevention of Recidivism by  
Communist Espionage Criminals Case**

**Issue**

1. Is an administrative order/decreed that provides for an indefinite period of reeducation and disciplinary measures after the completion of a sentence for those convicted of treason or espionage unconstitutional?
2. Is the statute permitting only those who have already completed reeducation or disciplinary sentences following a conviction of treason or espionage to seek state compensation constitutional?

**Holding**

[1] Article 8 of the Constitution expressly provides that personal freedom shall be guaranteed to the people. Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained other than by a judicial or police body in accordance with procedures prescribed by law. During the Martial Law period and under the jurisdiction of Martial Law governance, the chief commander could, under necessary circumstances, restrict personal liberty to a certain degree by the issuance of decrees. However, related punishment restricting personal freedom still had to be regulated by law whose provisions were substantially adequate, and the penalty was rendered through trial proceedings. Article 2 of the Disciplinary Measures Governing the Prevention of Recidivism by Communist Espionage Criminals during the Period of National Mobilization for the Suppression of Communist Rebellion provided, “For convicted communist

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\* Translation by Andy Y. SUN

espionage felons having completed a term of imprisonment or reeducation training but likely to recommit the offense(s) due to lack of improvement in thoughts and behaviors, they may be transferred into a labor re-education facility for compulsory labor for stricter discipline (Paragraph 1). The proceeding felons shall be reported by the agency of correction to the highest provincial security agency for approval (Paragraph 2).” Regardless of whether they were called compulsory labor or disciplinary measures, both penalties are serious intrusions upon personal freedom imposed by administrative orders without authorization by law and necessary trial proceeding. Furthermore, this provision allowed a state agency to recommit those who had already completed their penalties for an indefinite period of disciplinary action simply based on a review of their thoughts and behaviors and the determination of recidivism. Even though it was enacted during an extraordinary period, this provision does not conform to the minimum standards of human rights protection, and is contradictory to Articles 8 and 23 of the Constitution.

[2] Article 6, Paragraph 1, Subparagraph 4, of the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law provides that citizens, having completed their sentences, reeducation or disciplinary measures for convictions of treason, espionage, or crimes under the Act for the Punishment of Treason or Act for the Eradication of Communist Espionage but not having been released, may petition the competent district court, and the relevant provisions of the Act of Compensation for Wrongful Detentions and Executions may apply, *mutatis mutandis*, in this regard. The proceeding provision applies to those cases where the term of reeducation or disciplinary measures was arbitrarily extended even after the term was already completed, or other penalties restricting personal freedom were imposed without lawful decisions of courts. Therefore, those provisions do not contradict the purpose of the Constitution in terms of safeguarding the rights of the people.

## **Reasoning**

[1] Article 8, Paragraph 1 of the Constitution states that, “Personal freedom shall be guaranteed to the people. Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained other than by a judicial or a police organization in accordance with the procedure prescribed by law. No person shall be tried or punished other than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be rejected.” This means that any punishment concerning the restraint of personal freedom must be regulated by law and may not be executed unless and until a proper trial is conducted. The legislature must further ensure that when enacting a statute, its content must be substantively adequate so that it does not exceed the necessary limitations, even if it is to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare, as expressly stipulated by Article 23 of the Constitution. During the Period of National Mobilization for the Suppression of Communist Rebellion, the nation was under a system that was extraordinary in nature, and the state’s power and the protection of citizens’ rights were certainly not comparable to what they should have been under normal circumstances. Yet the premises for the protection of all other constitutional rights rest on the full protection of personal freedom, which is a critical and fundamental human right. Thus, even under extraordinary circumstances, the punishment restricting an individual’s personal freedom must nevertheless be in conformity to Articles 8 and 23 of the Constitution.

[2] Article 2 of the Disciplinary Measures Governing the Prevention of Recidivism by Communist Espionage Criminals during the Period of National Mobilization for the Suppression of Communist Rebellion provided for, “[f]or convicted communist espionage felons having completed a term of

imprisonment or reeducation training but likely to recommit the offense(s) due to lack of improvement in thoughts and behaviors, they may be transferred into a labor re-education facility for compulsory labor for stricter discipline (Paragraph 1). The proceeding felons shall be reported by the agency of correction to the highest provincial security agency for approval (Paragraph 2).” Based on this regulation, those convicted of the crime of communist espionage, who had fulfilled the term of imprisonment or reeducation but were still physically confined in a certain location without being released, regardless of whether such detention was called compulsory labor or disciplinary measures, were in fact not different from those suffering the penalty of having their personal freedom deprived. By nature, both punishments had seriously encroached on personal freedom and should be rendered only by courts through legal proceedings, in accordance with Article 8 of the Constitution. The aforementioned disciplinary measures permitted an agency other than a court, that is, the highest police authority of the province, to promulgate and execute the conditions by executive order, which clearly violated Article 8 of the Constitution. Any restriction of personal freedom must be stipulated by substantive law and enacted by the legislature. The measures in question were merely executive orders promulgated by an executive organization that permitted the exercise of disciplinary measures without any term restriction, which were invalid as they were not in conformity with Articles 8 and 23 of the Constitution.

[3] While the state may impose more restrictions on individual rights during extraordinary periods and due to necessity under extraordinary circumstances, such restrictions must nevertheless not exceed the boundaries of minimum human rights protection. Freedom of thought must be protected in order to safeguard the spiritual activities of the people. It is the root of human civilization and the foundation of freedom of expression, and also the most fundamental human dignity protected by the Constitution. Given its particularly crucial

meaning to freedom, democracy and the continuance of the constitutional rule of law, no government agencies may intrude upon such freedom in the name of emergency. Even in times of extraordinary nature, and regardless of whether it is in the form of a statute, invasion of the scope of minimum human rights is prohibited, be it via means of compelling revelation or rehabilitation. It should also be pointed out that Article 2 of the Disciplinary Measures Governing the Prevention of Recidivism by Communist Espionage Criminals during the Period of National Mobilization for the Suppression of Communist Rebellion permitted state agencies to order those who were likely to recidivate due to lack of improvement in thoughts and behaviors into a labor re-education facility for compulsory labor and stricter discipline. Such measures are no different from authorization for a state agency to try to reform the thoughts of its citizens through compulsory means. The said Article 2 violates not only the basic purpose of the Constitution for the protection of freedom of expression but also minimum standards of human rights protection.

[4] Article 6, Paragraph 1, Subparagraph 4 of the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law provides that citizens, having completed their sentences, reeducation or disciplinary sentences for convictions of treason, espionage, or crimes under the Act for the Punishment of Treason or Act for the Eradication of Communist Espionage, but not having been released in accordance with the law, may petition the competent district court, and the relevant provisions of the Act of Compensation for Wrongful Detentions and Executions may apply, *mutatis mutandis*, in this regard. The proceeding provision applies to those cases where the term of reeducation or disciplinary measures was arbitrarily extended even after the term was already completed or where other prolonged penalties restricting personal freedom were imposed without due process under which the State Compensation Law applies. Therefore, these provisions do not contradict the purpose of the Constitution in

terms of safeguarding the rights of the people.

### **Background Note** by Rong-Gen LI

J.Y. Interpretation No. 567 has two petitioners. Both of them were convicted of treason, sentenced to imprisonment, and had completed their punishment. However, even so, both petitioners were not released, but instead transferred to labor re-education facilities for discipline. Those petitioners were released only after they had completed the disciplinary measures. They argued that the compulsory labor and disciplinary measures were illegal detentions and applied for compensation for wrongful detention and execution. The Judicial Yuan Wrongful Detention and Execution Review Committee rejected their applications. Those petitioners applied to the Judicial Yuan for interpretation based on the reason that Paragraphs 1 and 2 of Article 2 of the Disciplinary Measures Governing the Prevention of Recidivism by Communist Espionage Criminals during the Period of National Mobilization for the Suppression of Communist Rebellion and Article 6, Paragraph 1, Subparagraph 4 of the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law were in violation of Articles 8 and 23 of the Constitution.

J.Y. Interpretation No. 567 has at least two key points. First, the interpretation emphasizes the protection of personal freedom. Personal freedom is the premise of other constitutional rights and fundamental human rights. Personal freedom can be restricted only by law and a law court in accordance with the procedure prescribed by law according to Article 8 of the Constitution. According to Article 23, a statute restricting personal freedom must be substantively adequate so that it does not exceed the necessary limitations, even if it is to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare. This Interpretation recognizes that during the extraordinary period, the state's power

and people's rights were different from how they would have been under normal circumstances. However, the protection of personal freedom should still comply with the aforementioned principle. In other words, this Interpretation establishes the minimum standard of protection of personal freedom.

This Interpretation also outlines the contours of freedom of thought. It holds that, according to the constitutional protection of the freedom of speech, it was unconstitutional to reform people's thoughts by compulsory means. In other words, this Interpretation recognizes the freedom of thought is protected by Article 11 of the Constitution. Many commentators further argued that the freedom of thought is absolute and cannot be restricted or intruded upon by the state.

While this interpretation holds that the labor re-education and disciplinary measures regulated by Article 2 of the Disciplinary Measures Governing the Prevention of Recidivism by Communist Espionage Criminals during the Period of National Mobilization for the Suppression of Communist Rebellion unconstitutional, J.Y. Interpretation No. 471 invalidated Article 12, Paragraph 1 of the Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife, which provided: "If convicted under Articles 7, 8, 10, 11, Paragraphs 1 to 3 of Article 12 or Paragraphs 1 to 3 of Article 13 and sentenced to imprisonment, a prisoner shall be sent to a place of labor and be compelled to labor for three years after he has served his sentence or has been pardoned." The reasoning of J.Y. Interpretation No. 471 was that the provision imposed a mandatory compulsory labor period of three years without considering the prevention necessity of the person's propensity to endanger the society. That provision was thus in violation of Article 23 of the Constitution.

J.Y. Interpretation No. 528 was another case in regard to compulsory labor. In that interpretation, the Constitutional Court upheld the compulsory-labor

provision in the Organized Crime Prevention Act. The Court found the Act to be constitutional because that provision was not mandatory. Paragraphs 4 and 5 of the provision permitted the suspension of execution or continuance of compulsory labor. The compulsory-labor provision, therefore, was in line with Articles 8 and 23 of the Constitution.