

**The Constitutionality of the *Liumpang* (Hoodlums) Act Case
(The Third Case on the Same Act)**

Issue

Do Articles 2, 6, 10, 12, 14, 15, and 21 of the Act for Eliminating *Liumpang* (Hoodlums), and even this Act as a whole, conflict with relevant principles of the Constitution?

Holding

[1] The provision of Article 2, Subparagraph 3 of the Act for Eliminating *Liumpang* (Hoodlums) (hereinafter referred to as “the Act”) regarding the acts of “committing blackmail and extortion, forcing business transactions, and manipulating matters behind the scenes to accomplish the foregoing”; the provision of Subparagraph 4 of the same Article regarding the acts of “managing or controlling professional gambling establishments, establishing brothels without authorization, inducing or forcing decent women to work as prostitutes, working as bodyguards for gambling establishments or brothels, or relying on superior force to demand debt repayment”; and the provision of Article 6, Paragraph 1, regarding “serious circumstances” do not violate the void-for-vagueness doctrine. As for the provisions of Article 2, Subparagraph 3, regarding the acts of “occupying territory,” “eating and drinking without paying,” and “coercing and causing trouble”, while they might not be difficult for the regulated people to understand, there are still aspects of these provisions that are insufficiently clear. Therefore, the authorities concerned shall review and revise

* Translation and Note by Kai-Ping SU

these provisions by taking into account factors such as the changing patterns of society. Further, the provision of Article 2, Subparagraph 3, regarding the act of “tyrannizing good and honest people” and the provisions of Article 2, Subparagraph 5, regarding “people who are habitually morally corrupt” as well as “people who habitually wander around and act like rascals” are inconsistent with the void-for-vagueness doctrine.

[2] Regarding the determination of *liumang* under Article 2 of the Act, in accordance with due process of law, the reported person shall have the right to appear and be heard during the determination procedure. In the case that a person determined as a *liumang* appears voluntarily before the police pursuant to a lawful notice, the person shall not be compelled to be transferred to the court with his case, if doing so is against the wishes of the person.

[3] Article 12, Paragraph 1 of the Act restricts the transferred person’s rights to confront and to examine witnesses and to access court files, without taking into consideration whether, in view of the individual circumstances of the case, other less intrusive measures are sufficient to protect witnesses’ safety and the voluntariness of their testimonies. This provision is clearly an excessive restriction on the transferred person’s right to defend himself in a legal action and is inconsistent with the principle of proportionality under Article 23 of the Constitution. This provision further violates the principle of due process of law under Article 8 of the Constitution and the right to judicial remedy under Article 16 of the Constitution.

[4] The provision regarding the mutual set-off of time in Article 21, Paragraph 1 of the Act does not conflict with the principle of proportionality under Article 23 of the Constitution. The proviso of Article 13, Paragraph 2 of the Act, which provides that court rulings need not specify the term of reformatory training, leads to concerns that the person receiving reformatory training might be

excessively deprived of personal liberty and security. The authorities concerned shall re-examine and revise this proviso.

[5] The provisions of Article 2, Subparagraph 3, regarding “tyrannizing good and honest people,” Subparagraph 5 of the same Article regarding “people who are habitually morally corrupt or who habitually wander around and act like rascals,” and Article 12, Paragraph 1, regarding excessive restraints on the rights of the transferred person to confront and to examine witnesses as well as to access court files are inconsistent with relevant principles of the Constitution. These provisions shall become null and void no later than one year after the date of announcement of this Interpretation.

Reasoning

[1] Personal liberty and security of the people is an important fundamental human right. Fully safeguarding this right is a prerequisite for the people to exercise other freedoms protected by the Constitution. Article 8 of the Constitution, therefore, includes a specific and detailed provision about protection of personal liberty and security of the people. Paragraph 1 of this Article reads:

The people’s right to personal liberty and security shall be guaranteed. Except in case of *flagrante delicto* as provided by statute, no person shall be arrested or detained otherwise than by a judicial or a police authority in accordance with the procedure prescribed by statute. No person shall be tried or punished otherwise than by a court of law in accordance with the procedure prescribed by statute. Any arrest, detention, trial, or punishment not conducted in accordance with the procedure prescribed by statute may be rejected.

Considering the intent of this clause, in exercising the state's power to restrict personal liberty and security of the people, the State must abide by legal procedures and, within certain limits, act in accordance with constitutional parameters. Regarding so-called "the procedure prescribed by statute", pursuant to past Interpretations of this Court, all the restraints imposed to restrict personal liberty and security to a certain place which are tantamount to a form of criminal punishment that deprives a person of personal liberty and security—irrespective of the name used for the restraint—these restraints must have a statutory foundation and also implement the procedures of due process of law. These procedures shall also be of the same type as used in meeting due process requirements when restricting personal liberty and security of a criminal defendant. Interpretations No. 384 and No. 567 of this Court used the same principles as above to review the provisions of the Act that concern the sanction of reformatory training, and the same principles were also used to review the sanction of "control and training" under the Disciplinary Measures for the Prevention of Repeat Offenses by Communist Spies during the Period of Communist Rebellion.

[2] In accordance with the principle of rule of law, when statutes are used to restrict rights of the people, the constitutive elements of statutes shall conform to the void-for-vagueness doctrine, which enables the regulated people to foresee the legal consequences of their behavior, in order that the prior notice function of the law is ensured. This further creates clear standards for enforcing the law so as to ensure that the statutory purpose can be achieved. Pursuant to the past Interpretations of this Court, the concepts used in a statute do not violate the void-for-vagueness doctrine if their meanings are not difficult for the regulated people to understand through the text of the statute and legislative purpose, and further if the meanings can be confirmed through judicial review (*see* J.Y. Interpretations Nos. 432, 491, 521, 594, 602, 617, 623 for reference). In addition, according to

Article 8 of the Constitution, the State's power to restrict personal liberty and security of the people is, within certain limits, reserved in the Constitution. If a statutory provision creates a severe restraint on personal liberty and security of the people that is tantamount to criminal punishment, whether the elements of this statute conform to the void-for-vagueness doctrine shall be subject to stricter scrutiny.

[3] Article 2 of the Act explicitly provides the definition of "*liumang*". Subparagraph 3 therein describes the "*liumang*" acts of "occupying territory, committing blackmail and extortion, forcing business transactions, eating and drinking without paying, coercing and causing trouble, or manipulating matters behind the scenes to accomplish the foregoing." Based on ordinary people's experience of daily life and understanding of language, as well as the practice of judicial review, the acts of "committing blackmail and extortion" and "forcing business transactions" are sufficient to be understood as using fraud, intimidation, violence, threats, or similar acts to mislead or suppress a victim's free will and cause the victim to surrender money or property or to complete certain business transactions. The act of "manipulating matters behind the scenes to accomplish the foregoing" is sufficient to be understood as substantive control of other people's formation of ideas, decisions to act, and implementation of acts. The meanings of the above constitutive elements of *liumang* acts are foreseeable by the regulated people and can further be confirmed through judicial review. The above elements thus do not violate the void-for-vagueness doctrine. As for "occupying territory," judging by its context, "occupying" is no doubt sufficient to be understood as the act of excluding other people's lawful rights and monopolizing certain interests. "Territory" could refer to a certain physical space or be understood as possessing specific business interests or other unlawful interests. Regarding "eating and drinking without paying," it could be understood as refusing to pay the bill after eating and drinking in order to gain unlawful

money or property. “Coercing” in “coercing and causing trouble,” is sufficient to be understood as using violence, threatening, intimidation, or similar acts. Ordinary people can understand these kinds of *liumang* acts based on their experience of daily life and understanding of language, and judicial review can confirm the constitutive elements of these *liumang* acts. However, how to define the concrete form and content of the act of monopolizing by excluding other people, whether the territory is limited to a certain physical space, whether other consuming activities in addition to eating and drinking are also included within the scope of “eating and drinking without paying,” and what actually are the acts that constitute “causing trouble” are all insufficiently clear. Therefore, the authorities concerned shall evaluate the possibility of concretely describing the constitutive elements of these statutes by taking into account factors such as the changing patterns of society.

[4] Article 2, Subparagraph 4 of the Act describes the *liumang* acts as “managing or controlling professional gambling establishments, establishing brothels without authorization, inducing or forcing decent women to work as prostitutes, working as bodyguards for gambling establishments or brothels, or relying on superior force to demand debt repayment.” “Managing or controlling professional gambling establishments” refers to the acts of providing places for gambling and gathering people together to gamble with the intention of making a profit. “Establishing brothels without authorization” is sufficient to be understood as acting without permission as an intermediary for sexual transactions and exploiting the earnings. “Working as bodyguards for gambling establishments or brothels” refers to assisting with the management and control of gambling establishments and with the management of brothels. “Relying on superior force to demand debt repayment” refers to demanding debt payment from others by violence, threatening, or similar means. “Inducing decent women to work as prostitutes” refers to causing a woman to have the intention to trade

sex for money by means other than violence or threatening. “Forcing decent women to work as prostitutes” refers to causing a woman to trade sex for money by violence, threatening, or similar means. All of the above constitutive elements of *liumang* acts are acts of economic exploitation that are commonly seen in society. Ordinary people can foresee the types of acts and the scope of their applications based on their experience of daily life as well as understanding of language, and they can also be confirmed through judicial review. The above requirements constituting the definition of *liumang* thus do not violate the void-for-vagueness doctrine.

[5] The provision of Article 2, Subparagraph 3, regarding “tyrannizing good and honest people” and the provisions of Subparagraph 5 of the same Article regarding “people who are habitually morally corrupt” and “people who habitually wander around and act like rascals” all describe the risk of a person’s potential to endanger society. These types of acts covered by the above provisions are excessively vague such that ordinary people, based on their experience of daily life and understanding of language, cannot foresee what acts are really covered, nor can these listed acts be confirmed through judicial review. In practice, these provisions would normally have to be merged with other factors such as acts of violence, threatening, intimidation, or similar acts, or merged with provisions in other subparagraphs of the same Article. The acts covered by the above basic constitutive elements are not clear. Although Subparagraph 5 further reads:

If there are sufficient facts to consider that the actor habitually undermines social order or endangers the life, body, freedom, or property of others, the scope of the overall elements of the offenses is still not sufficiently concrete and clear. Accordingly, the above provisions of “tyrannizing good and honest people” and “people who

are habitually morally corrupt” and “people who habitually wander around and act like rascals” are inconsistent with the void-for-vagueness doctrine.

[6] Article 6, Paragraph 1 of the Act reads:

When a person is determined to be a *liumang* and the circumstances are serious, the police precinct of the directly governed municipality or police department of the county (city), with the consent of the directly supervising police authorities, may summon the person to appear for questioning without prior warning. If the summoned person does not appear after receiving lawful notice and does not have proper grounds for failing to appear, then the police may apply to the court for an arrest warrant. However, if the facts are sufficient to lead the police to believe that the person is a flight risk and there are exigent circumstances, then the police may arrest him without a warrant.

According to the common societal conception, when determining the so-called “serious circumstances”, there still shall be taken into consideration the means used to carry out the *liumang* acts, the number of victims, the degree of harm, and the degree to which social order was undermined when examining the totality of the circumstances to determine whether the circumstances are serious. This provision does not contradict the void-for-vagueness doctrine.

[7] Article 2 of the Act reads:

The police precinct of the directly governed municipality or police department of the county (city) shall provide concrete facts and

evidence and, after examining the case with other concerned public security units, report the case to the directly supervising police authorities for reexamination and determination.

The preliminary examination as to whether a person is a *liumang* by the police precinct of the directly governed municipality or police department of the county (city) is conducted by the Examination Group for Eliminating *Liumpang*, which is a committee composed of the precinct chief for the directly governed municipality—or police department of the county (city) for all other localities—as well as responsible senior officials from the local branches of the Investigation Bureau and Military Police Command (*see* Article 6 of the Implementing Rules for the Act for reference). The reexamination and determination procedures of the police departments of the directly governed municipalities and the National Police Agency, the Ministry of Interior are conducted by the Committee for the Deliberation of and Objections to *Liumpang* Cases, which is composed of police, prosecutors, legal specialists, and impartial members of society (*see* Article 7, Paragraph 2 of the Implementing Rules for the Act for reference). The above provisions seek to ensure that the reported people obtain a fair result of examination, through a committee composed of diverse members.

[8] Although a diverse formation of the committee is conducive to promoting the objectivity of the committee's examination, the reported person must have an opportunity for defense in order to protect his right to defense. The reported person must have the right to be heard during the proceedings, in addition to the right to obtain relief after receiving an unfavorable decision. In order to comply with due process of law, the law shall grant the reported person the right to be heard during the examination committee's proceedings to determine whether the person is a *liumpang*.

[9] The beginning part of Article 6, Paragraph 1 of the Act provides that when

a person is determined to be a serious *liumang*, if the person summoned by the police does not comply after having received lawful notice and does not have proper grounds for failing to appear, the police may apply to the court for an arrest warrant. If a person is arrested under a warrant issued by the court, he shall be transferred to the court for hearing after his arrest (*see* Article 9, Paragraph 1 of the Act for reference). If a person voluntarily appears and is questioned by the police, but he is not willing to be transferred to the court, the police may not compel the person to be transferred to the court. Doing otherwise would violate due process of law. The procedures provided in the beginning part of Article 7, Paragraph 1 of the Act shall, as a matter of course, be interpreted in the same manner.

[10] Article 12, Paragraph 1 of the Act reads:

In order to protect reporters, victims, and witnesses under this Act, the court and the police department may, when necessary, separately summon them in private, and further use code names in place of their real names and identities when making the transcript and documents. When the facts are sufficient to believe that a reporter, victim, or witness may be threatened with violence, coercion, intimidation, or other retaliatory acts, the court may refuse to allow the transferred person and his lawyer to confront and to examine the reporter, victim, or witness, either based on the request of the reporter, victim, or witness or *ex officio*. The court may further refuse to allow the lawyer of the transferred person to view, copy, or photograph documents that might disclose the real names and identities of reporters, victims, or witnesses. The court may further request the police department to take necessary protective measures before or after the court questions the

reporter, victim, or witness. However, the judge shall inform the transferred person the gist of the transcripts and documents that are admissible as evidence and give the transferred person an opportunity to state his opinion.

This Article allows the court to deprive the transferred person and his lawyer of the rights to confront and to examine witnesses as well as the right to access relevant materials in the case file that could identify witnesses, either based on the request of these witnesses or *ex officio*, when the facts are sufficient to believe that the reporter, victim, or witness might suffer violence, coercion, intimidation, or other retaliatory acts.

[11] The purpose of the criminal defendant's right to examine witnesses is to guarantee his right to sufficient defense in a legal action, which right is protected by the principle of due process of law under Article 8, Paragraph 1 of the Constitution and within the protection scope of the right to judicial remedy under Article 16 of the Constitution (*see* J.Y. Interpretation No. 582 for reference). A person (including the reporter and the victim) is obligated to serve as a witness in the criminal proceedings against another person, except as otherwise provided by law. A witness shall fulfill his obligations to appear in court, to sign an affidavit to tell the truth, to be questioned, confronted, and examined, and to speak the truth (*see* Article 166, Paragraph 1; Article 166-6, Paragraph 1; Articles 168, 169, and 176-1; Article 184, Paragraph 2; and Articles 187 to 189 of the Code of Criminal Procedure for reference). The sanction of reformatory training, which may be imposed on the transferred person in the *liumang* elimination proceeding, is a severe restraint on personal liberty and security. The right of the transferred person to confront and to examine witnesses shall receive the same constitutional protections as those granted to criminal defendants. Accordingly, a person is obligated to serve as a witness in the *liumang* elimination proceeding

against another person and may not refuse to be confronted or examined by the transferred person or his defense lawyer. Nonetheless, to protect witnesses from endangering their lives, bodies, freedom, or property as a result of being confronted and examined, the transferred person's and his defense lawyer's right to confront and to examine witnesses may be restricted by concrete and clear statutory provisions. Any such restrictions must comply with the requirements of Article 23 of the Constitution.

[12] Article 12, Paragraph 1 of the Act simply provides in general terms:

The facts are sufficient to believe that a reporter, victim, or witness is threatened with violence, coercion, intimidation, or other retaliatory acts.

This provision fails to take into consideration whether, in view of the individual circumstances of the case, other less intrusive measures are sufficient to protect the witness's safety and the voluntariness of his testimony, such as wearing a mask, altering the person's voice or appearance, using a video transmission, or using other appropriate means of separation when witnesses are confronted and examined (*see* Article 11, Paragraph 4 of the Witness Protection Act for reference). The above provision immediately deprives the transferred person of his right to confront and to examine witnesses as well as to access court files, which is clearly an excessive restriction on the transferred person's right to defense in a legal action and does not conform with the essence of the principle of proportionality under Article 23 of the Constitution. Therefore, this provision violates the guarantees of the principle of due process of law under Article 8 of the Constitution and the right to judicial remedy under Article 16 of the Constitution.

[13] Article 21, Paragraph 1 of the Act reads:

If the *liumang* act for which the person is committed to reformatory training also violates criminal laws and becomes the basis for a criminal conviction, time spent serving fixed-term imprisonment, detention, or rehabilitation measures and time spent in reformatory training shall be mutually set off on a one-day-for-one-day basis.

That is, if a *liumang* act also violates criminal laws, the person who committed the act may be subject to the sanction of reformatory training in addition to receiving criminal punishments and rehabilitation measures based on the same facts. The Act therefore provides that time spent serving criminal punishments or rehabilitation measures under criminal laws shall be mutually set-off from time spent in the sanction of reformatory training. The purpose is to ensure that a person's constitutionally protected right to personal liberty and security will not be excessively restricted due to different legal proceedings. However, Article 13, Paragraph 2 of the Act reads:

If the court decides to impose the sanction of reformatory training, it shall deliver a written decision of its ruling to impose reformatory training but need not specify the term thereof.

Article 19, Paragraph 1 reads:

The term of reformatory training is set at more than one year and less than three years. After completion of one year, if the executing authorities consider that it is unnecessary to continue reformatory training, they may report, with facts and evidence, to the original

ruling court for its permission and exempt the person from further reformatory training.

When criminal punishment or rehabilitation measures have already been carried out for more than three years, then there is no need to commence the sanction of reformatory training because of the mutual set-off provision. This situation does not raise doubts regarding excessive restrictions on personal liberty and security of the people. However, when criminal punishment or rehabilitation measures have been carried out for less than three years, the amount of time that can be deducted from the upcoming time in reformatory training cannot be calculated, because the term of reformatory training has not been declared. If the aforementioned Article 19 is interpreted as meaning that reformatory training shall then be enforced for a minimum of one year, personal liberty and security of the person subject to reformatory training may be excessively restricted. Accordingly, the aforementioned proviso of Article 13, Paragraph 2 might lead to excessive restriction of personal liberty and security of a person receiving the sanction of reformatory training. The authorities concerned shall re-examine and revise the provision.

[14] In light of the fact that amending the law requires a certain period of time and a series of proceedings—and so that the authorities concerned can conduct a comprehensive review of the Act by taking into consideration both the need to protect people’s rights and the need to maintain social order—those parts of the following provisions that are inconsistent with relevant principles of the Constitution shall become null and void no later than one year after the date of announcement of this Interpretation: Article 2, Subparagraph 3, regarding the act of “tyrannizing good and honest people,” Subparagraph 5 of the same Article regarding “people who are habitually morally corrupt” as well as “people who habitually wander around and act like rascals,” and Article 12, Paragraph 1,

which excessively restricts the transferred person's right to confront and to examine witnesses as well as to access court files.

[15] As for the petitioners' petition that the provisions of Subparagraph 1 of Article 2, and Articles 10, 14, and 15 of the Act are unconstitutional, this Court considers that the constitutionality of these provisions does not influence the results of the court's ruling, as these provisions are not the legal provisions that the judges in these cases at hand shall apply. In addition, the petitioners allege that Subparagraph 2 of Article 2, the proviso of Paragraph 1 of Article 6, the proviso of Paragraph 1 of Article 7, and Articles 9, 11, 22, and 23 of the Act are unconstitutional, and further question the constitutionality of the Act as a whole. This Court considers that the grounds raised by the petitioners in support of the unconstitutionality of the foregoing provisions are insufficient to constitute concrete reasons for an objective belief that these provisions and the Act as a whole are unconstitutional. These two parts of the petition do not meet the requirements set forth in J.Y. Interpretations Nos. 371 and 572 of this Court and are therefore dismissed.

Background Note by the Translator

Petitioners of Interpretation No. 636 were two judges who tried *liumang* cases. One of the judges considered that Articles 2, 6, 7, 9, 10, 11, 12, 13, 14, 15, 19, 21 and 22 of the Act for Eliminating *Liumang* (Hoodlums) were unconstitutional, and that the Act as a whole contradicted the principle of proportionality under Article 23 of the Constitution. The other judge considered that the following provisions of the Act had strong value judgment and, therefore, caused legal uncertainty: the provision of Article 2, Subparagraph 3 regarding the act of "coercing and causing trouble" and the act of "tyrannizing good and honest people" as well as the provision of Article 2, Subparagraph 5 regarding "people who are habitually morally corrupt" and "people who habitually wander

around and act like rascals”. Accordingly, the judge considered that these provisions of the Act contradicted the principle of Article 8 of the Constitution.

This Interpretation is important in that it resulted in the abolition of the Act for Eliminating *liumang* (Hoodlums) on January 21st, 2009. Although it did not find the entire Act unconstitutional, the Constitutional Court deemed almost all the major articles of the Act unconstitutional in this Interpretation, which made the Legislature eventually decide to abolish the entire Act. According to legal scholars such as Jerome A. Cohen and Margaret K. Lewis, the abolition of the Act had an impact on the abolition of the “re-education through labor” in China in 2013.

There is another J.Y. Interpretation No. 523 that also touched upon the constitutionality of the same Act on *liumang*. In Interpretation No. 523, petitioners were transferred to the court to determine whether they were “serious *liumang*”. During the determination process, petitioners were confined by the court, and the periods of their confinement were further extended for one month by the court, pursuant to Article 11, Paragraph 1 of the Act, “The court may confine the transferred person for up to a month. If necessary, the court may extend, only once, the period of confinement for another one month.” Petitioners argued that Article 11, Paragraph 1 of the Act contradicted the principle of Article 8 of the Constitution.

The Constitutional Court considered that the confinement provided for in the aforementioned provision was a compulsory measure to keep the transferred people in a certain place so that the legal proceedings of *liumang* cases could proceed smoothly. However, the confinement constituted a serious restraint on the personal liberty and security of the transferred people. Since the Act did not explicitly provide the conditions under which the court could impose a confinement on the transferred people, the Constitutional Court considered that

the aforementioned provision exceeded the necessary level of restraint on personal liberty and security of the people. It was inconsistent with the intent of Articles 8 and 23 of the Constitution. Accordingly, Article 11, Paragraph 1 of the Act was rendered null and void.

The Act for Eliminating *Liumpang* (Hoodlums) had been announced partly unconstitutional by the Constitutional Court for three times, before the Act was completely abolished by the Legislature in 2009. The first time was J.Y. Interpretation No. 384, which announced five articles of the Act unconstitutional in 1995. The Constitutional Court revisited the constitutionality of the Act again in J.Y. Interpretation No. 523.

