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## **J.Y. Interpretation No. 690 (September 30, 2011)\***

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### **Compulsory Quarantine and Personal Liberty and Security Case**

#### **Issue**

Is the “necessary measures” provision of Article 37, Paragraph 1 of the Communicable Disease Control Act, including compulsory quarantine, unconstitutional?

#### **Holding**

[1] Article 37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2002, provides: “Any person who has physical contacts with patients of contagious diseases, or is suspected of being infected, shall be detained and checked by the competent authority, and if necessary, shall be ordered to move into designated places for further examinations, or to take other necessary measures, including immunization, etc.” As far as the provision of necessary measures is read to include compulsory quarantine, and hence deprivation of personal freedom, said provision neither violates the void-for-vagueness doctrine, nor the principle of proportionality implicit in Article 23 of the Constitution. It also does not violate the due process requirement of Article 8 of the Constitution.

[2] Any person who has had physical contacts with patients of contagious diseases, or is suspected of being infected, while compulsorily quarantined, is deprived of his or her personal freedom. In order to keep the length of quarantine period reasonable and not excessive, the law should prescribe a reasonable maximum time for compulsory quarantine, as well as organizational, procedural and other regulations for carrying out said compulsory quarantine. Moreover,

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\* Translation by Huai-Ching R. TSAI

prompt remedies and an adequate compensation system should be established for persons and their families disputing the compulsory quarantine. The authorities concerned should promptly review the Communicable Disease Control Act.

## **Reasoning**

[1] Article 8 of the Constitution stipulates that personal freedom shall be safeguarded. However, if the government restricts personal freedom using a law that does not violate the void-for-vagueness doctrine or the principle of proportionality implicit in Article 23 of the Constitution, and follows requisite judicial procedures or other due process of law, then it cannot be said that Article 8 of the Constitution is violated (*see* J.Y. Interpretations Nos. 602 and 677). Where the restriction of personal freedom has reached a degree of deprivation, in light of the manner of actual deprivation, purpose and resulting effects, adequate standards shall be defined for review (*see* J.Y. Interpretations Nos. 392, 588, 636 and 664).

[2] Because the occurrence and spread of contagious diseases endanger the life and health of people, the government should take appropriate preventative measures to counter it. To prevent the infection and spread of contagious diseases, Article 37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2001, (hereinafter “former Communicable Disease Control Act”), provides: “Any person who has had contacts with patients of contagious diseases, or is suspected of being infected, shall be detained for examination by the competent authority, and if necessary, shall be ordered to move into designated places for inspection, or to receive immunization or other necessary measures” (hereinafter “the provision at issue”). The term “necessary measures” refers to various statutes regulating the implementation of necessary measures to prevent the infection and spread of contagious diseases and is not limited to the examples

of detention for examination, order to move to designated places for inspection and immunization mentioned in the provision at issue. Article 5, Paragraph 1 of the Provisional Regulations Governing Prevention and Relief of SARS, promulgated on May 2, 2003, retroactively effective March 1, 2003 (repealed December 31, 2004), provides: “When implementing promptly effective epidemic prevention measures, government authorities at all levels shall designate specified areas for epidemic prevention or disease control; and if necessary, may compel quarantines, relocation of residents, or any other disease control measures.” It can be said that the legislators intended to retroactively strengthen the Communicable Disease Control Act by this legislative measure, expressly recognizing that compulsory quarantine is a necessary measure in the sense of the provision at issue. Furthermore, Regulation No. 0921700022, promulgated by the Department of Public Health, Executive Yuan, on May 8, 2003, “serving as the legal basis for government measures adopted to control Severe Acute Respiratory Syndrome (SARS),” clearly shows that the so-called necessary measures for disease control mentioned in the provision at issue include concentrated quarantine. Compulsory quarantine obliges people to stay at a specified place for a specified period and not to contact other persons, or else suffer mandatory punishment. This is a deprivation of personal freedom.

[3] The void-for-vagueness doctrine requires the text of law be detailed and specific. Nevertheless, it also allows legislators, when drafting legislation, to consider the complex nature of real life and the appropriateness of application in real cases, and to employ indeterminate legal concepts when they see fit. If the meaning of a statute is not too difficult to ascertain from legislative intent and the entire context of the legal system, and if whether the facts of the case fall within the statute’s normative objective or not is foreseeable by the people subject to the regulation, as well as determinable by the judiciary, then the void-for-vagueness doctrine is not violated (*see also* J.Y. Interpretations Nos. 432, 521, 594 and 602).

According to Article 8 of the Constitution, the government's right to restrict personal freedom, if it involves severe restriction of personal freedom tantamount to criminal punishment, shall be subject to strict scrutiny to determine whether its statutory elements conform to the void-for-vagueness doctrine (*see* J.Y. Interpretation No. 636). Although compulsory quarantine restricts personal freedom to a specified location, its purpose is to protect people's life, safety and health. It differs from criminal punishment in nature. It also involves the expertise of medical treatment and public health. Therefore, a more lenient test shall be adopted for judicial review in lieu of the strict scrutiny test used for reviewing criminal sanctions restraining personal freedom. Although the provision at issue does not explicitly mention compulsory quarantine in its illustrations, it does provide for ordering people to move into designated places, so that persons who have had contacts with patients of contagious disease, or are suspected of being infected, cannot keep in touch with the outside world. This kind of compulsory quarantine is a necessary measure for the provision at issue. Judging from literal interpretation and legislative intent of the statute, it is not unforeseeable by people subject to the regulation. Its meaning can also be determined by common sense in society, and it must furthermore obtain affirmation by way of judicial review. Hence, it does not violate the void-for-vagueness doctrine.

[4] The purpose of compulsory quarantine contained in the controversial "necessary measures" provision is to authorize the competent authority to detain persons in designated places who have had contacts with patients of contagious diseases or are suspected of being infected, to isolate them from the outside world and to undertake further investigations, medical treatments or other measures, so as to prevent the spread of contagious diseases and to safeguard the life and health of citizens. This legislative purpose is legitimate. Although compulsory quarantine is a deprivation of the personal freedom of a quarantined person, whether or not this violates the principle of proportionality should still be subject

to a strict scrutiny test. The purpose of compulsory quarantine prescribed by the provision at issue is not directly to restrain the personal freedom of quarantined persons, but rather to deal with the abrupt outbreak of a new type of contagious disease. Various statutes regulating the quick spread of contagious diseases inflicting, or that could inflict, multiple deaths or serious injuries nationwide (*e.g.* the Severe Acute Respiratory Syndrome outbreak in March 2003, hereinafter SARS) exist in order to prevent the spread of disease, to gain quick control of the epidemic situation, for important public interests to mitigate fear, anxiety etc. in society. These statutes order persons who have had contacts with patients of contagious diseases, or who are suspicious of being infected, to move into designated places for a reasonable period of mandatory quarantine and for further observation, examination, immunization, and medical treatment. The purpose of compulsory quarantine is to protect the quarantined person's life and health. Since there is no other less restrictive alternative, it is a necessary and effective method for disease control. Although the provision at issue did not prescribe in detail the length of period for compulsory quarantine, the length for necessary measures is related to pathogeny, pathway, incubation period, and seriousness of the contagious disease. Hence it should be determined by the competent authority, weighing the surrounding circumstances and opinions of World Health Organization (WHO), in accordance with the principle of proportionality (taking the abovementioned SARS as an example, Taipei City Government, the competent authority, had determined that the quarantine period was to be 14 days, weighing factors such as lack of international experience, no conclusive medical method in handling this new disease, the fact that the epidemic had already caused many serious injuries and deaths etc. domestically and abroad, as well as the WHO's opinions; see Public Health Disease Regulation Letter No. 09945686400, published January 18, 2011, by the Public Health Bureau, Taipei City Government). Moreover, from the viewpoint of violation of personal

freedom, although compulsory quarantine contained in the necessary measures provision at issue causes deprivation of the personal freedom of quarantined persons. Yet it protects their life and health, and does not have the same severe impact on human dignity of quarantined persons as the sanction of detention. In sum, compulsory quarantine is a reasonable and necessary method for protecting important public interests. It does not constitute an excessive burden on quarantined persons and does not violate the principle of proportionality implicit in Article 23 of the Constitution.

[5] Personal freedom is an important fundamental human right. It shall receive adequate protection. Any deprivation or limitation of personal freedom shall abide by due process of law. In determining whether respective procedural standards are adequate and reasonable, besides considering specific provisions in the Constitution and the types of fundamental rights involved, also the facts of a specific case, the extent and scope of the fundamental rights invaded, the public interests pursued, possible alternative procedures, related costs and other factors must be comprehensively evaluated (*see* J.Y. Interpretation No. 639). As indicated above, the purpose of compulsory quarantine is to protect people's life and health, unlike the nature of criminal punishment. Therefore, the due process of law that must be followed is not necessarily the same as in a criminal proceeding restricting the personal freedom of a defendant. Compulsory quarantine and other disease control decisions must be made by the specialized competent authority, based on knowledge of medical treatment and public health, follow stringent organizational procedures and balance seriousness of the epidemic and surrounding circumstances, in order to form an objective decision and to ensure correctness. It differs from the case where an independent, impartial court determines whether or not to detain a person for trial and interrogation. The key to epidemic control lies in the swift adoption of adequate measures to achieve the goal. The central competent authority in charge of

controlling contagious diseases shall lay down policies and plans for disease control, including immunization, disease prevention, monitoring, reporting, and investigation of epidemic situations, inspections, treatments, training and other measures. The local competent authority shall develop implementation plans based on the policies and plans of the central competent authority, taking into account the particular requirements for epidemic prevention in its locality, and carry out the plan (*see* former Communicable Disease Control Act, Article 4, Paragraph 1, Subparagraph 1, Item 1; Subparagraph 2, Item 1). Therefore, relevant measures for controlling contagious diseases shall refer to the expertise of the competent authority. A decision made by the competent authority to impose necessary measures for compulsory quarantine, balancing seriousness of the epidemic and surrounding circumstances, will be better than a decision made by the court for prompt disease control. As for the legality aspect, the competent authority, when making the abovementioned measures, shall follow the Administrative Procedure Act and relevant procedures prescribed by other laws. Persons ordered to move into designated places for compulsory quarantine, if they refuse to accept the measures of the competent authority, may still resort to administrative procedures for remedy. Therefore, compulsory quarantine for the provision at issue, although not ordered by courts, does not violate Article 8 of the Constitution guaranteeing due process to protect personal freedom.

[6] The provision at issue did not prescribe the period of compulsory quarantine, nor did it leave the decision with the courts to impose compulsory quarantine. Although these do not affect its constitutionality, a person who has had contacts with patients of contagious disease, or who is suspicious of being infected, is deprived of his or her personal freedom while in compulsory quarantine. In order to keep his or her quarantine time within a reasonable length, it is better to stipulate statutorily the maximum length of compulsory quarantine, the organs and procedures for implementing compulsory quarantine, the court remedies for

quarantined persons or their families who refuse compulsory quarantine, and the mechanism for compensating the quarantined persons. The relevant organs shall thoroughly review the Contagious Disease Control Act for revision.

[7] As for the allegations that Article 11, Article 24, Paragraph 1, Subparagraph 2 and Article 34, Paragraph 1 of the previous Contagious Disease Control Act violate Article 8 and Article 23 of the Constitution, petitioner merely disputed by subjective opinion the appropriateness of the court in applying the law to the facts and did not allege concretely how the provision at issue contradicts the Constitution in an objective sense. Because these allegations do not conform to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act, they shall be dismissed according Subparagraph 3 of the same article. It is hereby noted as well.

### **Background Note** by Mong-Hwa CHIN

The petitioner of this case was a physician working at Taipei City Ho-Ping Hospital. In April 2003, the epidemic of Severe Acute Respiratory Syndrome broke out in Taipei. The Taipei City Government ordered all Ho-Ping Hospital personnel who had “had physical contacts with patients of contagious diseases, or [who were] suspected of being infected” to return to the hospital for quarantine. Petitioner failed to follow that order, which resulted in a record of demerit, a fine, and a three-month suspension. The petitioner sought to challenge the Communicable Disease Control Act based on the vagueness of the statute, the proportionality principle, and due process of law.

This Interpretation was extremely controversial when it was announced in 2011. In their dissenting opinions, four justices addressed concerns that this decision failed to uphold the constitutional standard of due process of law, especially considering that this case involves the deprivation of personal liberty

and security. Justice Tzong-Li HSU, for example, criticized the majority opinion for endorsing a procedure that authorizes authorities to deprive people's freedom without judicial scrutiny.

It is also worth comparing this case with J.Y. Interpretation No. 664. In J.Y. Interpretation No. 664, the Court ruled that a preventative detention mechanism designed for juveniles who frequently skive or run away from home, authorized by the Juvenile Proceeding Act, was constitutional. However, unlike J.Y. Interpretation No. 690, in the juvenile scenario, it was the courts that had the authority to make preventative detention decisions. Therefore, J.Y. Interpretation No. 690 is extremely important in that it essentially creates a different constitutional standard for the deprivation of personal liberty and security.

