J.Y. Interpretation No. 445 (January 23, 1998)*

Prior Restraint on the Freedom of Assembly Case

Issue

Are the disputed provisions of the Assembly and Parade Act constitutional?

Holding

[1] Article 14 of the Constitution stipulates that the people shall have freedom of assembly. This freedom and the freedoms of speech, teaching, writing, and publication as enumerated by Article 11 of the Constitution can be categorized as the freedom of expression, and they are the most important basic rights for the implementation of democratic politics. In order to guarantee the people's freedom of assembly, the State shall provide appropriate places for assembly and maintain security for the proper-functioning of assemblies and parades. Laws that regulate the rights to assembly and parade must not be vague or run afoul of the constitutional requirements as set forth by Article 23 of the Constitution. Article 8, Paragraph 1 of the Assembly and Parade Act (hereinafter "Act") provides that, except for the circumstances as specified by the proviso of the same article, a permit from the competent authorities is required to hold an outdoor assembly/parade. Article 11 of the Act provides that, except for those circumstances specified in the same article, a permit shall be granted for an outdoor assembly/parade. Parts of the said provisions can be considered as content-neutral restrictions on time, place, and manner of assembly/parade, and as such, they are necessary for maintaining social order and promoting the public interest. This part of the law is a matter of policy and legislation. It does

* Translation and Note by Yen-Tu SU

not impinge on the freedom of expression, nor is it inconsistent with the constitutional guarantee of freedom of assembly.

[2] Article 11, Subparagraph 1 of the Act provides that a permit shall not be granted if there is a violation of Article 4 of the Act, which prohibits speech advocating communism or secession. This provision violates the constitutional guarantee of freedom of expression, as it authorizes the competent authorities to censor political speech prior to the issuance of a permit for assembly/parade. Article 11, Subparagraph 2 states [relevant required conditions for censorship, including] "[if] there is sufficient evidence for the finding that national security, social order, or the public interest would be jeopardized." Article 11, Subparagraph 3 states [relevant required conditions for censorship, including] "[if] there is a concern that life, health, or liberty would be in danger, or that property would be seriously damaged." Both of these provisions are unconstitutionally vague, and to the extent that they authorize the competent authorities to reject a permit application solely on the basis of prediction of future harm as opposed to the showing of clear and present danger on the eve of the assembly/parade, these provisions also violate the constitutional guarantee of freedom of assembly. Both of them are null and void from the date of announcement of this Interpretation.

[3] Article 6 of the Act, which designates restricted areas for assembly and parade, is aimed either at protecting the security of important government buildings and military facilities or at keeping international transportation from being disrupted. Article 10 of the Act specifies the qualifications for serving as principals, deputies, or picketers for an assembly/parade that requires a permit. Article 11, Subparagraph 4 of the Act authorizes denial of a permit application when another application has been approved for the same time, venue, and route. Article 11, Subparagraph 5 of the Act authorizes denial of a permit application when the named applicant is a group that is not legally formed, has had its

license revoked, or has been ordered to dissolve. Article 11, Subparagraph 6 of the Act provides that the permit application may be denied if it does not satisfy the requirements of Article 9, which specifies the information to be provided in the application form. All of the aforementioned provisions are for the sake of securing peace during the assembly/parade, and they are also designed to minimize disturbance to general public. They are necessary for preventing infringement of other people's freedoms, for maintaining social order, or for advancing the public interest. Therefore, they are not in violation of Article 23 of the Constitution. However, under the proviso of Article 9, Paragraph 1 of the Act, which provides, "An application may be submitted two days before [the date of assembly/parade] if doing so is justified by natural disaster or other major incidents that are not foreseeable," an unplanned assembly/parade would not be permitted if its application could not be filed two days before its realization. This state of affairs is in conflict with the constitutional guarantee of freedom of assembly and is in dire need of improvement.

[4] Article 29 of the Act, which makes it a crime for a person to instigate actions to disobey the order to disperse and the subsequent order to stop, is within the discretion of the legislature and does not run counter to Article 23 of the Constitution.

Reasoning

[1] This case was brought to the Constitutional Court by Cheng-Yen KAO, Mao-Nan CHEN, and Cheng-Hsiu CHANG, who challenged the constitutionality of the Assembly and Parade Act (hereinafter "Act") that the Taiwan High Court invoked in its Judgment 83-Shan-Yi-5278 (1995). This Court decided to hear the petition and, pursuant to Article 13, Paragraph 1 of the Constitutional Court Procedure Act, held oral arguments on December 5, 1997. This Court heard arguments from the petitioners and from the representatives of

the authorities concerned, including the Executive Yuan, the Ministry of the Interior, the Ministry of Justice, the Ministry of Transportation and Communications, and the National Police Agency of the Ministry of the Interior. It is first explained here.

[2] The arguments of the petitioners are summarized as follows. Article 14 of the Constitution reads, "The people shall have freedom of assembly and of association." Article 11 of the Constitution also provides, "The people shall have freedom of speech, teaching, writing, and publication." Both of them signify that the Constitution guarantees the people's freedom of expression. Given that the people have the right to participate in political decision-making, freedom of expression is the most important basic right for the implementation of democratic politics, as it enables the people to fully express themselves in the formation of the public opinion. Whereas the freedoms of teaching, writing, and publication are exercised mainly by intellectuals, the freedom of assembly functions as an action-based freedom of expression and serves as a direct way to express opinions in public for those ordinary people who do not have convenient access to the media. The freedom of assembly is also a positive right in nature, as the participants in collective opinion-making can transform the exercise of assembly/parade into a positive right to participate in the formation of the national will. However, Article 8, Paragraph 1 of the Act provides that, except for the circumstances as specified by the proviso of the same section, a permit from the competent authorities is required to hold an outdoor assembly/parade. This is a categorical restriction on the people's right to assembly and parade, and it authorizes the competent authorities to impose prior restraints and prohibition on assembly and parade. Article 11 of the Act provides that a permit shall be granted for an outdoor assembly/parade except for the following circumstances: when Articles 4, 6, or 10 would be violated (Subparagraph 1); if there is sufficient evidence for the finding that national

security, social order, or the public interest would be jeopardized (Subparagraph 2); if there is a concern that life, health, or liberty would be in danger, or that property would be seriously damaged (Subparagraph 3); when another application has been approved for the same time, venue, and route (Subparagraph 4); when the named applicant is a group that is not legally formed, has had its license revoked, or has been ordered to dissolve (Subparagraph 5); if the application does not satisfy the requirements of Article 9 (Subparagraph 6). Article 11, Subparagraph 1 refers to Article 4, which, in turn, stipulates, "No assembly/parade shall advocate for communism or secession." This provision implicates issues that are highly political, and its concepts are rather ambiguous. To the extent that other people's rights or freedoms are not affected or impinged upon, advocating communism or secession by way of assembly/parade should be protected by the freedom of expression. If someone advocates for communism of the Marxist-Leninist variety, attempts to overthrow the government by force, and seeks to realize such goals of communism by endeavoring to build organizations, he or she has clearly overstepped the inherent bounds of the right to assembly and parade, and the State is justified to regulate such conduct under a law enacted specifically for this purpose. However, the ambiguous prohibition of the Act at issue gives wide discretion to the police and thereby forces the police to enter political turmoil while having to forsake its commitment to political neutrality. In addition, the police decision under this provision is no different from a prior censorship of expression of opinion. Given that the decision is not made by a court of law under a meticulous trial proceeding, the police decision at issue falls far short of providing the necessary and adequate protections of the freedom of speech. The Ministry of the Interior and the Ministry of National Defense are authorized to specify the exact boundaries of the restricted areas listed in Article 6 of the Act. Under a filing system, a police permit is not required for holding an assembly, and only when an assembly/parade is taking place in a restricted area does the

consent from the caretaker of the restricted area need to be obtained in advance. The restricted areas as listed in Article 6, however, are not narrowly tailored. Besides, the exceptional permit as provided by the proviso of Article 6, Paragraph 1 is redundant, since an assembly permit from the same competent authority is invariably required [under the permit system]. The disqualifications for principals, deputies, or picketers as listed in Article 10 are of formal significance only. Moreover, Article 11, Paragraph 1, Subparagraphs 2 and 3[1] are replete with indeterminate legal concepts. Since an outdoor assembly/parade would inevitably affect other people's freedoms, social order, or the public interest, the freedom of assembly would be interfered with easily in the absence of clear and definite guidelines for applying standards of this sort. Article 11, Subparagraph 4 provides that a permit may be denied if another application has been approved for the same time, venue, and route. The permit application for an outdoor assembly or a counter-protest [, the petitioner argues,] may be denied only under the exceptional circumstance that constitutes a "police emergency." Otherwise, the latter permit application is categorically denied, Article 11, Subparagraph 4 would infringe on the freedom of assembly as guaranteed by Article 14 of the Constitution, and it would also be inconsistent with the proportionality principle. Article 11, Subparagraph 5 concerns the bearers of the right to freedom of assembly. This provision is meaningless, however, given that individual members of a group that is not legally formed, has had its license revoked, or has been ordered to dissolve can nonetheless file the permit application in their own names or in the name of another group that is legally formed. Article 11, Subparagraph 6 provides that the permit application may be denied if it does not satisfy the requirements of Article 9. Article 9 is especially problematic, however, because the application requirements and the application

[1] Editor's note: The provisions here shall be cited as "Article 11, Subparagraphs 2 and 3" instead of "Article 11, Paragraph 1, Subparagraphs 2 and 3" as they were originally identified in the Chinese version, because Article 11 includes only six Subparagraphs and no second Paragraph.

period set forth by this provision are inconsistent with the proportionality principle and leave little legal room for organizing a spontaneous assembly. In sum, the provisions for permit denial as listed in Article 11 of the Act are either too abstract to have any meaning in substance or are in violation of both the freedom of assembly as guaranteed by Article 14 of the Constitution and the requirement set forth by Article 23 of the Constitution. According to the Act, a permit for assembly/parade should be applied for from the police agency, which is also responsible for keeping the assembly/parade in order and for referring offenders under the Act to criminal prosecution. Under the existing regime, the police is susceptible to the manipulation of the elected ruling party to interfere with the people's freedom of assembly. From the viewpoint of the people, though the applicant may move for reconsideration upon receiving a denial of permit for assembly, the reconsideration is made solely by the police agency and therefore falls short of an effective remedy under due process of law. To provide citizens with equal opportunities to participate in public affairs, the State must take affirmative steps to establish relevant institutions in protecting the people's freedom of expression. Only then can the ideal of government by public opinion be realized. By adopting the permit system, the Act imposes prior restraints on the people's basic rights and contravenes the people's constitutional right to freedom of assembly. Furthermore, Article 29 of the Act stipulates, "If an assembly/parade is not dispersed after the competent authorities have ordered it to disperse, and continues to proceed in defiance of another official order to stop, the chief instigator shall be sentenced to imprisonment of up to two years or to short-term imprisonment." Compared to the offense of disobeying an order to disperse a public assembly as provided by Article 149 of the Criminal Code, this provision does not strike a proper balance with respect to the breadth of the offense. In view of the irreplaceable role that freedom of assembly plays in a democracy, peaceful assembly should be fully protected by law, and a higher amount of administrative fine should suffice for punishing the offense as

provided by Article 29 of the Act, which needs not resort to criminal sanctions. Pursuant to Article 25 of the Act, the competent authorities may issue warnings, injunctions, or the order to disperse when an assembly/parade is held without the required permit or after its permit has been revoked, or when it is found to have violated the terms or conditions of the permit. Basically speaking, this regulatory scheme is premised on a permit system, and only with a permit from the competent authorities can [participants of an assembly/parade] be immune from criminal prosecution. This is obviously a regulation that constitutes a major constraint on the freedom of expression. In order to reconcile an assembly/parade with the resulting inconvenience for the general public, the State may adopt a filing system, which enables the police agency to make proper preparations to prevent any unnecessary conflict between the interests of the assembly participants and third parties' security interests, and which also enables the police agency to seek win-win solutions by taking measures for maintaining order as it sees fit. Assemblies and parades are critical ways for people to express themselves, and as such, they are guaranteed by the Constitution. Based on the reasons stated above, the Act's very adoption of a permit system should be deemed unconstitutional for infringing on the people's basic rights.

[3] As the authority concerned, the Executive Yuan has the following arguments. In a democratic society, it is quite usual for people to express themselves and form public opinions on public governance through assemblies and parades. But it should also be noted that assemblies and parades are characterized as being easy to spread and difficult to contain, and they are likely to be a potential threat to public order. In order to ensure the rightful exercise of the freedom of assembly and parade while securing public order and social peace, it is necessary to keep assemblies and parades within the boundaries of peaceful expression as set by statutory laws. As a response to the social changes

upon the lifting of martial law, the Act was promulgated on January 20, 1988. As a result of the termination of the Period of National Mobilization for Suppression of the Communist Rebellion, the revised Act was promulgated on July 27, 1992. Evidently, the Act evolved as society changed, and it can be considered as a product of democratization. With respect to the regulatory approaches to assemblies and parades in comparative law, some countries adopt a filing system, and some opt for a permit system. Though the Act uses a permit system, the system it uses is not a privilege scheme but comes closer to a rule-based system. It therefore does not violate Article 23 of the Constitution, which requires that any restriction on rights must be necessary for preventing infringement on other people's freedoms, for averting imminent danger, for maintaining social order, or for advancing the public interest. This is clearly evidenced by the statistics that, of the 31,725 permit applications filed with the police agencies over the past five years, only 108 applications were denied, and the rate of denial was a tiny 0.34 percent. Article 4 of the Act stipulates that assemblies and parades shall not advocate communism or secession. This provision is grounded on the finding that communism is by nature antithetical to the Three Principles of the People, and that, for the time being, Mainland China is still a hostile regime that poses a military threat to our country. An assembly/parade that advocates communism not only runs afoul of the founding spirit of this country, but also raises concerns that the very existence of the Republic of China or the constitutional order of liberal democracy as referred to in Article 5, Paragraph 5 of the Additional Articles of the Constitution would be jeopardized. Therefore, an assembly/parade shall not advocate communism. Moreover, since advocating secession violates Article 4 of the Constitution, there is nothing wrong in Article 4 of the Act prohibiting the advocacy of secession. In addition, Article 2 of the National Security Act also prohibits assemblies and parades from advocating communism or secession, but it does not specify the legal consequences of violations. In the event that the violation

of Article 4 of the Act results in the denial or revocation of the permit application for assembly/parade, such result serves simultaneously the legislative purpose of carrying out the two aforementioned principles in the National Security Act. As to Article 29 of the Act, its criminal sanctions against the chief instigator are justified by the clear manifestation of the chief instigator's maliciousness in the four-stage course of his or her incessant disobedience upon being warned, ordered to stop, and ordered to disperse by the police. Such behavior cannot be deterred by administrative penalty. Compared to Article 26, Subparagraph 1 of the Assembly Act in Germany, which specifies a similar offense in two stages, this provision is more deliberate. Its constitutionality is therefore beyond question.

[4] The Ministry of Justice, which appeared before this Court on its own behalf and also on behalf of the Executive Yuan, presents the following arguments. The law governing assemblies and parades in our country was enacted after the lifting of martial law for the purpose of protecting lawful assemblies and parades and adapting to the needs of the time. Promulgated by the President on January 20, 1988, originally the law had the title Assembly and Parade Act during the Period of National Mobilization for Suppression of the Communist Rebellion. Later, in order to keep pace with the new developments of the society after the termination of the Period of National Mobilization for Suppression of the Communist Rebellion, the law was revised and renamed as the Assembly and Parade Act on July 27, 1992. The Act, therefore, is not a product of the martial law regime. Its enactment is motivated by the concern that assemblies and parades may cause harm to public order, and that for the sake of striking a proper balance between the public interest and human rights, reasonable restrictions need to be made on such issues as the time, place, and manner of assemblies/parades. Its purpose is definitely not to let government suppress or deny the freedom of expression, and it is consistent with the basic

values of Article 11 of the Constitution, which guarantees the freedom of expression for such goals as truth-seeking, democratic governance, and self-realization. In order to prevent Activities of an assembly/parade from harming the public interest and thereby affecting or intruding on other people's lives in terms of public peace and security, traffic conditions, living quality, or sanitation, necessary restrictions imposed by law are permissible under Article 23 of the Constitution. The use of a rule-based permit system is consistent with the proportionality principle as well. As to Article 29 of the Act, there is nothing wrong from the standpoint of legislative policy for the legislators to impose criminal sanctions based on the evaluation of the offenders' antisocial propensity and culpability. With the lifting of martial law on July 15, 1987, and the termination of the Period of National Mobilization for Suppression of the Communist Rebellion on May 1, 1991, the peacetime constitutional order has been restored in our country. Still, in view of Cross-Strait relations, Communist China has not relinquished its hostility toward us and has continued to endanger us with its military threats and missile intimidation. In order to ensure national security and social order, it is therefore necessary to restrict assemblies and parades that make national-security-related speeches and are likely to result in domestic disquiet. Assemblies or parades that advocate communism or secession would jeopardize the very existence of the Republic of China or the constitutional order of liberal democracy. In light of Article 5, Paragraph 5 of the Additional Articles of the Constitution, they should not be regarded as constitutionally protected speech.

[5] In addition to making the same arguments as the aforementioned arguments of the Executive Yuan, the Ministry of the Interior and its National Police Agency argues as follows. The Act uses a permit application system in regulating assemblies and parades because, although it is a constitutional right to hold an assembly/parade, the enjoyment and exercise of this right should take

due consideration of the public interest of the society as well as the rights and interests of other people. In order to ensure the rightful exercise of the freedom of assembly and parade while securing public order and social peace, the Act requires that permits be applied for and obtained ahead of time, and this requirement is not incompatible with Article 23 of the Constitution. Besides, the permit system in this Act adopts is a rule-based one. The police agency must approve or deny a permit application solely according to law and cannot illegally deny a permit. The use of the permit system not only leaves ample time for the applicants to make preparations, but also enables the competent authorities to make a timely assessment of the state of affairs and make proper responses accordingly. Some sociologists' empirical studies on crowd psychology also consider it necessary to reinforce the use of a permit system. According to the rule of thumb, it should be necessary to regulate [an assembly/parade] by permit, which has majority support according to public opinion polls. With respect to the factual background of this case, it should be noted that the petitioners once filed their permit application with the police agency five days before the parade, but the application was denied for failing to comply with Article 9, Paragraph 1 of the Act. The petitioners were convicted and punished because during their assembly and parade, they refused to obey the warnings, injunctions, and the order to disperse the police agency issued in pursuant to Article 25, Paragraph 1 of the Act. Only Article 9, Paragraph 1, Article 25, Paragraph 1, Subparagraph 1, and Article 29 of the Act may be considered relevant to this case. As to Article 4 of the Act, it has nothing to do with the factual background of this petition. Considering that the Act does not impose any administrative or criminal liability on those who violate this provision by advocating communism or secession, enforcing this provision is certainly not the primary objective of the permit regulation. Hence, the Judicial Yuan (the Constitutional Court) should not breach the principle of *non ultra petita* and review the constitutionality of laws that are not relevant to the final

judgment. Assemblies and parades have much to do with the expression and communication of collective opinions; they may exert influence on the making of public policies, and they ultimately contribute to the exercise of voting rights and the right to petition. As such, they are critical channels for minority groups to express what they wish. However, since crowd Activities are prone to inciting impulsive behaviors that deviate from the norm and may further affect peace, traffic, sanitation, and so forth, it is necessary to impose, by law, certain reasonable restrictions on them. There are ways of restrictions that are more lenient (or more stringent) than others. Articles 8 and 11 of the Act should be construed as adopting a rule-based permit system, which differs from a filing system, not in kind, but in administrative procedure only. Prior restraints on the content of speech of an assembly/parade that implicates the formation of public opinion are constitutionally impermissible unless there exists a very compelling public interest that may justify such restraints. Article 9 of the Act requires that the purpose of the assembly/parade be specified in the application form. While this provision may be considered as instituting some kind of censorship, this requirement is aimed merely at assessing the likelihood for the assembly/parade to pose danger to the public, and certainly not at passing abstract value judgment on its speech. Nonetheless, the inquiry into the purpose [of an assembly/parade] may involve the application of Article 11, Subparagraph 1 of the Act, which, in turn, lists Article 4 of the Act and the violation thereof as a content-based criterion for the denial of permit. Article 4 of the Act, however, resonates with Article 5, Paragraph 5 of the Additional Articles of the Constitution, which provides, "A political party shall be considered unconstitutional if its goals or activities endanger the existence of the Republic of China or the constitutional order of liberal democracy." Even then, the police agency is authorized to approve or deny the permit application under Article 26 of the Act. In view of the impacts an assembly/parade could have on public order, it is in accordance with the proportionality principle that the Act regulates

outdoor assemblies and parades with permits. To be more specific, Article 11 of the Act provides that, except for the specified circumstances, the competent authorities shall issue the permit and have no discretion whatsoever. And even if any of the specified exceptions is met, the competent authorities should exercise their discretion pursuant to the proportionality principle. In the event that the permit is denied, within three days the applicants should be notified in writing of the reasons for denial and the instructions for remedy. For an application filed under the proviso of Article 9, Paragraph 1, the notice of denial should be given within twenty-four hours. The application for an assembly/parade permit should be filed six days in advance. The application may be submitted two days in advance, however, if doing so is justified by natural disaster or other major incidents that are not foreseeable. Compared to similar regulations in other democracies, this application period requirement is not particularly stringent. As to unplanned rallies, while there would be no application for the competent authorities to consider because there is no initiator, the authorities could still handle the situations by taking into consideration the proportionality principle as required by Article 26 of the Act. In this regard, no excessive restrictions can be said to have been imposed on assemblies and parades. In addition, under the Act, only the principals, deputies, the chief instigators, and not a single participant would be held legally liable. Article 14 authorizes the competent authorities to condition the permit for assembly/parade with six types of restrictions that are deemed necessary. Article 15 specifies the conditions for revoking or modifying a permit. All these provisions are meant to prevent excessive regulation with due considerations of who, what, when, where, and how. Under an after-the-fact filing system, damages to the public interest can only be punished, but not prevented. This regulatory scheme could cause immeasurable harms in Taiwan, a small and densely populated country with an increasingly pluralistic society that breeds conflicts of interests and ideas and has yet to develop a political culture of tolerance. Furthermore, Article 11, Subparagraph 2 cannot be said to

be too ambiguous, for it requires that the factual finding that national security, social order, or the public interest would be jeopardized be justified by sufficient evidence. In any event, the ambiguity of this provision has not led to any abuses by the competent authorities. With respect to the issue concerning the use of criminal sanctions against unauthorized assemblies and parades, there is no excessive restriction in the punishment the Act sets for the chief instigators' violation of the administrative orders the authorities made before and during the two-stage course of action. To the extent that the punishment raises a constitutional concern, the concern is over whether there exist effective institutional safeguards against administrative abuses of power. The only way to minimize the risks of administrative abuses of power, though, is to let the courts in charge of the criminal case review the legality of the order to disperse as well as the subsequent actions undertaken by the police to stop the offenses. Insofar as Article 29 of the Act is concerned, the use of criminal sanctions against the offenders does not constitute legislative overreach, because the harms an outdoor assembly/parade may cause to other legitimate interests are not limited to matters of administrative inconvenience. This provision and Article 28 of the Act differ notably in their subjective as well as objective elements of offenses. If Article 29 of the Act were deleted, no person would be subject to criminal liability for disobeying the order to disperse and the order to stop an assembly/parade, except for the situation in which Article 149 of the Criminal Code is applicable. It makes sense only when the maliciousness of repeated legal offenses as stipulated by Article 29 of the Act is punishable by criminal sanctions. According to the presumption of constitutionality principle, a statute enacted by the Congress should be presumed constitutional unless there exist clear and definite grounds that are sufficient for the Constitutional Court to hold it unconstitutional. Having considered such factors as the crowds' propensity for danger, the traffic impacts, the deployment of the police, the clashes between opposing crowds, and the proportionality principle as required by Article 26, the

Act does not exceed the necessity as required by Article 23 of the Constitution in adopting a permit system. As to the situation in which an urgent assembly/parade is excusable for not being able to apply for the permit in time as required by the existing Act, the problem can be solved with legislative craftsmanship and has nothing to do with the constitutionality of the provision at issue.

[6] In its brief, the Ministry of Transportation and Communications has the following arguments. Assemblies and parades are prone to affect traffic safety and operations, as they are likely to change dramatically when they become larger and larger. The use of a rule-based permit system enables the competent authorities to plan for contingencies and traffic control in time so as to prevent traffic congestion or traffic chaos, which lead to excessive interference with other road users' rights. That assemblies and parades may come at huge social costs and cause significant and direct harms to social order and public interests is further evidenced by our past experiences with the occupation of highways, overnight protests at station plazas, and the blocking of rail traffic by lying on tracks. Therefore, the existing provisions of the Act are in accordance with the freedom of assembly as guaranteed by Article 14 of the Constitution and with the *Gesetzesvorbehalt* principle as embedded in Article 23 of the Constitution. Having considered the totality of the arguments, this Court rendered this Interpretation on the basis of the following reasons:

[7] Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the Constitution and to unify the interpretations of statutes and regulations. A Judicial Yuan Interpretation shall be binding upon each and every governmental agency and the people of the whole country. As such, a Judicial Yuan Interpretation is distinct from the decisions made by ordinary courts, administrative courts, or the Public Functionary Discipline Sanction Commission, as the binding force of those judicial decisions is limited to the

specific cases at issue, be they concerning civil, criminal, or administrative law matters, or concerning discipline of public functionaries. Under Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act, an individual, legal entity, or political party, whose constitutional rights are unlawfully violated may, after exhaustion of ordinary judicial remedies, petition this Court to review the constitutionality of the statutes or regulations applied by a final decision of a court of last resort. In making a Judicial Yuan Interpretation under this provision, this Court certainly would look into whether the petitioner's constitutional rights are infringed upon by the statute or regulation upon which the final decision of the court of last resort was grounded. But since the petition for constitutional review filed by a person not only serves to protect the petitioner's constitutional rights, but is also aimed at elaborating constitutional truth for the sake of safeguarding the constitutional order, this Court certainly could review the constitutionality of the laws that are related to and necessary for the disposition of the specific case undergirding the petition. In J.Y. Interpretation No. 216, for instance, the petitioner took issue with two letters that the former Ministry of Judicial Administration issued on matters of enforcement proceedings by arguing that they contravened the Customs Act. This Court nonetheless made it clear in that Interpretation that trial Court judges are not bound by regulations of the judicial administration when it comes to matters of adjudication. In J.Y. Interpretation No. 289, the petitioner merely challenged the constitutionality of Article 6 of the Measures Governing the Handling of Pecuniary Penalties Cases, but this Court held that the Measures as a whole were at best a tentative substitute for adequate legislation and should be abolished within the period of time as prescribed by the Interpretation. The petition that led to J.Y. Interpretation No. 324 challenged the constitutionality of Article 26 of the Measures Governing the Customs' Supervision of Containers, yet this Court in that Interpretation went on to hold that "the Measures implicate issues of administrative contract, the basic norms of which shall be duly

promulgated by the competent authorities as soon as possible." In J.Y. Interpretation No. 339, the petitioner contended that the Ministry of Finance Letter Tai-Tsai-Shuei-38572 of December 20, 1977, was in violation of Article 19 of the Constitution, Article 18 of the Commodity Tax Act, and the principle of *lex mitior*. This Court took an additional step and invalidated Article 18, Paragraph 1, Subparagraph 12 of the Commodity Tax Act as revised and promulgated on January 9, 1971. The petitioner of J.Y. Interpretation No. 396 argued that the Public Functionary Disciplinary Sanction Act violated the right to judicial remedy as guaranteed by Article 16 of the Constitution on the grounds that it failed to provide appellate relief. Building on the core concern of the petition, this Court prescribed in that Interpretation a set of constitutional guidelines for the institutional reform of the public functionary disciplinary sanction, including, among others, that the disciplinary authority shall be restructured into a court of law, and that sufficient procedural safeguards shall be afforded to the disciplinary defendants in accordance with the principle of due process of law. In addition, in J.Y. Interpretation No. 436, which was referred to this Court by the Members of the Legislative Yuan pursuant to Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act, this Court also considered the legislative referral as implicating the court-martial system as a whole and held:

> [I]n order to implement the principle of adjudicatory independence, such institutional arrangements as the separation of judicial and prosecutorial functions in the court-martial, the criteria for selecting military officers to serve on the trial panel, and the career security of the military judges shall be subject to reform as well.

These are but a few examples of the Interpretations made by this Court, but they suffice to demonstrate that, when exercising the power of constitutional review,

the consideration of this Court is not necessarily limited to the issues being raised in the petition. In the present case, the petitioners were convicted of violating Article 29 of the Act by the Taiwan High Court in its Judgment 83-Shang-Yi-5278 (1995). They petitioned to this Court to review the constitutionality of the Act as applied by the final judgment mentioned above, and they contended that, by enabling the police to impose prior restraints and prohibition on assembly and parade under indeterminate legal concepts, the Act should be held to be unconstitutional for infringing on the petitioners' freedom of assembly as guaranteed by Article 14 of the Constitution. The petitioners were convicted because they disobeyed the order to disperse and the subsequent warning when leading a parade of cars and people without obtaining a permit six days before the outdoor event as required by Article 9, Paragraph 1 of the Act. However, it would be ill-advised for this Court to limit our consideration to the issue of whether or not the application deadline as set by Article 9, Paragraph 1 of the Act is constitutional, because the real issue presented in this case is the very constitutionality of the permit requirement for outdoor assemblies and parades as found in Article 8, Paragraph 1, First Sentence and the relevant provisions of the Act. Therefore, in this Interpretation we review the constitutionality of the permit scheme employed by the Act in regulating outdoor assemblies and parades. Article 14 of the Constitution stipulates that the people shall have freedom of assembly. Along with the freedoms of speech, teaching, writing, and publication as enumerated by Article 11 of the Constitution, this freedom is part of the freedom of expression. In light of the idea that sovereignty rests in the people, the people shall have the right to discuss freely and to fully express themselves, and only so can they seek for facts, search for the truth, form the public opinion through democratic process, and thereby make policy or law. Therefore, the freedom of expression is the most important basic right for the implementation of democratic politics. The State must guarantee the enjoyment of this right out of respect for the dignity

and autonomy of an individual as an independent and free person. Whereas the freedoms of speech, teaching, writing, and publication involve expressions of ideas via speech or written words, the freedom of assembly is mainly about exercise of free speech through action. For those ordinary people who do not have convenient access to the media, exercising free assembly is an important way to express opinions in public. According to the definition of Article 2 of the Act, an assembly is a meeting, lecture, or any other mass activity held in a public place or place accessible to the general public. A parade, in turn, refers to an organized collective procession on streets, roads, alleys, or any other public place or place accessible to the general public. As an expression of ideas through collective action, the exercise of free assembly is a way for the people to communicate with the government. In this way, the people may offer their opinions to the government, participate in the formation of the will of the State, or influence policymaking. In this regard, the State not only should refrain from interfering with the exercise of such freedom, but should also provide appropriate places for assembly and maintain security for the proper-functioning of assemblies and parades. Furthermore, the freedom of assembly is not just an external freedom to be protected in form, but also an internal freedom to be protected in substance, so that those who participate in an assembly/parade may do so without fear. Therefore, in addition to adhering to the necessity principle as required by Article 23 of the Constitution, the statutory restrictions on the right to assembly and parade must also comply with the void-for-vagueness doctrine. Only laws with clear rules can serve as the legal basis for a decision made by the competent authorities to restrict the exercise of such rights. And the people should be able to rely on clear and definite laws in asserting and defending their constitutional rights under due process of law.

[8] A distinction can be made between indoor and outdoor assemblies/parades, as outdoor assemblies/parades inevitably affect other people's lives in terms of

public peace and security, traffic conditions, living quality, and/or sanitation. In order to protect the freedoms of others or maintain social order or public interests, the State surely has the authority to regulate [outdoor assemblies/parades] by statute. That being said, the regulation should strike a proper balance between freedom of expression and the societal interests affected, and the regulation should be done by the least restrictive means. Generally speaking, there exist three types of regulatory regimes when it comes to the regulation of [outdoor] assemblies and parades: the *ex post* sanction, the filing system, and the permit system. Article 8, Paragraph 2 of the Act provides that no permit is required for any indoor assembly. According to Article 8, Paragraph 1 of the Act, a permit from the competent authorities is required for any outdoor assembly/parade except for (1) those held in accordance with statutes and regulations, (2) academic, artistic, tourist, or sport Activities or other Activities of similar nature, and (3) religious and folk Activities, weddings, and funerals. So, they opt for the permit system. This Court takes a clause-by-clause approach to review and determine whether the statutory provisions that are related to and necessary for the workings of this administrative prior restraint can withstand scrutiny under the proportionality principle as required by Article 23 of the Constitution. The petitioners argue that *ex post* sanction and a filing system are the only two regulatory regimes that are constitutionally permissible, and that the very use of prior restraint is an infringement of the basic right to free assembly. We reject this argument as groundless. To the extent that a prior restraint of the permit requirement has to do with content-neutral time, place, and manner restrictions clearly prescribed by a statutory law, it would not be considered an infringement on the freedom of expression. By the same token, the competent authorities may take precautionary measures that are necessary for protecting such important public interests as transportation security and social peace before the assembly/parade takes place.

[9] Article 11 of the Act provides that, except for the circumstances listed in the same Article, a permit should be granted for an outdoor assembly/parade upon application. In other words, the competent authorities cannot refuse to issue a permit for an assembly/parade if the application does not fall into any of the exceptions listed in the same Article. This is a rule-based permit system. The constitutionality of each provision of permit denial as listed in Article 11 of the Act is separately reviewed and discussed as follows.

[10] [According to] Subparagraph 1, "when Articles 4, 6, or 10 would be violated," [the competent authorities may deny a permit application]. Article 4 thereof stipulates, "Assembly and parade shall not advocate communism or secession." "Advocating communism or secession" is political speech. By listing it as a condition for denial of permit, the Act allows the competent authorities to review the content of speech. This amounts to a direct restriction on the freedom of expression. To be sure, Article 5, Paragraph 5 of the Additional Articles of the Constitution reads, "A political party shall be considered unconstitutional if its goals or Activities endanger the existence of the Republic of China or the constitutional order of liberal democracy." The right to form a political party, however, is part of the right to freedom of association. No permit is required for forming a political party, and no existing law bans the creation of new political parties. A political party can be prohibited if and only if it is dissolved by a judgment of the Constitutional Tribunal based on the finding that, since its establishment, its goals or Activities have endangered the existence of the Republic of China or the constitutional order of liberal democracy. The Ministry of the Interior argues that Article 4 of the Act resonates with the aforementioned Article 5 of the Additional Articles of the Constitution. We disagree. By listing the violation of Article 4 of the Act as a condition for denial of permit, the Act authorizes the competent authorities to engage in content-based prior restraint of assembly/parade. The competent

authorities would not be able to enforce this content-based restriction, however, if the permit application fails to specify the purpose of the assembly/parade in accordance with Article 9, Paragraph 1, Subparagraph 2 of the Act. If the outdoor assembly/parade is found to have such cause after the permit is granted, the competent authorities could revoke the permit pursuant to Article 15, Paragraph 1 of the Act and thereby achieve the objective of prohibition provided that doing so is urgently necessary, as dictated by circumstances of the moment, for maintaining social order, the public interests, or the safety of the assembly/parade. On the other hand, if such advocacy is made clear at the outset of the permit application, but the proposed assembly/parade does not pose any clear and present danger to social order or public interests, then the decision made by the competent authorities to deny or revoke the permit would be one that is made solely on the grounds that the assembly/parade advocates communism or secession of territory. This not only impinges on the participants' freedom to express their political opinions, but also runs afoul of the requirement of necessity made by Article 23 of the Constitution. Article 6 of the Act designates the following areas as restricted areas for assemblies and parades: (1) the Office of the President, the Executive Yuan, the Judicial Yuan, the Examination Yuan, and courts at all levels; (2) international airports and seaports; (3) important military facilities or areas. The restriction extends to the respective surroundings of the restricted areas. Article 6, Paragraph 2 of the Act tasks the Ministry of the Interior as well as the Ministry of National Defense with specifying the exact boundaries of the restricted areas. An assembly/parade may nonetheless be held in a restricted area if approval is obtained from the competent authorities. The creation of the restricted areas is aimed partly at ensuring the functions of Head of State, constitutional organs, and courts, partly at keeping international transportation from being disrupted, and partly at protection and security of important military facilities. In this regard, this provision, which prohibits assemblies and parades—except for those approved

by the competent authorities—from taking place in the restricted areas, is necessary for maintaining social order and promoting the public interest. Insofar as the regulation over the restricted areas and their surroundings is concerned, this provision is clearly written and is in line with the void-for-vagueness doctrines. We therefore uphold the constitutionality of this provision. Article 10 of the Act disqualifies the following persons from serving as principals, deputies, or picketers for permit-required outdoor assemblies or parades: (1) any person under the age of twenty; (2) any person who is not an R.O.C. citizen; (3) any person who has been sentenced to imprisonment but has yet to serve and complete the prison term, with the exception of those who have received suspended sentences; (4) any person who has yet to serve and complete rehabilitative or reformative treatment as ordered by a court; (5) any person who is interdicted. By requiring that those who serve as principals, deputies, or picketers for permit-required outdoor assemblies or parades be R.O.C. citizens with full legal capacity and without having to serve any pending sentence of imprisonment that is not suspended, or any pending rehabilitative or reformative treatment as ordered by a court, this foregoing provision is designed to ensure that those who may lead the formation of public opinion be qualified as such. This is within the scope of legislative authority and does not violate Article 23 of the Constitution.

[11] Subparagraph 2 provides that "[if] there is sufficient evidence for the finding that national security, social order, or the public interest would be jeopardized," [a permit application may be denied]. An assembly or a parade is a collective action of a multitude of people that aims at a specific common purpose. It is also a means by which people express their views and form the public opinion about governance in a democratic society. For the sake of ensuring social order and public safety, assemblies and parades as guaranteed by the Constitution must be held in peace, and statutory restrictions [on assemblies

or parades] are constitutionally permissible only if they have crossed the line of peacefulness. The content of the statutory restrictions, however, shall be clear, definitive, and specific. The phrase "national security, social order, or the public interest would be jeopardized" as found in this Subparagraph at issue is composed of general clauses that are not as specific and definite as the law should be. As such, this provision grants discretion to the police, which would have to determine, within a rather short period of time, whether there is sufficient evidence for the finding that the aforementioned governmental interests would be jeopardized. An outdoor assembly/parade would inevitably affect other people's freedoms, social order, or the public interest. Nevertheless, when a permit application presents no clear and present danger, if the competent authorities may base their decision solely on a prediction of future harm, then the application of this provision in practice is prone to impinge on the freedom of assembly. Such a state of affairs is not compatible with Article 11 of the Act, the legislative purpose of which is to confine the competent authorities' discretion. In this regard, the very use of this provision as a standard for reviewing the permit application is in and of itself an infringement on the right to freedom of assembly. In the event that a permit-required assembly/parade proceeds without a permit, or that a clear and present danger presents itself after the permit is issued, the competent authorities may still take suitable actions as authorized by Article 25, Paragraph 1, Subparagraph 1 and by Article 15, Paragraph 1 of the Act respectively when doing so is urgently necessary for the safety of an assembly/parade. It is also beyond dispute that the competent authorities may deny a permit application when there already exists a clear and present danger and the proposed assembly/parade would make the danger and harm even worse.

[12] Subparagraph 3 [allows the competent authorities to deny a permit application if they find] "there is a concern that life, health, or liberty would be

in danger, or that property would be seriously damaged." We hold this provision unconstitutional on grounds similar to what has been laid out in the preceding paragraph. In addition, it is unclear whether a permit for an assembly/parade may be denied when only a fraction of the participants raise the concern "that life, health, or liberty would be in danger, or that property would be seriously damaged." Besides, if there is merely a concern that life, health, or liberty would be in danger, or that property would be seriously damaged, then there is still no action that is punishable under criminal law. If there is a disturbance or disorder, the disorderly conduct is still punishable under the Maintenance of Social Order Act. In this regard, to deny a permit based solely on such a concern is in violation of the principle of proportionality. Since the standard for determining the presence of this "concern" is far from clear and specific, allowing the competent authorities to make this kind of substantive decision prior to the proposed assembly/parade contravenes the constitutional guarantee [of freedom of assembly]. In the event that a major incident occurs after the permit is issued, the competent authorities could still apply Article 15, Paragraph 1, First Sentence of the Act as dictated by the urgent necessity for ensuring the safety of the assembly/parade. This is similar to what we have said about Subparagraph 2.

[13] [The competent authorities, pursuant to] Subparagraph 4, [may reject a permit application] "when another application has been approved for the same time, venue, and route." When another application for an assembly/parade permit has been approved for the same time, venue, and route, the further approval of the present application would lead to confusion about the purposes of the assemblies/parades. If the two assemblies/parades are held in different manners, there is an increasing likelihood that there would be disruptions of social order. The likelihood of crowd conflict also increases with the presence of those who oppose and counteract the assemblies/parades. To be sure, when the competent authorities invoke this provision to deny a permit application, they

should comply with Article 26 of the Act by giving due consideration to the proper balance between the right to assembly/parade and the other governmental interests, and by choosing an appropriate means to achieving the intended purpose within the range of necessity. We uphold the constitutionality of this provision.

[14] Subparagraph 5 provides that "when the named applicant is a group that is not legally formed, has had its license revoked, or has been ordered to dissolve," [the competent authorities may deny the application.] This provision has the effect of saying that only natural persons, legal entities, or other groups legally formed are eligible for being the applicants of assemblies or parades. This requirement, in turn, is derived from Article 7 of the Act, which provides, "There shall be a person responsible for each assembly/parade" in Paragraph 1 and "The person responsible for the assembly/parade held by a legally formed group shall be the representative of the group or another person designated by him or her" in Paragraph 2. The identity of the person who represents a legally formed group is objectively ascertainable through a thorough background check. And as such, this provision is within the discretion of the legislature and is constitutional.

[15] [According to] Subparagraph 6, [the competent authorities may deny a permit application] "if the application does not satisfy the requirements of Article 9." Article 9, Paragraph 1 of the Act provides that the person responsible for an outdoor assembly/parade shall complete an application form specifying (1) such identification information as the names and residences of the principals, deputies, or picketers; (2) the purpose, procedure, and schedule of the assembly/parade; (3) the venue of the assembly or the route along with the rallying and breakup points of the parade; (4) the expected number of participants; (5) the models and number of vehicles and devices. The application shall be filed to the competent authorities for approval six days before the

assembly/parade takes place, but the application may be submitted two days before [the date of assembly/parade] if doing so is justified by natural disaster or other major incidents that are not foreseeable. Paragraph 2 of the same Article further requires that deputies present letters of proxy, that consent forms from the owner or manager of the venue for the assembly be enclosed, and that a detailed map of the parade route be enclosed for a parade application. An outdoor assembly/parade inevitably affects other people's freedoms, social order, or the public interest. In order to prevent activities of an assembly/parade from harming the public interest and thereby affecting or intruding on other people's lives in terms of public peace and security, traffic conditions, living quality, and/or sanitation, the Act requires that the person responsible for the assembly/parade file the permit application with the competent authorities six days in advance, and that detailed information, such as the identities of the principals, the purpose, procedure, and schedule of the assembly/parade, the venue of the assembly, the route along with the rallying and breakup points of the parade, the expected number of participants, the number of the vehicles and devices, *etc*., be specified in the application. This requirement not only leaves ample time for the applicants to make preparations, but also enables the competent authorities to make an informed assessment of the state of affairs and take such precautionary measures as making a good plan of traffic control to prevent traffic congestion or traffic chaos, which would lead to excessive interference with other road users' rights. Therefore, insofar as this part is concerned, this line item provision does not exceed the necessity as required by Article 23 of the Constitution. On the other hand, the proviso of Article 9, Paragraph 1 of the reads, "[A]n application may be submitted two days before [the date of assembly/parade] if doing so is justified by natural disaster or other major incidents that are not foreseeable." How can an assembly/parade submit its permit application two days in advance when it is held in response to a natural disaster or an unforeseeable major incident of another sort? Given that

an unplanned assembly/parade is by definition an immediate response that a crowd makes to a major incident that is unforeseeable, it is impossible to expect that its principals can file the permit application two days in advance, nor is it possible to expect that upon the occurrence of a major incident that a responding assembly/parade could nonetheless be postponed for two days. In this regard, the permit system is simply not applicable to unplanned assemblies or parades. The freedom of assembly as guaranteed by Article 14 of the Constitution does not preclude assemblies and parades that are unplanned. Under Article 9, Paragraph 1 of the Act, any permit application that cannot be filed within the period prescribed by law due to hastiness would be denied for violating Article 9. The resulting restraint on assembly/parade under this provision is inconsistent with the constitutional guarantee of freedom of assembly and is in dire need of improvement.

[16] Article 29 of the Act stipulates, "If an assembly/parade is not dispersed after the competent authorities have ordered it to disperse and continues to proceed in defiance of another official order to stop, the chief instigator shall be sentenced to imprisonment of up to two years or to short-term imprisonment." Under the circumstances as prescribed in Article 25 of the same Act, the competent authorities may issue warnings, injunctions, or the order to disperse to an assembly/parade. The prescribed circumstances include (1) when the assembly/parade is held without the required permit or after its permit has been revoked; (2) when the approved assembly/parade is found to have violated the terms or conditions of the permit; (3) when law is breached in the course of a permit-exempted assembly/parade held under Article 8, Paragraph 1 of the Act; (4) when there is any other behavior that is illegal. Article 11 of the Act provides that, except for those circumstances specified in the same article, a permit shall be granted for an outdoor assembly/parade. Part of the said provisions can be considered as content-neutral restrictions on

time, place, and manner of assembly/parade, and they are constitutionally permissible. Similarly, it does not violate Article 23 of the Constitution when the authorities issue warnings, injunctions, or the order to disperse to an assembly/parade under the circumstances as prescribed in Article 25 of the Act. Pursuant to Article 28 of the Act, if an assembly/parade is not dispersed after the authorities have ordered it to disperse, the principals, delegates, or the hosts of the assembly/parade shall be subject to an administrative fine ranging from TWD 30,000 to 150,000. This is an administrative penalty against the principals, delegates, or the hosts for their disobeying the dispersal order issued by the competent authorities. By contrast, it is only under the circumstances in which "an assembly/parade is not dispersed after the competent authorities have ordered it to disperse and continues to proceed in defiance of another official order to stop" that Article 29 imposes criminal sanctions on the instigators. Accordingly, the latter behavior [as described in Article 29] is subsequent to the former behavior [as described in Article 28], and the persons subject to punishment under these two provisions are not necessarily the same. The latter provision, under which a convicted chief instigator shall be sentenced to imprisonment for no more than two years or to short-term imprisonment, is aimed at punishing the instigator's unrelenting defiance against the order to disperse and the order to stop. If such behavior is left undeterred, the competent authorities would not be able to take necessary measures provided by the Code of Criminal Procedure when the instigation puts others or the public order in unpredictable danger. The breach of peace and order as punishable by Article 64, Subparagraph 1 of the Social Order Maintenance Act is applicable when and only when the offender "intends to cause trouble by assembling a crowd haphazardly at parks, stations, wharfs, airports, or other public places and refuses to disperse the crowd as ordered by the competent officer for the concern that public order would be in jeopardy." As to the offense of disobeying an order to disperse a public assembly as

provided by Article 149 of the Criminal Code, the criminal sanctions are imposed on any person "who assembles a crowd in public with the intent to engage in violence or coercion and who refuses to disperse after having been ordered to disperse three times or more by the competent official." These two provisions differ from Article 29 of the Act in terms of both the subjective and objective elements of offense. Therefore, their existence does not lead to the conclusion that [Article 29 of the Act] violates the necessity principle as required by Article 23 of the Constitution. Moreover, the issues concerning the propriety of the order to disperse—such as how the order to disperse assemblies or parades is made by the authorities and the means the authorities use to stop the assembly/parade from continuing—are matters of fact-finding. It should go without saying that in making a decision on conviction and sentencing, a criminal Court should make a precise determination as to whether all elements of a criminal offense—especially the necessary element of *mens rea*—are present in the case.

Background Note by the Translator

The petitioners in this case were Chen-Yen KAO, Mao-Nan CHEN, and Cheng-Hsiu CHANG, who were convicted in the Taiwan High Court Judgment 83-Shang-Yi-5278 (1995) of violating the Assembly and Parade Act (hereinafter "Act") and were each sentenced to a thirty-day short-term imprisonment convertible to fine. After exhausting ordinary judicial remedies, they filed their petition for constitutional review with the Constitutional Court in June 1995. In their petition, they challenged the constitutionality of Article 8, Paragraph 1, and Articles 6, 10, 11, 25, and 29 of the Act. The Constitutional Court decided to hear the petition and held oral arguments on December 5, 1997.

Prompted in part by this J.Y. Interpretation No. 445, which was issued on January 23, 1998, the Act was partially revised on June 26, 2002. With respect

to the issue concerning unplanned assemblies and parades, the proviso of Article 9, Paragraph 1 of the revised Act provides that, if an assembly/parade must be held immediately due to an unexpected major emergency, its application needs not comply with the requirement that applications be filed six days in advance. Article 12, Paragraph 2 of the revised Act further stipulates, "When the application is submitted pursuant to the proviso of Article 9, Paragraph 1, the competent authorities should notify the applicant in writing [of its approval or denial of permit] within twenty-four hours upon receiving the application."

In November 2008, hundreds of protestors held a two-day sit-in at the entrance of the Executive Yuan to protest police abuse during the visit of Yun-Lin CHEN, a high-ranking official of the Chinese government. The protest did not apply for a permit and was ultimately dispersed by police with force. One of the protestors was Ming-Tsung LEE, an assistant professor of sociology at National Taiwan University, and he was prosecuted for violating Article 29 of the Act in 2009. LEE's case was tried by Taiwan Taipei District Court Judge Szu-Fan CHEN. In September 2010, Judge CHEN decided to suspend the pending procedure and petitioned the Constitutional Court to review the constitutionality of several provisions of the Act. In 2011, a criminal chamber of the Taiwan Taoyuan District Court suspended the trial proceedings of a similar case concerning violation of the Act and petitioned the Constitutional Court for constitutional review. Por-Yee LIN, a graduate student who was convicted of violating Article 29 of the Act in 2006 for his involvement in a protest against high tuition, also filed a petition with the Constitutional Court in 2012, challenging the constitutionality of the Act on a number of grounds.

The Constitutional Court consolidated the three aforementioned petitions and rendered J.Y. Interpretation No. 718 on March 21, 2014. In J.Y. Interpretation No. 718, the Constitutional Court held that, to the extent that urgent and spontaneous (unplanned) assemblies/parades were not exempted

from the permit regulation, Article 8, Paragraph 1, the proviso of Article 9, Paragraph 1, and Article 12, Paragraph 2 of the Act violated both the proportionality principle as required by Article 23 and the freedom of assembly as guaranteed by Article 14 of the Constitution. The Constitutional Court also held that the aforementioned provisions were to cease to be effective from January 1, 2015.