

J. Y. Interpretation No.670 ( January 29, 2010 ) \*

**ISSUE:** Is Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions which denies indemnification should detention is the result of the victim's intentional or gross negligent conduct unconstitutional ?

**RELEVANT LAWS:**

Article 8, Paragraph 1, Articles 15, and 23 of the Constitution ( 憲法第八條第一項、第十五條、第二十三條 ), J.Y. Interpretation Nos. 384, 400, 425, 487, 516, 588, 624, 652 and 665 ( 司法院釋字第三八四號、第四〇〇號、第四二五號、第四八七號、第五一六號、第五八八號、第六二四號、第六五二號、第六六五號解釋 ), Article 5, Paragraph 1, Section 2 of the Constitutional Interpretation Procedural Act ( 司法院大法官審理案件法第五條第一項第二款 ), Article 1, Paragraph 1, Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions ( 冤獄賠償法第一條第一項、第二條第三款 ), Article 101, Paragraph 1 of the Criminal Procedure Code ( 刑事訴訟法第一百零一條第一項 ), and Article 102, Paragraph 1 of the Military Justice Act ( 軍事審判法第一百零二條第一項 ) .

**KEYWORDS:**

Compensation for Wrongful Detention ( 冤獄賠償 ), state

---

\* Translated by Professor Dr. Ming-Woei Chang.

\*\* Contents within frame, not part of the original text, are added for reference purposes only.

2 J. Y. Interpretation No.670

compensation (國家賠償), final acquittal adjudication (無罪判決確定), intention or recklessness (故意或重大過失), obstruction or misleading of investigation or trial (妨礙誤導偵查審判), degree of culpability (可歸責程度), public interest (公共利益), special sacrifice (特別犧牲), indemnification (補償), physical freedom (人身自由), right of equal protection (平等權), principle of proportionality (比例原則)\*\*

**HOLDING:** For victims acquitted by final adjudication, in the event their detention is based on Article 101, Paragraph 1 of the Criminal Procedure Code or Article 102, Paragraph 1 of the Military Justice Act because of intentional or reckless conduct on their part, no damage award is available in accordance with Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions. Such across-the-board denial does not take into consideration whether the victim's conduct that caused the detention was to commit the crime or was to obstruct or mislead the investigation or the trial, nor consider the degree of culpability from the act that caused the detention and the losses resulted from the

**解釋文：**受無罪判決確定之受害人，因有故意或重大過失行為致依刑事訴訟法第一百零一條第一項或軍事審判法第一百零二條第一項受羈押者，依冤獄賠償法第二條第三款規定，不得請求賠償，並未斟酌受害人致受羈押之行為，係涉嫌實現犯罪構成要件或係妨礙、誤導偵查審判，亦無論受害人致受羈押行為可歸責程度之輕重及因羈押所受損失之大小，皆一律排除全部之補償請求，並非避免補償失當或浮濫等情事所必要，不符冤獄賠償法對個別人民身體之自由，因實現國家刑罰權之公共利益，受有超越一般應容忍程度之特別犧牲時，給予所規範之補償，以符合憲法保障人民身體自由及平等權之立法意旨，而與憲法第二十三條之比例原則有違，應自本解釋公布之日起至遲於屆滿

detention of the victim. Given that it is not a necessity to avoid inappropriate or abusive indemnification, and is not in compliance with the legislative meaning and purpose of the Constitution on the protection of people's physical freedom and right of equal protection by which statutory indemnification is available under the Act of Compensation for Wrongful Detentions and Executions for an individual who has endured special sacrifices more than ordinary degree while the public interest through the exercise of the state's penal authority was realized, it contradicts the principle of proportionality under Article 23 of the Constitution and shall become invalid no later than two years since the issuance of this Interpretation .

**REASONING:** This Yuan has repeatedly issued Interpretations regarding the fact that the state shall provide indemnification in accordance with the law for the people's property rights, protected under Article 15 of the Constitution, that have been specially sacrificed because of the need of the public interest

二年時失其效力。

**解釋理由書：**人民受憲法第十五條保障之財產權，因公益需要而受特別犧牲者，應由國家依法律予以補償，已迭經本院解釋在案（本院釋字第000號、第四二五號、第五一六號、第六五二號解釋參照）。人民受憲法第八條保障身體之自由，乃行使其憲法上所保障其他自由權利之前提，為重要基

#### 4 J. Y. Interpretation No.670

(see J.Y. Interpretation Nos. 400, 425, 516, and 652). This Yuan has also repeatedly issued Interpretations regarding the fact that the people's right of physical freedom protected under Article 8 of the Constitution is the prerequisite [basis] for the exercise of other freedoms and rights protected under the Constitution, and is deemed to be a critical fundamental human right that requires special protection (see J.Y. Interpretation Nos. 384 and 588). Thus for any individual whose specific physical freedom subject to legitimate restrictions by the public authority and for public interest, such as detention, custody, or constrain, but under the special circumstances has exceeded the degree that should be endured by people under ordinary condition, and constitute special personal sacrifice, there shall be the right to petition for reasonable indemnification in accordance with the law so as to comply with the meaning and purpose of the Constitution on the protection of people's physical freedom and right of equal protection.

本人權，尤其應受特別保護，亦迭經本院解釋在案（本院釋字第三八四號、第五八八號解釋參照）。是特定人民身體之自由，因公共利益受公權力之合法限制，諸如羈押、收容或留置等，而有特別情形致超越人民一般情況下所應容忍之程度，構成其個人之特別犧牲者，自應有依法向國家請求合理補償之權利，以符合憲法保障人民身體自由及平等權之意旨。

Article 1, Paragraph 1 of the Act of Compensation for Wrongful Detentions and Executions stipulates: "For cases filed and received under the Criminal Procedure Code, Military Justice Act, Juvenile Proceeding Act, or Gangster Prevention Act, the victim may petition for state compensation if one of the following conditions is met: (1) that he/she has been detained before the final non-prosecutorial disposition or acquittal; (2) that he/she has been detained, placed under custody, served a sentence or compelled to work before the final non-prosecutorial disposition, acquittal, or cancellation of compulsory work in a retrial or an extraordinary appeal proceeding; (3) that he/she has been placed under custody before the final dismissal of the case or protective disposition; (4) that he/she has placed under custody or served the juvenile correction program before the final dismissal of protective disposition in a retrial proceeding; (5) that he/she has been confined before the final dismissal of correction disposition; or (6) that he/she has been confined or subjected to correction program before the final dismissal of correction disposition."

冤獄賠償法第一條第一項規定：「依刑事訴訟法、軍事審判法、少年事件處理法或檢肅流氓條例受理之案件，具有下列情形之一者，受害人得依本法請求國家賠償：一、不起訴處分或無罪、不受理之判決確定前，曾受羈押或收容。二、依再審或非常上訴程序判決無罪、不受理或撤銷強制工作處分確定前，曾受羈押、收容、刑之執行或強制工作。三、不付審理或不付保護處分之裁定確定前，曾受收容。四、依重新審理程序裁定不付保護處分確定前，曾受收容或感化教育之執行。五、不付感訓處分之裁定確定前，曾受留置。六、依重新審理程序裁定不付感訓處分確定前，曾受留置或感訓處分之執行。」本條項規定之國家賠償，並非以行使公權力執行職務之公務員有故意或過失之不法侵害行為為要件。是冤獄賠償法於形式上為國家賠償法之特別法，然本條項所規定之國家賠償，實係國家因實現刑罰權或為實施教化、矯治之公共利益，對特定人民為羈押、收容、留置、刑或保安處分之執行，致其憲法保障之自由權利，受有超越一般應容忍程度之限制，構成其個人之特別犧牲時，依法律之規定，以金錢予以填補之刑事補償（以下稱本條項之賠償為補償）。

## 6 J. Y. Interpretation No.670

tion in a retrial proceeding.” The state compensation stipulated under this provision is not premised on the intentional or negligent unlawful infringing conduct on the part of the public official in the capacity of carrying out public authority.. Thus, as a matter of form, the Act of Compensation for Wrongful Detentions and Executions is the special statute of the State Compensation Act, and the state compensation provided in this provision is in fact a statutory financial compensation to indemnify specific individual whose freedoms and rights protected under the Constitution endured more than ordinary degree of restrictions that constitute special sacrifices while the state, in realizing its penal authority or exercising the public interest through education or correction, put that specific individual under detention, custody, confinement, sentence serving, or corrective measures (the compensation in this provision is hereafter referred to as in-demnification).

When a statute provides indemnification to individuals whose freedoms and rights endure special sacrifices that

人民之自由權利因公共利益受有超越一般應容忍程度之特別犧牲，法律規定給予補償時，為避免補償失當或浮

exceeded the ordinary degree because of public interests, for the sake of avoiding inappropriate or abusive indemnification, such indemnification right may be excluded or reduced under different circumstances if the victim is culpable for the creation or expansion of damages. Yet it has to be necessary to achieve the statutory purpose so that there is no violation of the principle of proportionality under Article 23 of the Constitution. Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions (hereinafter the disputed provision), on the part that prohibits those who are detained because of intentional or reckless conduct from seeking indemnification, as far as detention under Article 101, Paragraph 1 of the Criminal Procedure Code or Article 102, Paragraph 1 of the Military Justice Act is concerned, it does not take into consideration whether the victim's conduct that caused the detention was to commit the crime or was to obstruct or mislead the investigation or the trial (such as escape, tampering with a witness, destruction of evidence or false confession, among other things), nor consider

濫等情事，受害人對損失之發生或擴大，如有可歸責之事由，固得審酌不同情狀而排除或減少其補償請求權，惟仍須為達成該目的所必要，始無違憲法第二十三條之比例原則。冤獄賠償法第二條第三款規定，因故意或重大過失行為致受羈押者，不得請求補償部分（以下稱系爭規定），就刑事訴訟法第一百零一條第一項及軍事審判法第一百零二條第一項所規定之羈押而言，並未斟酌受害人致受羈押之行為，係涉嫌實現犯罪構成要件，或係妨礙、誤導偵查審判（例如逃亡、串供、湮滅證據或虛偽自白等），亦無論受害人致受羈押行為可歸責程度之輕重及其因羈押所受損失之大小，皆一律排除全部之補償請求，並非避免補償失當或浮濫等情事所必要，不符冤獄賠償法對特定人民身體之自由，因實現刑罰權之公共利益受有干涉，構成超越一般應容忍程度之特別犧牲時，給予所規範之補償，以實現憲法保障人民身體自由及平等權之立法意旨，而與憲法第二十三條之比例原則有違。系爭規定應由相關機關自本解釋公布之日起二年內，依本解釋之意旨，衡酌受害人致受羈押行為之情狀、可歸責程度及所受損失等事由，就是否限制其補償請求權，予以限制時係全面排除或

## 8 J. Y. Interpretation No.670

the degree of culpability from the act that caused the detention and the losses resulted from the detention of the victim. Given that it is not a necessity to avoid inappropriate or abusive indemnification, and is not in compliance with the legislative meaning and purpose of the Constitution on the protection of people's physical freedom and right of equal protection by which statutory indemnification is available under the Act of Compensation for Wrongful Detentions and Executions for an individual who has endured special sacrifices more than ordinary degree while the public interest through the exercise of the state's penal authority was realized, it contradicts the principle of proportionality under Article 23 of the Constitution. The relevant government agencies should conduct a thorough review and provide proper revisions within two years since the issuance of this Interpretation, and based on the meaning and purpose of this Interpretation, on whether the right to indemnification shall be restricted, whether such restriction shall be across the board exclusion or partial reduction, among other things, while taking into consideration

部分減少等，配合冤獄賠償法相關規定通盤檢討，妥為規範，屆期未完成修法者，系爭規定失其效力。

circumstances such as the victim's conduct that caused the detention, the degree of culpability and the resulted damages, in association with the relevant provisions of the Act of Compensation for Wrongful Detentions and Executions. The disputed provision shall become invalid if no amendment is made within this period.

Justice Ming Chen filed concurring opinion, in which Justice Sea-Yau Lin joined.

Justice Tzong-Li Hsu filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Chen-Shan Li filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Ching-You Tsay filed dissenting opinion.

Justice Chi-Ming Chih filed dissenting opinion.

Justice Shin-Min Chen filed concurring opinion in part and dissenting opinion

本號解釋陳大法官敏、林大法官錫堯共同提出協同意見書；許大法官宗力提出協同意見書；葉大法官百修提出協同意見書；李大法官震山提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官春生提出協同意見書；蔡大法官清遊提出不同意見書；池大法官啟明提出不同意見書；陳大法官新民提出部分協同、部分不同意見書。

## 10 J. Y. Interpretation No.670

ion in part.

### EDITOR'S NOTE:

Summary of Facts: The two petitioners were responsible for foreign exchange operations in a bank. In December 1978, after the foreign issuing bank refused to honor an export negotiation, the two petitioners were detained on February 28, 1979 by the prosecutor who considered them highly suspicious in committing corrupted conducts. The Taiwan High Court eventually granted bail and ended the detention on April 8, 1983 and September 28, 1981, resulting the petitioners being detained for 1,500 and 925 days respectively.

The Supreme Court subsequently and finally acquitted the two individuals in 2007, and the two petitioners filed petition for wrongful detention damages. On appeal, the Wrongful Detention Compensation Court of the Judicial Yuan denied their claims in 2008, holding that the two petitioners nevertheless committed significant flaws in processing the export negotiation, which, objectively and easily, can

### 編者註：

事實摘要：聲請人等原均於銀行負責外匯作業暨審核業務。67年12月間因發生出口押匯遭國外開狀銀行拒付案，經檢察署認涉有犯貪污罪之重大嫌疑，於68年2月28日遭羈押，分於72年4月8日、70年9月9日始由臺灣高等法院准予交保後停止羈押，分別受羈押1500日，925日。

嗣該貪污案件經最高法院96年度台上字第4591號刑事判決無罪確定，爰依法請求冤獄賠償。經司法院冤獄賠償法庭97年度台覆字第129號覆審決定認聲請人經辦押匯作業仍有重大瑕疵，於客觀上易遭誤認其有主觀上圖利他人之犯行，故其受羈押，核有冤獄賠償法第2條第3款不得請求賠償情形，遂駁回其覆審之聲請。

be misconstrued to have engaged in the criminal conduct to benefit others, and the detention, therefore, is not qualified for indemnification under Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions.

The petitioners file for the present statutory interpretation, claiming that Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions contradicts the principles of presumption of innocence and proportionality, and contravenes the right of equal protection under Article 7, the right to work under Article 15, and the fundamental basic rights under Article 23 of the Constitution.

In a separate case, the petitioner was detained for violation of the Securities on August 20, 2005, based on a decision of the Banciao District Court, and was released on bail on June 13, 2006, amounting to 298 days of detention.

The case was finalized with the acquittal judgment from the Taiwan High

聲請人不服，認冤獄賠償法第2條第3款規定，違反無罪推定及比例原則，有牴觸憲法第7條、第15條、第23條等規定之疑義，聲請解釋憲法。

聲請人因違反證券交易法等案件，經臺灣板橋地方法院裁定自94年8月20日起羈押禁見，迄95年6月13日准予交保後停止羈押，計受羈押298日。

嗣經臺灣高等法院以97年度金上重訴字第3號刑事判決無罪確定，爰依

## 12 J. Y. Interpretation No.670

Court in 2008, the petitioner then petitioned in accordance with the law for wrongful detention compensation. On appeal, the Wrongful Detention Compensation Court of the Judicial Yuan denied the claim in 2009, holding that the petitioner is nevertheless highly suspicious in violating the Security Transactions Act, the pretrial detention was the result of his improper conduct and, therefore, meet the conditions not to receive indemnification under Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions.

The petitioner files the present statutory interpretation, claiming that Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions contradicts the right of equal protection under Article 7 and the right to physical freedom under Article 8 of the Constitution.

In the third case, the petitioner was an Army officer who was absent without leave (AWOL) in his base from January 26 1976 to February 9 1976. The brigade

法請求冤獄賠償。該請求經司法院冤獄賠償法庭 98 年度台覆字第 319 號覆審決定認其違反證券交易法等犯罪嫌疑重大，聲請人受羈押乃因其不當行為所致，核有冤獄賠償法第 2 條第 3 款不得請求賠償之情形，遂駁回其覆審之聲請。

聲請人不服，認冤獄賠償法第 2 條第 3 款規定，有牴觸憲法第 7 條、8 條等規定之疑義，聲請解釋憲法。

聲請人為陸軍軍官，於 65 年 1 月 26 日不假離營，至同年 2 月 9 日自行返營。該旅司令部軍事檢察官認聲請人涉有犯逃亡罪之重大嫌疑，於 65 年 2

military prosecutor deemed the petitioner highly suspicious of committing the crime of escape and detained the petitioner from February 9, 1976 to March 14th, 1977, the day the officer was discharged from the Army, amounting to 399 days of detention.

On November 3, 1976, the court-martial of the Army Development of War Training Command acquitted the petitioner, finding that he had no intent to escape and did not meet the statutory conditions of the offense. The petitioner then filed for wrongful detention compensation. On appeal, the Wrongful Detention Compensation Court of the Judicial Yuan denied the claim in 2008, holding that the detention was the result of the petitioner's improper conduct in that he failed to apply for leave in accordance with the regulations, and, therefore, meet the conditions not to receive indemnification under Article 2, Section 3 of the Act of Compensation for Wrongful Detentions and Executions.

月9日羈押聲請人，迄至66年3月14日准予退伍止，計羈押399日。

65年11月3日陸軍訓練作戰發展司令部65年判字第196號判決認聲請人並無逃亡犯意，與逃亡罪之構成要件不合，經諭知無罪，爰依法請求冤獄賠償。該請求經司法院冤獄賠償法庭97年度台覆字第80號覆審決定認聲請人受羈押乃因其未依規定辦理休假手續之不當行為所致，核有冤獄賠償法第2條第3款不得請求賠償之情形，遂駁回其覆審之聲請。

**14 J. Y. Interpretation No.670**

The petitioner files the present statutory interpretation, claiming that Article 2, Section 3 of the Act of Compensation for Wrongful De-tentions and Executions contradicts the right to physical freedom under Article 8 of the Constitution.

聲請人不服，認冤獄賠償法第2條第3款規定，有牴觸憲法第8條規定之疑義，聲請解釋憲法。