

J. Y. Interpretation No.677 (May 14, 2010) \*

**ISSUE:** Is the provision that prisoners may be released before noon of the next day after the enforcement of prison terms has been fulfilled under Article 83, Paragraph 1 of the Prison Act unconstitutional?

**RELEVANT LAWS:**

Articles 8 and 23 of the Constitution (憲法第八條、第二十三條) ; J.Y. Interpretation Nos. 384 and 588 (司法院釋字第三八四號、第五八八號解釋) ; Article 121, Paragraph 1 of Civil Code (民法第一百二十一條第一項) ; Article 65 of the Criminal Procedure Code (刑事訴訟法第六十五條) ; Article 83, Paragraph 1 of the Prison Act (監獄行刑法第八十三條第一項) .

**KEYWORDS:**

detention (拘禁), release (釋放), prisoners (受刑人), personal freedom (人身自由), physical freedom (身體自由), necessary statutory procedure (法定程序), fulfillment of prison term (刑期期滿), due process of law (正當法律程序).\*\*

**HOLDING:** On the part that prisoners shall be released at noon of the

解釋文：監獄行刑法第八十三條第一項關於執行期滿者，應於其刑期終

\* Translated by Fort Fu-Te Liao.

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

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next day since the expiration of the prison terms under Article 83 Section 1 of the Prison Act, it causes the prisoners to remain detained after the enforcement of the prison term is fulfilled without proper procedure and infringes on the prisoners' physical liberty, and violates due process of law. Such means by restricting the prisoners' physical liberty is not necessary, and contravenes Articles 8 and 23 of the Constitution. The part of the statute not in consistent with this Interpretation shall be invalid as of June 1, 2010. The related governmental agencies shall promptly implement appropriate regulations on the release of prisoners in accordance with this Interpretation. Before the statute is amended, prisoners shall be released before noon on the day their prison terms are ended.

On the part of the petition that concerns the interim disposition under Article 83, Paragraph 1 of the Prison Act, since it is no longer necessary to take that measure in light of this Interpretation, it is hereby dismissed.

了之次日午前釋放之規定部分，使受刑人於刑期執行期滿後，未經法定程序仍受拘禁，侵害其人身自由，有違正當法律程序，且所採取限制受刑人身體自由之手段亦非必要，抵觸憲法第八條及第二十三條之規定，與本解釋意旨不符部分，應自中華民國九十九年六月一日起失其效力。有關機關應儘速依本解釋意旨，就受刑人釋放事宜予以妥善規範。相關規定修正前，受刑人應於其刑期終了當日之午前釋放。

本件聲請人就上開監獄行刑法第八十三條第一項規定所為暫時處分之聲請部分，因本案業經作成解釋，無作成暫時處分之必要，應予駁回。

**REASONING:** Article 8, Paragraph 1 of the Constitution stipulates: “Personal freedom shall be guaranteed to the people. Except in case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be resisted.” The statutory procedure prescribed under this Article means any measure that limits the personal freedom, regardless of whether the status being a criminal defendant. In addition to statutory authorization, it can be imposed only after necessary judicial procedure and other due process of law being followed through respectively, and confirms to Article 23 of the Constitution (see J. Y. Interpretation Nos. 384 and 588 )

On the part of the stipulation under Article 83, Paragraph 1 of the Prison Act,

**解釋理由書：**憲法第八條第一項規定：「人民身體之自由應予保障。除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序，不得逮捕拘禁。非由法院依法定程序，不得審問處罰。非依法定程序之逮捕、拘禁、審問、處罰，得拒絕之。」本條規定之法定程序，係指凡限制人民身體自由之處置，不問其是否屬於刑事被告之身分，除須有法律之依據外，尚應分別踐行必要之司法程序或其他正當法律程序，並符合憲法第二十三條之規定，始得為之（本院釋字第三八四號、第五八八號解釋參照）。

監獄行刑法第八十三條第一項關於「執行期滿者，……應於其刑期終了

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“[h]aving served the term of imprisonments ... [prisoners] shall be released at noon of the next day since the end of the prison terms[,]” (hereinafter the disputed provision) it was an expedient measure legislated against the backdrop of administrative difficulties for night time operations at the prison, provided that the transportation means were not convenient to and from the prison in the past, rendering it difficult to force the prisoners to depart at late night. Therefore, the release operations did not start until the next morning during business hours after the enforcement of the prison term is fulfilled so that the transportation and personal safety of the prisoners can both be looked after (see Ministry of Justice Memorandum No. Fa Jio Zi No. 0990900962 (March 25, 2010) ). However, under Article 65 of the Criminal Procedure Code: “The calculation of term shall be in accordance with the stipulations of the Civil Code.” As such, the calculation of prison terms is analogous to and shall apply, mutatis mutantis, Article 121, Paragraph 1 of the Civil Code, in that when a term is determined by a day, week, month or year, the

之次日午前釋放」之規定部分（下稱系爭規定），考其立法之初所處時空背景，係認監獄於深夜時間作業困難，且過往監獄對外交通聯繫不便，亦難強令受刑人於深夜立即離去等情所為之權宜處置，乃於刑期執行期滿之次日上午辦公時間始行辦理釋放作業，以兼顧受刑人釋放後之交通與人身安全（法務部九十九年三月二十五日法矯字第0九九〇九〇〇九六二號函參照）。然依刑事訴訟法第六十五條：「期間之計算，依民法之規定。」本此意旨，有關刑期期間之計算應類推適用民法第一百二十一條第一項規定，以日、星期、月或年定期間者，以期間末日之終止，為期間之終止。刑期執行期滿，除另有合憲之法定事由外，受刑人即應予以釋放，始與憲法第八條保障人民身體自由之意旨無違。

end of the term shall be the end of the last day of that term. Once the enforcement of the prison term is fulfilled, except otherwise with statutory justifications under the Constitution, the prisoners shall be released immediately so as not to contravene the protection of personal freedom under Article 8 of the Constitution.

The state's penal power over the prisoners extinguishes at the time the enforcement of the prison term is fulfilled. By having those prisoners who have fulfilled their imprisonments to be released before noon of the next day after the end of the prison terms, as stipulated by the disputed provision, is the continuous confinement of their personal freedom in a particular locale and is no different from the criminal penalty of depriving people's personal freedom. Now that the disputed provision did not clearly stipulate the due process under which such quasi-penal limitations on personal freedom of a criminal defendant can be carried out, it contravenes the due process of law under Article 8 of the Constitution. Separately, while the disputed provision has a justifi-

國家對於受刑人之刑罰權，於刑期執行期滿即已消滅。系爭規定以執行期滿者，應於其刑期終了之次日午前釋放，將使受刑人於刑期期滿後，仍拘束人民身體自由於特定處所，而與剝奪人民身體自由之刑罰無異，系爭規定未明確規範類似限制刑事被告人身自由所應踐行之正當法律程序，與憲法第八條規定之正當法律程序即屬有違。另系爭規定考量受刑人釋放後之交通與人身安全，延至刑期終了之次日午前始行釋放受刑人，目的固屬正當，惟所謂刑期執行期滿當日，就執行刑罰目的之達成，並不以執行至午夜二十四時為必要，是於期滿當日之午前釋放，既無違刑期執行期滿之意旨，亦無受刑人交通與人身安全之顧慮，足見系爭規定關於受刑人應於其刑期終了次日午前釋放部分，尚非必要，亦與憲法第二十三條所定比例

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able purpose by taking into consideration the transportation and personal safety of the prisoners to postpone the release prior to noon of the next day after the enforcement of the prison term is fulfilled, the day the enforcement of the prison term is fulfilled does not necessarily mean to enforce the prison term literally until the midnight of that day. Therefore, by releasing the prisoners before noon of the day their prison terms are ended neither violates the tenet of fulfilling the enforcement of the imprisonment nor raises concerns over the prisoners' transportation and personal safety. It shows that the disputed provision is unnecessary and contravenes the principle of proportionality under Article 23 of the Constitution. The part of the disputed provision not in consistent with this Interpretation shall be invalid as of June 1, 2010. The related governmental agencies shall promptly implement appropriate regulations on the release of prisoner release in accordance with this Interpretation. Before the statute is amended, prisoners shall be released before noon on the day their prison terms are ended.

原則之意旨有違。系爭規定與本解釋意旨不符部分，應自九十九年六月一日起失其效力。有關機關應儘速依本解釋意旨，就受刑人釋放事宜予以妥善規範。相關規定修正前，受刑人應於其刑期終了當日之午前釋放。

On the part of the petition that concerns the interim disposition under the disputed provision, since it is no longer necessary to take that measure in light of this Interpretation, it is hereby dismissed.

Justice Pai-Hsiu Yeh filed concurring opinion, in which Justice Yuhsiu Hsu joined.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed dissenting opinion in part.

#### **EDITOR'S NOTE:**

Summary of facts: The Petitioner was convicted under the charges of robbery, forging documents, among other crimes, and sentenced to five and half years and six months imprisonments, respectively, by the Taiwan High Court. The executable sentence should be five years and nine months imprisonments. The judgment was finalized on July 14, 2005.

On July 16, 2007, the High Prosecutorial Office issued an enforcement order ((96) Jien Gon Shu Zi No. 4) and trans-

本件聲請人就系爭規定所為暫時處分之聲請部分，因本案業經作成解釋，無作成暫時處分之必要，應予駁回

本號解釋葉大法官百修、許大法官玉秀共同提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官新民提出部分不同意見書。

#### **編者註：**

事實摘要：聲請人因犯強盜、偽造文書等案件，經臺灣高等法院分別判處有期徒刑5年6月及6月，應執行有期徒刑5年9月，於94年7月14日確定。

96年7月16日，臺灣高等法院檢察署以96年度減更戊字第4號執行指揮書之執行命令，發送臺灣綠島監獄執

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ferred the Petitioner to the Taiwan Green Island Prison, with the prison term ended on June 11, 2010.

Note 3 of the above-indicated enforcement order stated: "If there should be no other criminal investigations in progress, in the morning of the next day after the prison term ends, the prison [authority] shall verify the identity and release the prisoner." The Petitioner objected and claimed that his prison term ended on June 11, 2010 and he should have been released as soon as the enforcement of that sentence was ended as of the midnight of that day.

In Criminal Judgment (98) Shun Zi no. 2722 (2009), the Taiwan High Court, based on the disputed provision, ruled that the enforcement order was neither unjustified nor in violation of the law.

The Petitioner disagreed and appealed to the Supreme Court but the case was dismissed for lack of proper claim (Criminal Judgment (98) Kun Zi No. 744 (2009)). The Petitioner, believing the dis-

行，其刑期應於 99 年 6 月 11 日期滿。

上開執行指揮書備註 3 記載，「如無其他刑事案件偵審中，執行期滿之翌日上午，由監獄驗明正身釋放」，聲請人主張其刑期屆滿日係 99 年 6 月 11 日，依法應執行至當日 24 時止，執行期滿即應予釋放，聲明異議。

臺灣高等法院 98 年度聲字 2722 號裁定，以監獄行刑法第 83 條第 1 項規定，執行期滿者，應於其刑期終了之次日午前釋放之（下稱系爭規定），認上開執行指揮書並無違法或不當，駁回異議。

聲請人不服，向最高法院提起抗告，經該院以 98 年度台抗字第 744 號刑事裁定以無理由駁回。聲請人乃認系爭規定有抵觸憲法第 8 條及第 23 條規定之疑義，聲請解釋暨暫時處分。

puted provision violated Articles 8 and 23 of the Constitution, petitioned a constitutional interpretation and interim disposition.