

J. Y. Interpretation No.689 (July 29, 2011) *

ISSUE: Does Article 89, Paragraph 2 of the Social Order Maintenance Act restricting the act of stalking by a journalist violate the Constitution ?

RELEVANT LAWS:

Articles 11, 15, 22, 23 of the Constitution of the Republic of China (1947) (憲法第十一條、第十五條、第二十二條、第二十三條) ; J.Y. Interpretations No. 535, No. 585, No. 603 (司法院釋字第五三五號、第五八五號、第六〇三號解釋) ; Article 5, Paragraph 1, Item 2 and Article 13, Paragraph 1 of the Constitutional Interpretation Procedure Act (1993.2.3) (司法院大法官審理案件法第五條第一項第二款、第十三條第一項) ; Article 55 Article 89, Paragraph 2 Social Order Maintenance Act (2011.11.4) (社會秩序維護法第五十五條、第八十九條第二款) ; Articles 18, 195 Civil Code (2012.12.26) (民法第十八條、第一百九十五條) ; Article 28 of the Computer-Processed Personal Data Protection Act (revised and promulgated as Personal Data Protection Act on May 26, 2010, not yet implemented) (電腦處理個人資料保護法 (九十九年五月二十六日修正公布為個人資料保護法 , 尚未施行) 第二十八條) ; Act Governing the Punishment of Police Offences (promulgated on September 3, 1943 by the Republic Government, implemented on October 1 of the same

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year, repealed on June 29, 1991.) (違警罰法第七十七條第一款(三十二年九月三日國民政府公布,同年十月一日施行,八十年六月二十九日廢止))

KEYWORDS:

human dignity (人性尊嚴), freedom from intrusion (不受侵擾之自由), freedom of general behavior (一般行為自由), freedom of movement (行動自由), personality right (人格權), privacy (隱私), private sphere (私密領域), right to Informational self-determination (個人資料自主權), body right (身體權), physical and emotional safety (身心安全), public sphere (公共場域), reasonable expectation(合理期待), tort (侵權行為), freedom of press (新聞自由), freedom of news gathering(新聞採訪), journalist (記者), news reporter (新聞採訪者), right to work (工作權), freedom of occupation (職業自由), freedom to exercise one's profession (執行職業自由), principle of clarity and definiteness of law (法律明確性), principle of proportionality (比例原則), due process (正當法律程序), stalking (跟追), observing (監看), monitoring (監聽), public disclosure (公開揭露), legitimate reason (正當理由), dissuasion (勸阻); common Idea (社會通念), tolerable limitation of common idea (社會通念所能容忍之界限), balancing of interests (利益衡量), public interest (公益性), newsworthy (新聞價值), public servant (公職人員), political figure (政治人物), public figure (公眾人物), police (警察), objection (異議) .**

HOLDING: Article 89, Paragraph 2 of the Social Order Maintenance Act aims to protect a person's freedom of movement, freedom from bodily and mental harms, freedom from intrusion with reasonable expectation in the public space and the right to autonomous control of personal information, and to punish a stalking behavior which has been urged to stop yet continues without any legitimate reason. We find the Provision at issue does not violate the principle of clarity and definitiveness of law. A journalist's following in person shall be considered to have legitimate reasons and shall not be subject to penalty by the aforementioned provision if judging from the facts a specific event is of concern to the public, of public interest, and newsworthy, it is not intolerable under the general social standard. Within this scope, although the aforementioned provision places a limit on the behavior of newsgathering, it is appropriate and proportionate and does not contradict the freedom of newsgathering provided by Article 11 of the Constitution or people's right to work guaranteed by

解釋文：社會秩序維護法第八十九條第二款規定，旨在保護個人之行動自由、免於身心傷害之身體權、及於公共場域中得合理期待不受侵擾之自由與個人資料自主權，而處罰無正當理由，且經勸阻後仍繼續跟追之行為，與法律明確性原則尚無牴觸。新聞採訪者於有事實足認特定事件屬大眾所關切並具一定公益性之事務，而具有新聞價值，如須以跟追方式進行採訪，其跟追倘依社會通念認非不能容忍者，即具正當理由，而不在首開規定處罰之列。於此範圍內，首開規定縱有限制新聞採訪行為，其限制並未過當而符合比例原則，與憲法第十一條保障新聞採訪自由及第十五條保障人民工作權之意旨尚無牴觸。又系爭規定以警察機關為裁罰機關，亦難謂與正當法律程序原則有違。

Article 15 of the Constitution. Furthermore, the provision at issue delegating the power of sanction to police authorities also does not violate the principle of due process of law.

REASONING: W claimed that the application of Article 89, Paragraph 2 of the Social Order Maintenance Act (hereinafter “Provision at issue”) in the Ruling of Taipei District Court Bei-Jih-Seng-Tzi No. 16 (2008) has raised constitutional doubts. The Justices of the Constitutional Court granted to review the case and pursuant to Article 13, Paragraph 1 of the Constitutional Interpretation Procedure Act summoned the petitioner and his agent ad litem, as well as the representative and agent ad litem of the agency concerned, namely, the Ministry of Interior, to attend the oral argument session scheduled on June 16th, 2011 in the Constitutional Court; expert witnesses were also subpoenaed for deposition in court.

解釋理由書：本件係因 W 認臺灣臺北地方法院九十七年度北秩聲字第一六號裁定所適用之社會秩序維護法第八十九條第二款規定（以下簡稱系爭規定）有違憲疑義，聲請解釋憲法，經大法官議決應予受理，並依司法院大法官審理案件法第十三條第一項規定，通知聲請人及訴訟代理人、關係機關內政部指派代表及訴訟代理人，於中華民國一〇〇年六月十六日在憲法法庭行言詞辯論，並邀請鑑定人到庭陳述意見。

The petitioner claimed that the Provision at issue violates the principle of clarity and definitiveness of law, the principle of proportionality and the principle of due process of law, infringes people's freedom of press and the right to work guaranteed by the Constitution. The reasons are summarized as followed:

1. The right of news reporters to gather information freely and the right to conduct interviews in order to verify news information are protected by Article 11 of the Constitution: (1) Based on the stipulated freedom of "publication" in Article 11 of the Constitution as well as on the conclusion of Number 613, Judicial Yuan Interpretation, freedom of press shall be one of the fundamental rights guaranteed in Article 11 of the Constitution; (2) The process of news production includes newsgathering, followed by news editing, news reporting. Therefore, freedom of press shall encompass newsgathering activities which are considered necessary for collecting information and verifying the source, otherwise the purpose of press freedom would be undermined. (3) The

本件聲請人主張系爭規定違反法律明確性原則、比例原則及正當法律程序原則，侵害人民受憲法所保障之新聞自由及工作權，其理由略謂：一、新聞記者得自由蒐集、採訪並查證新聞資料之權利，為憲法第十一條所保障：（一）依據憲法第十一條所謂之「出版」自由，參以司法院釋字第六一三號解釋意旨，新聞自由應為憲法第十一條所保障之基本權利。（二）新聞之產生流程，包括採訪行為及其後之編輯、報導行為，新聞自由之保障範圍應及於為蒐集查證資訊來源所必須進行之採訪行為，否則將形同架空憲法保障新聞自由之意旨。（三）應受新聞自由保障之新聞，除政治、經濟相關資訊以外，娛樂新聞亦在保障範圍內，故蒐集查證娛樂新聞資訊之採訪行為，亦應受新聞自由所保障。（四）凡從事新聞工作之每個個人，無論其在新聞產生過程之分工為何，均應為新聞自由所保障之主體，又因現代化新聞經營多採企業組織方式為之，該組織亦享有新聞自由之保障。二、系爭規定所限制者，包括新聞記者之採訪自由及工作權：（一）新聞記者持續近距離接觸新聞事件之被採訪者，以便觀察、拍攝或訪問，乃新聞採訪所必要之

news protected by freedom of press shall include entertainment news other than political and economic ones, thus the interviewing for gathering and verifying of materials regarding entertainment news shall also be protected. (4) Every individual person who works in the profession of journalism, no matter which part of work he does in the process of news production, shall be the subject of press freedom. Since modern journalism is often managed by corporate organizations, organizations shall as well enjoy the protection of press freedom. 2. The Provision at issue restrains both a journalist's freedom of newsgathering and his right to work: (1) In order to observe, photograph and interview when a news event occurs, it is necessary for a journalist to approach a subject in a short distance for a period of time. Accordingly, the prohibition on stalking in the Provision at issue constitutes a restraint on the freedom of newsgathering. (2) Since the Provision at issue limits a journalist's act of newsgathering, it likewise restrains a journalist's right to work. 3. The Provision at issue violates

行為，而系爭規定所禁止之跟追他人行為，即對新聞採訪自由形成限制。(二)系爭規定限制新聞記者之採訪行為，因而同時涉及新聞從業人員之工作權限制。三、系爭規定違反法律明確性原則：(一)依系爭規定立法說明，無法具體得知系爭規定所欲保護之法益究為他人之行動自由、人身安全、抑或免於恐懼之自由，其規範目的是否為一般人民所能理解，不無疑問。(二)系爭規定之行為規範要件包括「跟追他人」、「經勸阻不聽」及「無正當理由」，雖以跟追他人為中心，然系爭規定未言明須由何人以何種方式勸阻，以及如何情況下始可勸阻，且所謂正當理由之有無，須透過利益衡量判斷，惟系爭規定所欲保護之法益模糊不清，則受規範之一般人民顯然難以預見須受規範處罰之跟追行為為何，其違反法律明確性原則甚明。四、系爭規定違反比例原則：(一)於本件聲請，系爭規定所干預者，至少包括新聞採訪自由。(二)縱認系爭規定所欲保護者，係被跟追者之行動自由、人身安全或隱私，其所採取手段未將對於新聞採訪自由之干預效果降至最小，例如區分跟追手段是否具備高度攻擊性或侵入性，而限縮處罰要件，形成過度

the principle of clarity and definitiveness of law: (1) According to the legislative materials of the Provision at issue, one cannot specifically identify which legal interest is meant to be protected. May it be freedom of movement, security of the person or freedom from fear, it casts doubts on whether the purpose of the limitation can be conceived by ordinary people. (2) The conduct requirements of the Provision at issue include “to follow others”, “not stop after being urged to do so” and “without legitimate reason”. While focusing on following others, the Provision at issue does not specify by whom, in what way and under what circumstances the following shall be urged to stop. The requirement of so called legitimate reasons shall be determined through a balancing of interests. Nevertheless, it is obviously at odds with the principle of clarity and definitiveness of law, since the protected interests in the Provision at issue are so ambiguous that ordinary people regulated by it would have difficulty to predict what kind of following will be subject to punishment. 4. The

侵害新聞採訪自由，而與比例原則有違。五、系爭規定違反正當法律程序原則：與外國立法例相較，系爭規定有關裁罰之規定，係循行政程序而非司法程序進行，並將衡量採訪自由與被跟追者權益之責全然委諸警察機關判斷，程序保障顯有不足，難謂符合正當法律程序原則等語。

Provision at issue violates the principle of proportionality: (1) Based on the present claim, the Provision at issue infringes at least the freedom of press. (2) Even if the protected interests include freedom of movement, security of the person, and privacy of the person being followed, the law fails to reduce the effects of interference with the freedom of press to a minimum extent. For instance, failure to distinguish whether the manner of following is highly offensive or intrusive so as to diminish the scope of punishment has excessively infringed upon freedom of press, and therefore violates the principle of proportionality. 5. The Provision at issue violates the principle of due process of law: Compared to anti-stalking laws in other countries, the imposition of penalty in the Provision at issue follows the rules of administrative procedures instead of judicial proceedings. Since the Provision at issue unreservedly delegates to police authorities the power of discretion to balance between the freedom of news-gathering and the rights or interests of the person being followed, it fails to provide

sufficient procedural protection and violates the principle of due process of law.

The agency concerned, namely, the Ministry of Interior, has argued summarily that: 1. The petitioner's claim, that his following based on the reason of news-gathering shall not be punished pursuant to the Provision at issue, is a dispute concerning the interpretation and application of law in a concrete case, not a case regarding the constitutionality of the Provision at issue. The court should dismiss the case as it does not fall under Article 5, Paragraph 1, Item 2 of the Constitutional Interpretation Procedure Act. 2. The Provision at issue is in tune with the rule of proportionality: (1) As can be known from the legislative intent, the legal interests protected by the Provision at issue include individual privacy and personality rights, freedom of movement and freedom of choice, which shall be protected by Article 22 of the Constitution. The Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the European Human

關係機關內政部略稱：一、聲請人主張基於新聞採訪之理由而跟追他人，不應受系爭規定所規範云云，係爭執系爭規定於該個案之解釋適用，並非系爭規定是否牴觸憲法之疑義，與司法院大法官審理案件法第五條第一項第二款規定不合，應不予受理。二、系爭規定符合比例原則：（一）依立法理由可知，系爭規定所保護之法益為個人之隱私及人格權、行動自由與決定自由權等，應受憲法第二十二條所保障，且依世界人權宣言、公民與政治權利國際公約及歐洲人權公約規定，私人生活領域有不受他人任意干涉之權利，國家負有積極的保護義務，應提供法律保護，以免個人之私人生活領域遭受不當干涉，是系爭規定之目的殊屬正當。（二）系爭規定所處罰之跟追，係故意或惡意對被跟追人重複緊追不捨之行為，形成被跟追人恐懼、不安；各國對於惡意跟追行為，若侵犯他人之基本權利，嚴重干擾被跟追人之生活作息，或對身體、生命法益形成威脅者，多以刑罰手段加以制裁，相對而言，系爭規定處以申誡或

Rights Convention all guarantee freedom from unwanted interference by others in private life. The State shall have a positive duty and provide legal protection to prevent unwanted interference in private life, therefore the purpose of the Provision at issue should be legitimate. (2) The Provision at issue punishes stalking behavior which was defined as the willful, malicious and repeated following and harassing which has caused the stalkee to feel fearful and insecure. Many countries sanction malicious stalking by means of criminal punishment, if the act of stalking has infringed other's basic rights, seriously interfered with other's everyday life, or caused a threat to one's body and life. In contrast, the punishment in the Provision at issue is relatively light, given it only reprimands the offender or imposes an administrative fine not exceeding 3,000 dollars. Since an individual's right to privacy is given a comparatively loose and very basic protection, it not only conforms with the principle of *ultimum remedium* but also does not exceed the requirement of necessity and appropriateness, and

新臺幣三千元以下之行政罰鍰，可認對隱私權之保護密度較為寬鬆，而提供個人隱私權最基本之保障，既符合刑罰謙抑原則，亦未逾越必要性及適當性之要求，而與比例原則無違。三、系爭規定仍應適用於新聞記者之採訪行為，並採合憲性解釋方式，而非全面排除適用，以保護他人自由權利：（一）新聞自由係一制度性基本權利，乃為保障新聞媒體自主獨立，免於政府干預，以發揮監督政府之功能，而與為維護人性尊嚴所設之其他人民基本權利有所不同。（二）新聞媒體雖享有新聞自由，其為蒐集、查證新聞資料而採跟追方式進行採訪，雖在所難免，惟若因此侵害他人權利行使，仍應受必要之限制。（三）新聞採訪之自由雖以真實報導為目的，但其手段方法仍應合法正當，本於誠信原則為之。系爭規定適用於新聞採訪行為侵害他人隱私，僅於以下情形，新聞記者得主張免責：1、被跟追人明示或默示的同意；2、被跟追人於公共場所參與社會公共活動。（四）新聞採訪自由與隱私權界限之判斷標準，主要應以事件公共性為區分界限，並參酌美國聯邦最高法院之見解，以下列因素為基準：1、新聞價值之有無；2、區分公

therefore does not violate the principle of proportionality. 3. In order to protect the liberty and rights of the stakeholder, a journalist's act of newsgathering shall be subject to the provision, rather than be totally exempted. The provision shall be ruled constitutional according to the principle of interpretation in conformity with the Constitution, because: (1) Freedom of press is an institutional right to protect the autonomy and independence of news media from governmental interference and also has the function to supervise the government, thus differing from individual fundamental rights safeguarding human dignity. (2) Although news media enjoy freedom of press, they must be restrained when infringing other people's rights for purposes of newsgathering and verification, even if this may be inevitable. (3) Although the freedom of newsgathering aims to report the truth, the method should be legitimate and follow the principle of good faith. The Provision at issue should apply where a journalist's act of newsgathering infringes the right of privacy, except in the following situ-

眾人物與公共事務之關聯度，而採寬嚴不同的審查基準，關聯度愈高，隱私權保障愈為限縮；3、是否具有正當公共關切等語。

ations: (i) when the stalker explicitly or implicitly gives his consent; (ii) when the stalker participates in public activity at a public place. (4) The boundary between freedom of newsgathering and the right to privacy should be drawn primarily based on the publicity of the case. We summarize the opinions of the Supreme Court of the United States and conclude that the following criteria shall be considered: (i) whether the matter is newsworthy; (ii) Depending on the degree of the nexus between the public figure and to what extent the reported matter is of public concern, different standards apply. The closer the relationship between the public figure and public affairs is, the smaller the scope of the safeguard of privacy is; (iii) whether the matter is of legitimate concern to the public.

The Judicial Yuan has in its deliberation taken into account all arguments made by the parties and made this interpretation with the following reasons:

本院斟酌全辯論意旨，作成本解釋，理由如下：

Based on respect of human dignity, we believe that one's autonomy and the free development of personality shall be safeguarded by the Constitution (*See* J. Y. Interpretation Number 603). In addition to the various freedoms already protected by the Constitution, for the protection of individual autonomy and the free development of personality, an individual's freedom of willful action or inaction shall also be safeguarded in Article 22 of the Constitution, under the premise of not jeopardizing public order and interests. The freedom of movement guaranteeing a person's willful move toward or stay in a place (*see* J. Y. Interpretation Number 535) shall be protected within the scope of freedom of general behavior. Nevertheless, the freedom of movement is not an absolute right that cannot be appropriately restrained by laws or administrative regulations clearly authorized by laws, for instance if the restriction is necessary for preventing the impediment of another person's freedom or for preserving social order. For purposes of ensuring that news media can provide newsworthy diverse

基於人性尊嚴之理念，個人主體性及人格之自由發展，應受憲法保障（本院釋字第六〇三號解釋參照）。為維護個人主體性及人格自由發展，除憲法已保障之各項自由外，於不妨害社會秩序公共利益之前提下，人民依其意志作為或不作為之一般行為自由，亦受憲法第二十二條所保障。人民隨時任意前往他方或停留一定處所之行動自由（本院釋字第五三五號解釋參照），自在一般行為自由保障範圍之內。惟此一行動自由之保障並非絕對，如為防止妨礙他人自由，維護社會秩序所必要，尚非不得以法律或法律明確授權之命令予以適當之限制。而為確保新聞媒體能提供具新聞價值之多元資訊，促進資訊充分流通，滿足人民知的權利，形成公共意見與達成公共監督，以維持民主多元社會正常發展，新聞自由乃不可或缺之機制，應受憲法第十一條所保障。新聞採訪行為則為提供新聞報導內容所不可或缺之資訊蒐集、查證行為，自應為新聞自由所保障之範疇。又新聞自由所保障之新聞採訪自由並非僅保障隸屬於新聞機構之新聞記者之採訪行為，亦保障一般人為提供具新聞價值之資訊於眾，或為促進公共事務討論以監督政府，而從

information, promoting full and adequate flow of information to satisfy the people's right to know, formation of public opinion and achieving public oversight, in order to maintain the normal development of a democratic and pluralistic society, freedom of press is an indispensable mechanism, and shall be protected under Article 11 of the Constitution. Newsgathering is indispensable for providing the contents of news reports through newsgathering and verification and shall be within the scope of the protection of press freedom. The freedom of newsgathering within the freedom of press not only protects the newsgathering of a journalist who works for a press institution but also protects an ordinary person who gathers information with the aim of providing newsworthy information to the public or promoting the discussion of public affairs to supervise the government. The freedom of newsgathering is by no means an absolute right, the State may within the range of Article 23 of the Constitution duly limit it by laws or regulations clearly authorized by law.

事之新聞採訪行為。惟新聞採訪自由亦非絕對，國家於不違反憲法第二十三條之範圍內，自得以法律或法律明確授權之命令予以適當之限制。

Article 89, Paragraph 2 of the Social Order Maintenance Act (the Provision at issue) provides that people who follow others without legitimate reason and do not stop after being urged to do so can be fined up to NT\$3,000 or be reprimanded. From the records of the legislative process and the wording of the provision, we find that this provision was based on Article 77, Paragraph 1 of the Act Governing the Punishment of Police Offences which was promulgated on September 3, 1943 by the Republic Government, implemented on October 1 in the same year, and repealed on June 29, 1991. The Provision at issue purports to prohibit stalking or tailing others, including women, to protect people's freedom of movement. In addition, the Provision at issue also aims to protect an individual's bodily and mental security, individual's autonomy over his personal information and freedom from unwarranted intrusion in public spheres.

The Provision at issue aims to protect a person's liberty to be free from physical and emotional harm, freedom

社會秩序維護法第八十九條第二款規定，無正當理由，跟追他人，經勸阻不聽者，處新臺幣三千元以下罰鍰或申誡（即系爭規定）。依系爭規定之文字及立法過程，可知其係參考違警罰法第七十七條第一款規定（三十二年九月三日國民政府公布，同年十月一日施行，八十年六月二十九日廢止）而制定，旨在禁止跟追他人之後，或盯梢婦女等行為，以保護個人之行動自由。此外，系爭規定亦寓有保護個人身心安全、個人資料自主及於公共場域中不受侵擾之自由。

系爭規定所保護者，為人民免於身心傷害之身體權、行動自由、生活私密領域不受侵擾之自由、個人資料之自

of movement, freedom from intrusion into one's private sphere and individual's autonomy over his personal information. Among these liberties, the freedom from unwanted intrusion into one's private life and individual's autonomy over his personal information are recognized as constitutional rights as promulgated by previous Judicial Yuan interpretations (*see* Interpretation Number 585 and Number 603). Although a person's liberty to be free from physical and emotional harm is not expressly enumerated in the Constitution, it shall, just as the above mentioned freedom of general behavior, be protected as a basic right under Article 22 of the Constitution, based on the concept of human dignity to safeguard personal autonomy and to develop one's personality. The protection of an individual's aforementioned liberties shall not be undermined just because he puts himself in the place of public sphere. In public places, everyone possesses the constitutionally protected freedom of movement. However, when participating in social life, a person's freedom of movement

主權。其中生活私密領域不受侵擾之自由及個人資料之自主權，屬憲法所保障之權利，迭經本院解釋在案（本院釋字第五八五號、第六〇三號解釋參照）；免於身心傷害之身體權亦與上開闡釋之一般行為自由相同，雖非憲法明文列舉之自由權利，惟基於人性尊嚴理念，維護個人主體性及人格自由發展，亦屬憲法第二十二條所保障之基本權利。對個人前述自由權利之保護，並不因其身處公共場域，而失其必要性。在公共場域中，人人皆有受憲法保障之行動自由。惟在參與社會生活時，個人之行動自由，難免受他人行動自由之干擾，於合理範圍內，須相互容忍，乃屬當然。如行使行動自由，逾越合理範圍侵擾他人行動自由時，自得依法予以限制。在身體權或行動自由受到侵害之情形，該侵害行為固應受限制，即他人之私密領域及個人資料自主，在公共場域亦有可能受到干擾，而超出可容忍之範圍，該干擾行為亦有加以限制之必要。蓋個人之私人生活及社會活動，隨時受他人持續注視、監看、監聽或公開揭露，其言行舉止及人際互動即難自由從事，致影響其人格之自由發展。尤以現今資訊科技高度發展及相關設備之方便取得，

will inevitably suffer interference from other people's movements. To a reasonable extent, it is self-evident that people shall mutually tolerate such interference. If the exercise of one's liberty of movement has exceeded the reasonable extent and has interfered with free movement of other people, it shall be restricted by law. Where bodily rights or freedom of movement have been infringed, such tortious conduct should be restricted. Likewise, where a person's private sphere or the autonomy over his personal information has been infringed in a public space beyond a tolerable extent, it is also necessary to restrict such infringing conduct. If a person's private life and social activities would be constantly watched, monitored, eavesdropped or publicly exposed, such a person's words, conduct and social interactions can hardly be freely carried out, thus hindering free development of his personality. Especially since the rapid development of information technology and easy access to related equipment have greatly increased the possibility of intrusion into one's private life and privacy

個人之私人活動受注視、監看、監聽或公開揭露等侵擾之可能大為增加，個人之私人活動及隱私受保護之需要，亦隨之提升。是個人縱於公共場域中，亦應享有依社會通念得不受他人持續注視、監看、監聽、接近等侵擾之私人活動領域及個人資料自主，而受法律所保護。惟在公共場域中個人所得主張不受此等侵擾之自由，以得合理期待於他人者為限，亦即不僅其不受侵擾之期待已表現於外，且該期待須依社會通念認為合理者。系爭規定符合憲法課予國家對上開自由權利應予保護之要求。

by watching, monitoring, eavesdropping or public disclosure etc., the necessity of higher protection of privacy has accordingly increased. Even a person in the public sphere should, within the scope of social expectation, shall enjoy the legal protection of the freedom from the intrusion of his private sphere and the autonomy to control his personal information by way of constant watching, monitoring, eavesdropping, approach etc. However, the liberty to be free from intrusion in the public sphere can only be asserted when it can be reasonably expected; that is, the expectation of nonintrusion must not only be manifested but also deemed reasonable by the general public. The Provision at issue has met the constitutional requirement of the State to guarantee the aforementioned rights and liberties.

Stalking in the Provision at issue means to continuously approach another person or to oversee another's whereabouts by following, tailing and keeping watch for or other similar methods to the extent of constituting an intrusion of

系爭規定所稱跟追，係指以尾隨、盯梢、守候或其他類似方式，持續接近他人或即時知悉他人行蹤，足以對他人身體、行動、私密領域或個人資料自主構成侵擾之行為。至跟追行為是否無正當理由，須視跟追者有無合理化跟追

another person's body, activity, private space or autonomy to control his personal information. Whether a stalking can be legally justified depends on whether the stalker has justifiable reasons based on an overall assessment of the factors, including the purpose, the circumstances of the relevant people, time, place and context, the extent to which the stalker is intruded, and whether or not the intrusion caused by the stalking has exceeded the reasonable tolerance of the general public. The requirement of "being urged to stop yet continues the stalking" has the function of ascertaining that the stalker has manifested the wish not to be followed or a warning. Only when a perpetrator continues stalking after being urged to stop by the police or the stalker, does the behavior constitute an illegal act. If a perpetrator continues stalking after he has been urged to stop without legitimate reasons, he should be punished by the Provision at issue. In as much as whether the meaning and scope of application of the Provision at issue is difficult for the regulated to understand based on everyday life expe-

行為之事由而定，亦即綜合考量跟追之目的，行為當時之人、時、地、物等相關情況，及對被跟追人干擾之程度等因素，合理判斷跟追行為所構成之侵擾，是否逾越社會通念所能容忍之界限。至勸阻不聽之要件，具有確認被跟追人表示不受跟追之意願或警示之功能，若經警察或被跟追人勸阻後行為人仍繼續跟追，始構成經勸阻不聽之不法行為。如欠缺正當理由且經勸阻後仍繼續為跟追行為者，即應受系爭規定處罰。是系爭規定之意義及適用範圍，依據一般人民日常生活與語言經驗，均非受規範者所難以理解，亦得經司法審查予以確認，尚與法律明確性原則無違。

rience and language of ordinary people may be reviewed by the judiciary, the Provision at issue is not repugnant to the principle of clarity and definitiveness of law.

Although the Provision at issue restricts the freedom of movement of the stalker, the restriction is made to protect the fundamental rights and liberties of the stalker. Since the restriction of the stalking behavior which is intolerable based on general social rules is reasonably connected with the aforementioned goals, and is considered a less intrusive means weighing all the related interests, we find the restriction does not exceed the scope of appropriateness. Furthermore, the Provision at issue does not punish the stalker unless he continues to stalk after being urged to stop, thus giving the perpetrator the opportunity to stop in time to avoid punishment; therefore this Provision does not violate the rule of proportionality provided in Article 23 of the Constitution. As to whether the restriction of the Provision at issue affects the stalker to exercise oth-

又系爭規定雖限制跟追人之行動自由，惟其係為保障被跟追者憲法上之重要自由權利，而所限制者為依社會通念不能容忍之跟追行為，對該行為之限制與上開目的之達成有合理關聯，且該限制經利益衡量後尚屬輕微，難謂過當。況依系爭規定，須先經勸阻，而行為人仍繼續跟追，始予處罰，已使行為人得適時終止跟追行為而避免受處罰。是系爭規定核與憲法第二十三條比例原則尚無牴觸。至系爭規定對於跟追行為之限制，如影響跟追人行使其他憲法所保障之權利，其限制是否合憲，自應為進一步之審查。

er constitutional rights and has violated the Constitution needs further examination.

The purpose of enacting the Provision at issue is not to restrict the behavior of newsgathering. If the indirect restriction on freedom of newsgathering aims to pursue important public interests and the applied method is substantively related to achieve the objective, it is not contradictory to the principle of proportionality. Even when the newsgatherer has stalked the subject in order to gather news information, as long as the stalking reaches an intensive degree so as to threaten the physical and mental safety or the freedom of movement for the stalker without a legitimate cause, the Provision at issue authorizes the police to intervene and stop in time, hence it cannot be considered a violation of the freedom of newsgathering protected by Article 11 of the Constitution. If the stalking of the newsgatherer has intruded a person's private liberty and autonomy to control his personal information in the public space which he is enjoy-

考徵系爭規定之制定，原非針對新聞採訪行為所為之限制，其對新聞採訪行為所造成之限制，如係追求重要公益，且所採手段與目的之達成間具有實質關聯，即與比例原則無違。新聞採訪者縱為採訪新聞而為跟追，如其跟追已達緊迫程度，而可能危及被跟追人身心安全之身體權或行動自由時，即非足以合理化之正當理由，系爭規定授權警察及時介入、制止，要不能謂與憲法第十一條保障新聞採訪自由之意旨有違。新聞採訪者之跟追行為，如侵擾個人於公共場域中得合理期待其私密領域不受他人干擾之自由或個人資料自主，其行為是否受系爭規定所限制，則須衡量採訪內容是否具一定公益性與私人活動領域受干擾之程度，而為合理判斷，如依社會通念所認非屬不能容忍者，其跟追行為即非在系爭規定處罰之列。是新聞採訪者於有事實足認特定事件之報導具一定之公益性，而屬大眾所關切並具有新聞價值者（例如犯罪或重大不當行為之揭發、公共衛生或設施安全之維護、

ing with reasonable expectation, whether this sort of behavior shall be subject to punishment according to the Provision at issue should be decided by balancing the public nature of the news content and the extent to which the private sphere is disturbed. If the disturbance is not intolerable based on general social standards, the stalking shall not be punished by the Provision at issue. If the interviewer has reason to believe the specific event is of public value in nature, which means it is of concern to the public and worth reporting (for instance disclosure of a crime or major misconduct, maintenance of public health or safety of public facilities, appropriateness of public policy, competence and performance of public officials, trustworthiness of a politician, conduct of a public figure influencing society, etc.), the stalking shall be deemed justified and not be subject to punishment if it is necessary and is not intolerable based on general social standard. According to the aforementioned reasons, the Provision at issue does not exceed appropriateness and is not repugnant to freedom of newsgather-

政府施政之妥當性、公職人員之執行職務與適任性、政治人物言之可信性、公眾人物影響社會風氣之言行等），如須以跟追方式進行採訪，且其跟追行為依社會通念所認非屬不能容忍，該跟追行為即具正當理由而不在系爭規定處罰之列。依此解釋意旨，系爭規定縱有限制新聞採訪行為，其限制係經衡酌而並未過當，尚符合比例原則，與憲法第十一條保障新聞採訪自由之意旨並無牴觸。又系爭規定所欲維護者屬重要之利益，而限制經勸阻不聽且無正當理由，並依社會通念認屬不能容忍之侵擾行為，並未逾越比例原則，已如上述，是系爭規定縱對以跟追行為作為執行職業方法之執行職業自由有所限制，仍難謂有違憲法第十五條保障人民工作權之意旨。

ing provided in Article 11 of the Constitution. In addition, this interpretation has clearly demonstrated that the provision lies within the constitutional scope since the interests this provision purports to safeguard are important, the restriction is meant to punish the stalking, which is being urged to stop but yet is continued without legitimate reasons, that constitutes an intrusion intolerable by social standard. Although the provision restricts the freedom of work by limiting the way of newsgathering from stalking or following as a gathering method, it is not to be deemed a violation of the right to work protected in Article 15 of the Constitution.

According to the principle of due process of law in the Constitution, an opportunity and a system of remedy shall be available whenever people's rights are infringed or restricted, it also requires that legislators promulgate corresponding legal procedures taking into considerations all factors including the type of the underlying fundamental rights, intensity

憲法上正當法律程序原則之內涵，除要求人民權利受侵害或限制時，應有使其獲得救濟之機會與制度，亦要求立法者依據所涉基本權之種類、限制之強度及範圍、所欲追求之公共利益、決定機關之功能合適性、有無替代程序或各項可能程序成本等因素綜合考量，制定相應之法定程序。按個人之身體、行動、私密領域或個人資料自主遭受侵

and scope of the restrictions, the public interests pursued, proper functions of the decision-making institutions, availability of alternative procedures or possible costs under respective procedures etc. It is self-evident that when an individual's autonomy of body, movement, private spheres or personal information are invaded, according to the circumstances, that individual may request court remedies to remove the infringement or obtain compensation (*see* Articles 18 and 195 Civil Law, and Article 28 Computer Processing of Personal Data Protection Act) under relevant provisions on protection of personality rights and on tortious acts against an individual's body, health or privacy under laws such as the Civil Code or the Computer Processing of Personal Data Protection Act (amended and promulgated as the Personal Data Protection Act, May 26, 2010, not yet enforced). Legislators promulgated the Provision at issue to protect people's autonomy of his body, movements, private spheres or personal information so as to permit the stalker to request police authorities for timely intervention to halt or

擾，依其情形或得依據民法、電腦處理個人資料保護法（九十九年五月二十六日修正公布為個人資料保護法，尚未施行）等有關人格權保護及侵害身體、健康或隱私之侵權行為規定，向法院請求排除侵害或損害賠償之救濟（民法第十八條、第一百九十五條、電腦處理個人資料保護法第二十八條規定參照），自不待言。立法者復制定系爭規定以保護個人之身體、行動、私密領域或個人資料自主，其功能在使被跟追人得請求警察機關及時介入，制止或排除因跟追行為對個人所生之危害或侵擾，並由警察機關採取必要措施（例如身分查證及資料蒐集、記錄事實等解決紛爭所必要之調查）。依系爭規定，警察機關就無正當理由之跟追行為，經勸阻而不聽者得予以裁罰，立法者雖未採取直接由法官裁罰之方式，然受裁罰處分者如有不服，尚得依社會秩序維護法第五十五條規定，於五日內經原處分之警察機關向該管法院簡易庭聲明異議以為救濟，就此而言，系爭規定尚難謂與正當法律程序原則有違。惟就新聞採訪者之跟追行為而論，是否符合上述處罰條件，除前述跟追方式已有侵擾被跟追人之身體安全、行動自由之虞之情形外，就其跟

timely intervention to halt or exclude the hazards or intrusion caused by the stalking, and the police authorities may thus take necessary measures (e.g. necessary investigations for resolving disputes such as identity verification, data collection, and recording facts). In accordance with the Provision at issue, police authorities may sanction the unjustifiable stalking of a stalker disregarding dissuasion. While legislators did not take the approach of direct penalty by a judge, the sanctioned stalker may, if he disagrees with the ruling, still file an objection to the sanction via the police authorities which originally made the sanction within five days after the original disposition to the proper court's division of summary judgment in accordance with Article 55 of the Social Order Maintenance Act. For that matter, the Provision at issue is difficult to be said as violating the principle of due process of law. However, as to whether the stalking behavior of journalists falls within the above-mentioned criteria for sanctions, in addition to the aforementioned circumstances where the stalking

追僅涉侵擾私密領域或個人資料自主之情形，應須就是否侵害被跟追人於公共場域中得合理期待不受侵擾之私人活動領域、跟追行為是否逾越依社會通念所認不能容忍之界限、所採訪之事件是否具一定之公益性等法律問題判斷，並應權衡新聞採訪自由與個人不受侵擾自由之具體內涵，始能決定。鑑於其所涉判斷與權衡之複雜性，並斟酌法院與警察機關職掌、專業、功能等之不同，為使國家機關發揮最有效之功能，並確保新聞採訪之自由及維護個人之私密領域及個人資料自主，是否宜由法院直接作裁罰之決定，相關機關應予檢討修法，或另定專法以為周全規定，併此敘明。

has infringed the bodily safety and freedom of movement of the stalkee, when the stalking only involves intruding into the private spheres or autonomy to control personal information, it shall not be determined until taking into account the following legal issues including whether the stalkee may reasonably expect to have an arena of private activity without intrusion in public places, whether the stalking exceeds intolerable boundaries generally recognized by society, whether the event interviewed for newsgathering involves a certain degree of public interests, ...etc., and the connotations of freedom of journalism in newsgathering shall be weighed against personal freedom from intrusion. Given the complexity of the judgment and balancing of connotations, and considering the difference in the responsibilities, professional fields and functions of courts and police authorities, to develop the most effective functions of state organs, and to ensure the freedom of news gathering and to maintain the private spheres of individuals and autonomy of personal data, it should be clearly stated whether

penalties should be directly rendered by the court, the relevant authorities should review and amend the law, or alternatively, promulgate special law to provide comprehensive and thorough rules.

Justice Yeong-Chin Su filed concurring opinion.

Justice Sea-Yau Lin filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Tzu-Yi Lin filed concurring opinion in part and dissenting opinion in part, in which Justice Pi-Hu Hsu joined.

Justice Tzong-Li Hsu filed concurring opinion in part and dissenting opinion in part.

Justice Yu-hsiu Hsu filed concurring opinion in part and dissenting opinion in part.

本號解釋蘇大法官永欽提出協同意見書；林大法官錫堯提出協同意見書；黃大法官茂榮提出協同意見書；葉大法官百修提出協同意見書；陳大法官春生提出協同意見書；陳大法官新民提出協同意見書；林大法官子儀、徐大法官璧湖共同提出部分協同、部分不同意見書；許大法官宗力提出部分協同、部分不同意見書；許大法官玉秀提出一部協同、一部不同意見書；李大法官震山提出部分不同意見書。

Justice Chen-Shan Li filed dissenting opinion in part.

EDITOR'S NOTE:

Summary of facts: The petitioner is a journalist of X, mainly reporting entertainment and art performance news; during two periods in July 2008 he followed and photographed the Vice President of X Business Group, A, and his newly-married wife, previously a performing artist. They entrusted a lawyer with sending two certified mails by post for the purpose of dissuading such actions, however when the applicant again followed the couple on 7 September an entire day, they informed the police on the same day in the afternoon. Following an investigation of the Taipei City Government Police Office, Zhongshan Branch, a fine of NTD 1,500 was imposed based on the reason that the applicant had violated Article 89 Paragraph 2 of the Social Order Maintenance Act. The applicant was not satisfied and declared objection in accordance with Article 55 of the stated law. Following dismissal without cause by the Taiwan

編者註：

事實摘要：緣聲請人為 X 報社記者，主跑娛樂演藝新聞；分別於中華民國 97 年 7 月間二度跟追 X 電腦集團副總 A 及其曾為演藝人員之新婚夫人，並對彼等拍照，經 A 委託律師二度郵寄存證信函以為勸阻，惟聲請人復於同年 9 月 7 日整日跟追 A 夫婦，A 遂於當日下午報警檢舉；案經臺北市政府警察局中山分局調查，以聲請人違反社會秩序維護法第八十九條第二款規定為由，裁處罰鍰新臺幣 1,500 元。聲請人不服，依同法第 55 條規定聲明異議，嗣經臺灣臺北地方法院 97 年度北秩聲字第 16 號裁定無理由駁回，全案確定。

聲請人認上開裁定所適用之系爭規定，有抵觸憲法第 11 條新聞自由、第 15 條工作權、第 23 條法律明確性、比例原則及正當法律程序等之疑義，爰提本件聲請。

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Taipei District Court in its Decision No. 16 of the year 2008, the entire case was confirmed. The applicant finds that all disputed regulations applied in the above mentioned ruling contradict the Constitution's Article 11 freedom of press, Article 15 right to work, Article 23 clarity of law, raise concerns with regard to the principle of proportionality and legal due process, and has therefore filed this application.