

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

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

RELEVANT LAWS:

Articles 8 & 23 of the Constitution (憲法第八條、第二十三條) ; J.Y. Interpretations No. 392, 432, 521, 588, 594, 602, 636, 639, 664, and 677 (司法院釋字第三九二號、第四三二號、第五二一號、第五八八號、第五九四號、第六〇二號、第六三六號、第六三九號、第六六四號、第六七七號解釋) ; Article 4 & Article 37, Paragraph 1 of the Communicable Disease Control Act (revised January 30, 2002) (傳染病防治法第四條、第三十七條第一項(中華民國九十一年一月三十日修正公布)) ; Article 5 of the Provisional Regulation Governing Prevention and Relief of SARS (promulgated May 2, 2003 retroactively effective March 1, 2003, and repealed December 31, 2004) (嚴重急性呼吸道症候群防治及紓困暫行條例第五條(九十二年五月二日制定公布溯自同年三月一日施行,九十三年十二月三十一日廢止)) ; Department of Health Regulation No. 0921700022, ” serving as the legal basis for government measures adopted to control Severe Acute Respiratory Syndrome” (for parts related to concentrated quarantine),

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promulgated by the Executive Yuan, Department of Health, on May 8, 2003 (行政院衛生署九十二年五月八日衛署法字第0九二一七000二二號公告「政府所為嚴重急性呼吸道症候群防疫措施之法源依據」(集中隔離部分))

KEYWORDS:

contagious diseases (傳染病), necessary dispositions (必要處置), compulsory quarantine (強制隔離), concentrated quarantine (集中隔離), principle of legal clarity (法律明確性原則), principle of proportionality (比例原則), personal freedom (人身自由), restriction of personal freedom (人身自由之限制), deprivation of personal freedom (人身自由之剝奪), due process of law (正當法律程序), reasonable maximum time (合理最長期限), apply for court remedy in time (及時請求法院救濟), reasonable compensation (合理補償).

HOLDING: Article 37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2002, provides: “Any person who had physical contacts with patients of contagious diseases, or suspected of being infected, shall be detained and checked by the competent authority, and if necessary, shall be ordered to move into designated places for further examinations, or to take other

解釋文: 中華民國九十一年一月三十日修正公布之傳染病防治法第三十七條第一項規定:「曾與傳染病病人接觸或疑似被傳染者,得由該管主管機關予以留驗;必要時,得令遷入指定之處所檢查,或施行預防接種等必要之處置。」關於必要之處置應包含強制隔離在內之部分,對人身自由之限制,尚不違反法律明確性原則,亦未抵觸憲法第二十三條之比例原則,與憲法第八條

necessary dispositions, including immunization, etc.” As far as the provision of necessary dispositions is read to include compulsory quarantine, hence deprivation of personal freedom, said provision neither violates the principle of legal clarity, nor the principle of proportionality implicit in Article 23 of the Constitution. It also does not violate the due process requirement of Article 8 of the Constitution.

Any person who had physical contacts with patients of contagious diseases, or suspected of being infected, while compulsorily quarantined, is deprived of his or her personal freedom. In order to keep the length of quarantine period reasonable and not excessive, the law should prescribe a reasonable maximum time for compulsory quarantine, as well as organizational, procedural and other regulations for carrying out said compulsory quarantine. Moreover, prompt remedies and an adequate compensation system should be established for persons and their families disputing the compulsory quarantine. The authorities concerned should promptly review the Communicable Disease Control

依正當法律程序之意旨尚無違背。

曾與傳染病病人接觸或疑似被傳染者，於受強制隔離處置時，人身自由即遭受剝奪，為使其受隔離之期間能合理而不過長，仍宜明確規範強制隔離應有合理之最長期限，及決定施行強制隔離處置相關之組織、程序等辦法以資依循，並建立受隔離者或其親屬不服得及時請求法院救濟，暨對前述受強制隔離者予以合理補償之機制，相關機關宜儘速通盤檢討傳染病防治法制。

Act.

REASONING: Article 8 of the Constitution stipulates that personal freedom shall be safeguarded. However, if the government in accordance with the principle of legal clarity restricts personal freedom, does not violate the principle of proportionality implicit in Article 23 of the Constitution, and follows requisite judicial procedures or other due process of law, then it cannot be said that Article 8 of the Constitution is violated (*see* J. Y. Interpretations No. 602 & No. 677). Where the restriction of personal freedom has reached a degree of deprivation, in light of the manner of actual deprivation, purpose and resulting effects, adequate standards shall be defined for review (*see* J.Y. Interpretations No. 392, No. 588, No. 636 and No. 664).

Because the occurrence and spread of contagious diseases endanger the life and health of people, the government should take appropriate preventive measures to counter it. To prevent the infection and spread of contagious diseases, Article

解釋理由書：人民身體之自由應予保障，為憲法第八條所明定。惟國家以法律明確規定限制人民之身體自由者，倘與憲法第二十三條之比例原則無違，並踐行必要之司法程序或其他正當法律程序，即難謂其牴觸憲法第八條之規定（本院釋字第六〇二號及第六七七號解釋參照）。而於人身自由之限制達到剝奪之情形，則應按其實際剝奪之方式、目的與造成之影響，在審查上定相當之標準（本院釋字第三九二號、第五八八號、第六三六號及第六六四號解釋參照）。

鑒於各種傳染病之發生、傳染及蔓延，危害人民生命與身體之健康，政府自應採行適當之防治措施以為因應。為杜絕傳染病之傳染及蔓延，九十一年一月三十日修正公布之傳染病防治法（下稱舊傳染病防治法）第三十七條第

37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2001 (hereinafter “former Communicable Disease Control Act), provides: “Any person who had contacts with patients of contagious diseases, or suspected of being infected, shall be detained for examination by the competent authority, and if necessary, shall be ordered to move into designated places for inspection, or to receive immunization or other necessary dispositions (hereinafter “the provision at issue”). The term “necessary dispositions” refers to various statutes regulating the implementation of necessary measures to prevent the infection and spread of contagious diseases and is not limited to the examples of detention for examination, order to move into designated places for inspection, and immunization mentioned in the provision at issue. Article 5, Paragraph 1 of the Provisional Regulations Governing Prevention and Relief of SARS, promulgated on May 2, 2003, retroactively effective March 1, 2003 (repealed December 31, 2004), provides: “When implementing promptly effective epidemic prevention measures, govern-

一項規定：「曾與傳染病病人接觸或疑似被傳染者，得由該管主管機關予以留驗；必要時，得令遷入指定之處所檢查，或施行預防接種等必要之處置。」（下稱系爭規定）。所謂必要之處置，係指為控制各種不同法定、指定傳染病之傳染及蔓延所施行之必要防疫處置，而不以系爭規定所例示之留驗、令遷入指定之處所檢查及施行預防接種為限。九十二年五月二日制定公布溯自同年三月一日施行之嚴重急性呼吸道症候群防治及紓困暫行條例（已於九十三年十二月三十一日廢止）第五條第一項明定：「各級政府機關為防疫工作之迅速有效執行，得指定特定防疫區域實施管制；必要時，並得強制隔離、撤離居民或實施各項防疫措施。」可認立法者有意以此措施性法律溯及補強舊傳染病防治法，明認強制隔離屬系爭規定之必要處置。又行政院衛生署九十二年五月八日衛署法字第0九二一七000二二號公告之「政府所為嚴重急性呼吸道症候群防疫措施之法源依據」，亦明示系爭規定所謂必要處置之防疫措施，包括集中隔離。而強制隔離使人民在一定期間內負有停留於一定處所，不與外人接觸之義務，否則應受一定之制裁，已屬人身自由之剝奪。

ment authorities at all levels shall designate specified areas for epidemic prevention or disease control; and if necessary, may compel quarantines, relocation of residents, or any other disease control measures.” It can be said that the legislators intended to retroactively strengthen the Communicable Disease Control Act by this legislative measure, expressly recognizing that compulsory quarantine is a necessary disposition in the sense of the provision at issue. Furthermore, Regulation No. 0921700022, promulgated by the Department of Public Health, Executive Yuan, on May 8, 2003, “serving as the legal basis for government measures adopted to control Severe Acute Respiratory Syndrome (SARS),” clearly shows that the so called necessary dispositions for disease control measures mentioned in the provision at issue includes concentrated quarantine. Compulsory quarantine obliges people to stay at a specified place for a specified period, not to contact other persons, or else suffer mandatory punishment. This is a deprivation of personal freedom.

Since the requirement of legal certainty not only refers to a detailed legal style, but also means that legislators when drafting legislation may balance the complex nature of real life with the need of application to each case, uncertain legal concepts become appropriate provisions. If the meaning of a statute is not too difficult to ascertain from legislative intent and the entire context of the legal system, and whether the facts of case fall within the statute's normative objective or not is foreseeable by people subject to the regulation, as well as determinable by the judiciary, then the principle of legal clarity is not violated (*see also* J.Y. Interpretations No. 432, No. 521, No. 594 and No. 602). According to Article 8 of the Constitution, the government's right to restrict personal freedom, if it involves severe restriction of personal freedom tantamount to criminal punishment, shall be subject to strict scrutiny to determine whether its statutory elements conform to the principle of legal clarity (*see* J.Y. Interpretation No. 636). Although compulsory quarantine restricts personal freedom to a specified location, yet its purpose is to protect people's life,

法律明確性之要求，非僅指法律文義具體詳盡之體例而言，立法者於法定制時，仍得衡酌法律所規範生活事實之複雜性及適用於個案之妥當性，從立法上適當運用不確定法律概念而為相應之規定。如法律規定之意義，自立法目的與法體系整體關聯性觀點非難以理解，且個案事實是否屬於法律所欲規範之對象，為一般受規範者所得預見，並可經由司法審查加以認定及判斷者，即無違反法律明確性原則（本院釋字第四三二號、第五二一號、第五九四號及第六〇二號解釋參照）。又依憲法第八條之規定，國家公權力對人民身體自由之限制，若涉及嚴重拘束人民身體自由而與刑罰無異之法律規定，其法定要件是否符合法律明確性原則，固應受較為嚴格之審查（本院釋字第六三六號解釋參照），惟強制隔離雖拘束人身自由於一定處所，因其乃以保護人民生命安全與身體健康為目的，與刑事處罰之本質不同，且事涉醫療及公共衛生專業，其明確性之審查自得採一般之標準，毋須如刑事處罰拘束人民身體自由之採嚴格審查標準。又系爭規定雖未將強制隔離予以明文例示，惟系爭規定已有令遷入指定處所之明文，則將曾與傳染病病人接觸或疑似被傳染者令遷入一定處所，

safety and health. It differs from criminal punishment in nature. It also involves medical treatment and public health professions. Therefore, a general rationality test shall be adopted for judicial review in lieu of a strict scrutiny test used for reviewing criminal sanctions restraining personal freedom. Although the provision at issue does not explicitly mention compulsory quarantine in its illustrations, it does provide for ordering people to move into designated places, so that persons who have had contacts with patients of contagious disease, or suspected of being infected, cannot keep in touch with the outside world. This kind of compulsory quarantine is a necessary disposition for the provision at issue. Judging from literal interpretation and legislative intent of the statute, it is not unforeseeable by people subject to the regulation. Its meaning can also be determined by common sense in society, and must furthermore obtain affirmation by way of judicial review. Hence it does not violate the principle of legal clarity.

使其不能與外界接觸之強制隔離，係屬系爭規定之必要處置，自法條文義及立法目的，並非受法律規範之人民所不能預見，亦可憑社會通念加以判斷，並得經司法審查予以確認，與法律明確性原則尚無違背。

The purpose of compulsory quarantine contained in the controversial necessary dispositions provision is to authorize the competent authority to detain persons who had contacts with patients of contagious diseases or suspected of being infected in designated places, to isolate them from the outside world, to undertake further investigations, medical treatments or other measures, so as to prevent the spread of contagious diseases and to safeguard the life and health of citizens. This legislative purpose is legitimate. Although compulsory quarantine deprives the personal freedom of a quarantined person, whether or not this violates the principle of proportionality should still be subject to a strict scrutiny test. The purpose of compulsory quarantine prescribed by the provision at issue is not directly aimed at restraining the personal freedom of quarantined persons, but rather to deal with the abrupt outbreak of a new type of contagious disease, various statutes regulating the quick spread of contagious diseases inflicting (or will inflict) multiple deaths or serious injuries nationwide (e.g. the Severe Acute Respiratory Syndrome

系爭規定必要處置所包含之強制隔離，旨在使主管機關得將曾與傳染病人接觸或疑似被傳染者留置於指定之處所，使與外界隔離，並進而為必要之檢查、治療等處置，以阻絕傳染病之傳染蔓延，維護國民生命與身體健康，其立法目的洵屬正當。雖強制隔離將使受隔離者人身自由遭受剝奪，其是否違反比例原則，仍應採嚴格標準予以審查。惟系爭規定之強制隔離，其目的並非直接出於拘束上開受隔離者之人身自由，而面對新型傳染病之突然爆發，或各種法定、指定傳染病之快速蔓延，已（或將）造成全國各地多人受感染死亡或重大傷害之嚴重疫情（例如九十二年三月間爆發之嚴重急性呼吸道症候群，Severe Acute Respiratory Syndrome，以下簡稱 SARS），為阻絕疫情之蔓延，使疫情迅速獲得控制，降低社會之恐懼不安等重大公共利益，將曾與傳染病人接觸或疑似被傳染者令遷入指定之處所施行適當期間之必要強制隔離處置，進而予以觀察、檢查、預防接種及治療，除可維護受隔離者個人之生命與身體健康外，且因無其他侵害較小之方法，自屬必要且有效控制疫情之手段。又雖系爭規定並未就強制隔離之期間詳為規定，惟必要處置期間之長

outbreak in March 2003, hereinafter SARS), to prevent the spread of disease, to obtain quick control of the epidemic situation, for important public interests to mitigate fear, anxiety etc. in society, ordering persons who had contacts with patients of contagious disease, or suspected of being infected, to move into designated places for a reasonable period of mandatory quarantine, for further observation, examination, immunization, and medical treatment. Apart from protecting the quarantined person's life and health and because there is no other less restrictive alternative, it is a necessary and effective method for disease control. Although the provision at issue did not prescribe in detail the length of period for compulsory quarantine, the length for necessary disposition is related to pathogeny, pathway, incubation period, and seriousness of the contagious disease. Hence it should be determined by the competent authority, weighing the surrounding circumstances and opinions of World Health Organization (WHO), in accordance with the principle of proportionality (taking the abovementioned SARS as an example,

short, matters involving source of disease, transmission pathway, latent period and its severity, should be determined by the competent authority, weighing various circumstances, and referring to the opinion of World Health Organization (WHO) as being in accordance with the principle of proportionality (taking the SARS epidemic as an example, the competent authority of the Taipei City Government weighed the fact that the world had no experience in dealing with the epidemic, the medical treatment method was also undetermined, and the epidemic had already caused serious casualties etc. in the domestic and foreign public, and referring to the opinion of World Health Organization, and thus determined the quarantine period of fourteen days, see the Taipei City Government Health Bureau 100 Year January 18th Taipei City Health Bureau Word 09945686400 Numbered Letter). And from the perspective of personal freedom being infringed, the compulsory quarantine, although it infringes personal freedom, but it can protect its life and health, and there is no such as the prohibition of confinement for the person being confined has a major impact. In short, compulsory quarantine is a reasonable and necessary measure to protect major public interests, and it has not caused excessive burden, and it has not violated the principle of proportionality of Article 23 of the Constitution.

Taipei City Government, the competent authority, had determined that the quarantine period shall be 14 days, weighing factors such as lack of international experience, no conclusive medical method in handling this new disease, the fact that the epidemic has already caused many serious injuries and deaths etc. domestically and abroad, as well as WHO's opinions; see Public Health Disease Regulation Letter No. 09945686400, published January 18, 2011 by the Public Health Bureau, Taipei City Government). Moreover, from the viewpoint of personal freedom violation, although compulsory quarantine contained in the necessary disposition provision at issue deprives the personal freedom of quarantined persons, yet apart from protecting their life and health, it does not have the same severe impact on human dignity of quarantined persons as the sanction of detention. In sum, compulsory quarantine is a reasonable and necessary method for protecting important public interests. It does not constitute an excessive burden for quarantined persons and does not violate the principle of proportionality implicit in Article 23 of the

Constitution.

Personal freedom is an important fundamental human right. It shall receive adequate protection. Any deprivation or limitation of personal freedom shall abide by due process of law. In determining whether respective procedural standards are adequate and reasonable, besides considering specific provisions in the Constitution and types of fundamental rights involved, also the facts of a specific case, the extent and scope of the fundamental rights invaded, public interests pursued, possible alternative procedures, related costs and other factors must be comprehensively evaluated (*see* J.Y. Interpretation No. 639). As indicated above, the purpose of compulsory quarantine is to protect people's life and health, unlike the nature of criminal punishment. Therefore, the due process of law that must be followed is not necessarily the same as in a criminal proceeding restricting the personal freedom of a defendant. Compulsory quarantine and other disease control decisions must be made by the specialized competent authority, based on

人身自由為重要之基本人權，應受充分之保護，對人身自由之剝奪或限制尤應遵循正當法律程序之意旨，惟相關程序規範是否正當、合理，除考量憲法有無特別規定及所涉基本權之種類外，尚須視案件涉及之事物領域、侵害基本權之強度與範圍、所欲追求之公共利益、有無替代程序及各項可能程序之成本等因素，綜合判斷而為認定（本院釋字第六三九號解釋參照）。強制隔離既以保障人民生命與身體健康為目的，而與刑事處罰之本質不同，已如前述，故其所須踐行之正當法律程序，自毋須與刑事處罰之限制被告人身自由所須踐行之程序相類。強制隔離與其他防疫之決定，應由專業主管機關基於醫療與公共衛生之知識，通過嚴謹之組織程序，衡酌傳染病疫情之嚴重性及其他各種情況，作成客觀之決定，以確保其正確性，與必須由中立、公正第三者之法院就是否拘禁加以審問作成決定之情形有別。且疫情之防治貴在迅速採行正確之措施，方得以克竟其功。傳染病防治之中央主管機關須訂定傳染病防治政策及計畫，包括預防接種、傳染病預防、疫情監視、通報、調查、檢驗、處理及訓

knowledge of medical treatment and public health, follow stringent organizational procedures, balance seriousness of epidemic and surrounding circumstances, in order to form an objective decision and to ensure correctness. It differs from the case where an independent, impartial court determines whether or not to detain a person for trial and interrogation. The key to epidemic control lies in the swift adoption of adequate measures to achieve the goal. The central competent authority in charge of controlling contagious diseases shall lay down policies and plans for disease control, including immunization, disease prevention, monitoring, reporting, and investigation of epidemic situations, inspections, treatments, training and other measures. The local competent authority shall develop implementation plans based on the policies and plans of the central competent authority, taking into account the particular requirements for epidemic prevention in its locality, and carry out the plan (*see* former Communicable Disease Control Act, Article 4, Paragraph 1, Subparagraph 1, Item 1; Subparagraph 2, Item 1). Therefore, relevant measures for

練等措施；地方主管機關須依據中央主管機關訂定之傳染病防治政策、計畫及轄區特殊防疫需要，擬訂執行計畫，並付諸實施（舊傳染病防治法第四條第一項第一款第一目、第二款第一目規定參照）。是對傳染病相關防治措施，自以主管機關較為專業，由專業之主管機關衡酌傳染病疫情之嚴重性及其他各種情況，決定施行必要之強制隔離處置，自較由法院決定能收迅速防治之功。另就法制面而言，該管主管機關作成前述處分時，亦應依行政程序法及其他法律所規定之相關程序而為之。受令遷入指定之處所強制隔離者如不服該管主管機關之處分，仍得依行政爭訟程序訴求救濟。是系爭規定之強制隔離處置雖非由法院決定，與憲法第八條正當法律程序保障人民身體自由之意旨尚無違背。

controlling contagious diseases shall resort to the expertise of the competent authority. A decision made by the competent authority to impose necessary dispositions for compulsory quarantine, balancing seriousness of epidemic and surrounding circumstances, will be better than a decision made by the court for prompt disease control. As for the legality aspect, the competent authority, when making the abovementioned disposition, shall follow the Administrative Procedure Act and relevant procedures prescribed by other laws. Persons ordered to move into designated places for compulsory quarantine, if they refuse to accept the disposition of the competent authority, may still resort to administrative procedures for remedy. Therefore, compulsory quarantine for the provision at issue, although not ordered by courts, does not violate Article 8 of the Constitution guaranteeing due process to protect personal freedom.

The provision at issue did not prescribe the period of compulsory quarantine, nor did it leave the decision with the courts to impose compulsory quarantine.

系爭規定未就強制隔離之期間予以規範，及非由法院決定施行強制隔離處置，固不影響其合憲性，惟曾與傳染病病人接觸或疑似被傳染者，於受強

Although these do not affect its constitutionality, yet a person having contacts with patients of contagious disease, or suspected of being infected, while in compulsory quarantine, is deprived of his or her personal freedom. In order to keep his or her quarantine time within a reasonable length, it is better to stipulate in statute the maximum length of compulsory quarantine, the organs and procedures for implementing compulsory quarantine, the court remedies for quarantined persons or their families who refuse compulsory quarantine, and the mechanism for compensating the quarantined persons. The relevant organs shall thoroughly review the Contagious Disease Control Act for revision.

As for the allegations that Article 11, Article 24, Paragraph 1, Subparagraph 2, and Article 34, Paragraph 1 of the previous Contagious Disease Control Act violated Article 8 and Article 23 of the Constitution, petitioner merely disputed by subjective opinion the appropriateness of the court in applying the law to the fact, and did not allege concretely how

制隔離處置時，人身自由即遭受剝奪，為使其受隔離之期間能合理而不過長，仍宜明確規範強制隔離應有合理之最長期限，及決定施行強制隔離處置相關之組織、程序等辦法以資依循，並建立受隔離者或其親屬不服得及時請求法院救濟，暨對前述受強制隔離者予以合理補償之機制，相關機關宜儘速通盤檢討傳染病防治法制。

至聲請人認舊傳染病防治法第十一條、第二十四條第一項第二款、第三十四條第一項，違反憲法第八條、第二十三條規定，聲請解釋憲法部分，均係以個人主觀見解爭執法院認事用法之當否，並未具體指摘該等規定於客觀上究有何牴觸憲法之處，核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，依同條第三項規定，應不受理，

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the provision at issue contradicts the Constitution in an objective sense. Because these allegations do not conform to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act, they shall be dismissed according Subparagraph 3 of the same article. It is hereby explained.

Justice Yeong-Chin Su filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chen-Shan Li filed dissenting opinion in part, in which Justice Tzu-Yi Lin joined.

Justice Tzong-Li Hsu filed dissenting opinion in part.

Justice Yu-hsiu Hsu filed dissenting opinion.

EDITOR'S NOTE:

Summary of facts: The petitioner was a medical doctor and the director of

併此指明。

本號解釋蘇大法官永欽提出協同意見書；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；陳大法官新民提出協同意見書；李大法官震山、林大法官子儀共同提出部分不同意見書；許大法官宗力提出部分不同意見書；許大法官玉秀提出不同意見書。

編者註：

事實摘要：聲請人原為臺北市政府所屬市立和平醫院（下稱和平醫院）

Gastroenterology Department in Taipei Municipal Ho-Ping Hospital (hereinafter "Ho-Ping Hospital"). In April 2003, Ho-Ping Hospital experienced an outbreak of SARS group infections. Based on the provision at issue authorizing the government agency in charge of executing law to make "necessary dispositions" to "persons having contacts with patients of contagious disease, or suspected of being infected," Taipei Municipal Government promulgated "Emergency Measures of Taipei Municipal Government to Handle SARS" on April 24, ordered all Ho-Ping Hospital's employees to go back to the hospital for concentrated quarantine. Petitioner did not go back to the hospital before the deadline, and delayed until May 1 afternoon to report to the hospital. He was punished by 2 major demerits with immediate suspension of his hospital duty. Later, he was fined N.T. \$240,000, and suspended from the practice of medicine for 3 months.

Petitioner refused to accept the punishment and instituted administrative proceedings. The cases were dismissed by

醫師兼消化系外科主任。92年4月間，和平醫院發生院內集體感染 SARS 事件，臺北市政府依據系爭規定所定，對於「曾與傳染病病人接觸或疑似被傳染者」，主管機關必要時得為「必要之處置」，於4月24日公布「臺北市政府 SARS 緊急應變處理措施」，召回和平醫院員工返院集中隔離。聲請人當時未依限返院，遲至同年5月1日下午始返，嗣後因而被記2大過並先行停職，同時被處以新台幣24萬元罰鍰，另又受停業3個月之懲戒處分。

聲請人不服，提起行政爭訟，為最高行政法院95年度判字第01651號判決（懲獎部分）、96年度判字第

the Supreme Administrative Court Judgment No. 01651, 2006 (for demerits), Judgment No. 00043, 2007 (for fines), and Judgment No. 02054, 2006 (for suspension of practice). He also applied for National Damage Compensation, and the case was dismissed by Taiwan High Court in Re-Appeals for National Damage Compensation, Civil Judgment No.9, 2006. He contended that the hospital's ordering its employees back to the hospital for concentrated quarantine is a deprivation of his personal freedom guaranteed by the Constitution, and that the relevant provisions of law violated the principle of legal clarity, principle of proportionality, and due process of law. Therefore, he petitioned for a constitutional interpretation.

00043 號判決(罰鍰部分)、95 年度判字第 02054 號判決(停業部分)予以駁回；又另請求國家賠償，亦為臺灣高等法院作成 95 年度重上國字第 9 號民事判決駁回，爰認命令醫院員工返院集中隔離，剝奪其人身自由，相關規定違反法律明確性、比例原則及正當法律程序，聲請釋憲。