

J. Y. Interpretation No.699 (May 18, 2012) *

ISSUE: Is a regulation unconstitutional which punishes a vehicle driver who refused to take the sobriety test by suspending his driver's license, prohibiting him from taking the driver's license test within a period of three years, and suspending all classes of vehicle licenses ?

RELEVANT LAWS:

Articles 15, 22 and 23 of the Constitution (憲法第十五條、第二十二條、第二十三條) ; Article 1 of the Road Traffic Management Penalties Regulation (道路交通管理處罰條例第一條) ; Article 35, Paragraph 1, Subparagraph 1, preceding part of Paragraph 4; Article 67, preceding part of Paragraph 2 of the Road Traffic Management Penalties Regulation (promulgated on December 28, 2005, implemented on July 1, 2006) (道路交通管理處罰條例第三十五條第一項第一款、第四項前段、第六十七條第二項前段 (中華民國九十四年十二月二十八日修正公布，九十五年七月一日施行)) ; Article 68 of the Road Traffic Management Penalties Regulation (promulgated on December 14, 2005, implemented on March 1, 2006) (道路交通管理處罰條例第六十八條 (九十四年十二月十四日修正公布，九十五年三月一日施行)) ; Article 2 of the Police Act (警察法第二條) ; Article 8, Paragraph 1,

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Subparagraph 3 of the Police Duties Enforcement Act (警察職權行使法第八條第一項第三款) ; Article 185-3 of the Criminal Code (promulgated on April 21, 1999, amended on January 2, 2008 and November 30, 2011) (刑法第一百八十五條之三(八十八年四月二十一日增訂,九十七年一月二日、一〇〇年十一月三十日修正公布)) ; Article 114, Subparagraph 2 of the Road Traffic Safety Regulation (道路交通安全規則第一百十四條第二款) ; J.Y. Interpretation Nos. 535 and 689 (司法院釋字第五三五號、第六八九號解釋) .

KEYWORDS:

Road Traffic Management Penalties Regulation (道路交通管理處罰條例), Criminal Code (刑法), Road Traffic Safety Regulation (道路交通安全規則), Police Act (警察法), Police Duties Enforcement Act (警察職權行使法), vehicle operator (汽車駕駛人), spot check (臨檢), driver's license (駕駛執照), license suspension (吊銷), prohibition of taking/receiving driver's license (禁止考領), driving under influence (酒後駕車), alcohol concentration (酒精濃度), sobriety test (酒測), caused accident (肇事), refusal to take sobriety test (拒絕接受酒測), operating a motor vehicle (駕駛汽車), use of other modes of transportation (使用其他交通工具), freedom of movement (行動自由), right to work (工作權), principle of proportionality (比例原則).**

HOLDING: Article 35, the preceding part of Paragraph 4 of the Road Traffic Management Penalties Regulation states that motor vehicle operators who refuse to accept the sobriety test of alcohol concentration according to the first Paragraph, first Subparagraph, of the same Article, will be suspended of their driver's license. Article 67, the preceding part of Paragraph 2, of the Road Traffic Management Penalties Regulation further stipulates that motor vehicle operators who violate Article 35, the preceding part of Paragraph 4 will be suspended of his or her license, and be prohibited from taking/receiving a driver's license for three years. As promulgated and amended on December 14, 2005, Article 68 of the same Regulation furthermore states that a motor vehicle operator whose license was suspended due to Article 35, the preceding part of Paragraph 4, would be suspended of all classes of vehicle licenses. The above provisions do not contravene the principle of proportionality of Article 23 of the Constitution, and do not violate the constitutional safeguards of people's freedom of movement and right to work.

解釋文：道路交通管理處罰條例第三十五條第四項前段規定，汽車駕駛人拒絕接受同條第一項第一款酒精濃度測試之檢定者，吊銷其駕駛執照。同條例第六十七條第二項前段復規定，汽車駕駛人曾依第三十五條第四項前段規定吊銷駕駛執照者，三年內不得考領駕駛執照。又中華民國九十四年十二月十四日修正公布之同條例第六十八條另規定，汽車駕駛人因第三十五條第四項前段規定而受吊銷駕駛執照處分者，吊銷其持有各級車類之駕駛執照。上開規定與憲法第二十三條比例原則尚無抵觸，而與憲法保障人民行動自由及工作權之意旨無違。

REASONING: Under the premise of not offending the social order of public interests, people shall have the freedom of movement to arbitrarily head to another location at any time or remain at a certain premise, as is protected under Article 22 of the Constitution (with reference to J.Y. Interpretation Nos. 535 and 689 of this Yuan). This freedom of movement shall include the freedom of operating a motor vehicle or any other transportation vehicles. Moreover, Article 15 of the Constitution clearly stipulates that people's right to work shall be protected. Provided above mentioned freedoms and rights accord with the conditions in Article 23 of the Constitution, proper restraints set by statutes or by regulations explicitly authorized by law are not forbidden by the Constitution.

According to law, the duty of a police officer is to maintain public order, to protect social security, to prevent all kinds of harms, and to advance people's welfare (with reference to Article 2 of the Police Act). Where danger already exists or may result according to objective and reason-

解釋理由書：人民有隨時任意前往他方或停留一定處所之行動自由，於不妨害社會秩序公共利益之前提下，受憲法第二十二條所保障（本院釋字第五三五號、第六八九號解釋參照）。此一行動自由應涵蓋駕駛汽車或使用其他交通工具之自由。又人民之工作權應予保障，亦為憲法第十五條所明定。惟上揭自由權利於合乎憲法第二十三條要件下，以法律或法律明確授權之命令加以適當之限制，尚非憲法所不許。

依法維持公共秩序，保護社會安全，防止一切危害，促進人民福利，乃警察之任務（警察法第二條規定參照）。警察對於已發生危害或依客觀合理判斷易生危害之交通工具，得予以攔停，要求駕駛人接受酒精濃度測試之檢定（以下簡稱酒測；警察職權行使法第八條第

able judgment, the police shall have the right to pull over such transportation vehicles and request the driver to take a sobriety test to determine the alcohol concentration (hereinafter referred to as “sobriety test”; with reference to Article 8, Paragraph 1, Subparagraph 3 of the Police Duties Enforcement Act, Article 185-3 of the Criminal Code, Article 35 of the Road Traffic Management Penalties Regulation and Article 114, Subparagraph 2 of the Road Traffic Safety Regulation). The driver shall be obligated to cooperate pursuant to the law. The competent authorities have, in accordance with the abovementioned laws, stipulated operation procedures to combat driving under influence and regulated the procedure for the police to perform sobriety tests on those suspected of driving under influence. If the subject refuses to take the sobriety test, the police should first try to advise against the refusal and inform the subject of the legal consequences of refusing the test. If the subject continues to refuse the sobriety test, a penalty shall be imposed.

一項第三款、刑法第一百八十五條之三、道路交通管理處罰條例第三十五條及道路交通安全規則第一百四條第二款規定參照)，是駕駛人有依法配合酒測之義務。而主管機關已依上述法律，訂定取締酒後駕車作業程序，規定警察對疑似酒後駕車者實施酒測之程序，及受檢人如拒絕接受酒測，警察應先行勸導並告知拒絕之法律效果，如受檢人仍拒絕接受酒測，始得加以處罰。

In order to strengthen road traffic management, maintain traffic order and ensure traffic safety, the legislators enacted the Road Traffic Management Penalties Regulation (see Article 1 of the same Regulation; hereinafter referred to as the “Disputed Regulation”). Given that driving under influence is one of the main causes of traffic accidents, legislators have in accordance with Article 35, the preceding part of Paragraph 4 of the Disputed Regulation stipulated that, if the vehicle operator refuses the sobriety test of the same Article, Paragraph 1, Subparagraph 1, a NT\$60,000 fine will be imposed with immediate seizure of the driver’s motor vehicle and suspension of the driver’s license. Article 67, the preceding part of Paragraph 2, of the Disputed Regulation further provides that a vehicle operator, whose driver’s license has been suspended in accordance with Article 35, the preceding part of Paragraph 4, shall not take/receive the driver’s license within three years. Article 68 of the Disputed Regulation promulgated on December 14, 2005 further states that any vehicle operator whose driver’s license was suspended due

立法者為加強道路交通管理，維護交通秩序，確保交通安全之目的，制定道路交通管理處罰條例（同條例第一條規定參照；下稱系爭條例）。有鑒於酒後駕車為道路交通事故主要肇事原因之一，立法者乃於系爭條例第三十五條第四項前段規定汽車駕駛人拒絕接受同條第一項第一款酒測，除處新臺幣六萬元罰鍰，當場移置保管該汽車外，並吊銷其駕駛執照。系爭條例第六十七條第二項前段復規定，汽車駕駛人曾依第三十五條第四項前段規定吊銷駕駛執照者，三年內不得考領駕駛執照。九十四年十二月十四日修正公布之系爭條例第六十八條另規定，汽車駕駛人因違反第三十五條第四項前段規定而受吊銷駕駛執照處分者，吊銷其持有各級車類之駕駛執照。上開系爭條例第三十五條第四項前段吊銷駕駛執照部分、第六十七條第二項前段暨第六十八條規定關於違反第三十五條第四項前段部分（以下合稱系爭規定），係為考量道路交通行車安全，保護大眾權益，其目的洵屬正當，且所採吊銷駕駛執照等手段，亦可促使駕駛人接受酒測，進而遏止酒後駕車之不當行為，防範發生交通事故，有助於上開目的之達成。

to violating Article 35, the preceding part of Paragraph 4 shall also be suspended of all licenses for all types of motor vehicles. The above mentioned suspension of the driver's license in accordance with Article 35, the preceding part of Paragraph 4 of the Disputed Regulation, Article 67, the preceding part of Paragraph 2, and Article 68 in relation to the violation of Article 35, the preceding part of Paragraph 4 (hereinafter together referred to as the "Disputed Provisions"), takes into consideration of road and traffic safety and the protection of public interests, which are appropriate objectives. Moreover, the method of suspending the driver's license can also encourage the driver to consent to the sobriety test, consequently deterring the improper behavior of driving under influence and preventing traffic accidents, thus helping to achieve the purpose set forth above.

In order to strengthen the ban on driving under influence and to ensure traffic safety, legislators passed an addendum to Article 185-3 of the Criminal Code on April 21, 1999 (subsequently amended to

為強化取締酒後駕車，維護交通安全，立法者於八十八年四月二十一日增訂刑法第一百八十五條之三規定（嗣後於九十七年一月二日及一〇〇年十一月三十日更兩度修正提高法定刑）。惟

double the statutory penalty on January 2, 2008 and November 30, 2011). Pursuant to statistics collected from 1999 to 2001 by the National Police Administration, casualties resulting from driving under influence have increased year after year. As a result of vehicle operators' refusal to take the sobriety test or their objective to evade penalties against public safety offenses under Article 185-3 of the Criminal Code, legislators subsequently amended Article 35 of the Disputed Regulation on January 17, 2001 to increase the punishment for refusing to take the sobriety test (with reference to Volume 91, Issue 40, Page 577 et seq. of the Gazette of the Legislative Yuan, proposal explanation by Legislator John Chang, etc.), so as to avert any loopholes when controlling driving under influence and to effectively deter driving under influence. All methods adopted by the Disputed Provisions have the effect of preventing the offender from taking chances to evade the sobriety test and encourage vehicle operators to cooperate with the test. Additionally, a more moderate means of achieving the same effect is still lacking, hence the Disputed

依內政部警政署八十八年至九十年間之統計數字卻顯示，酒後駕車肇事傷亡事件有逐年上升之趨勢。鑒於汽車駕駛人拒絕接受酒測，或係為逃避其酒後駕車致可能受刑法第一百八十五條之三公共危險罪之處罰。立法者遂於九十年一月十七日修正系爭條例第三十五條提高拒絕酒測之罰責（參考立法院公報第九十一卷第四十期，第五七七頁以下，立法委員章孝嚴等之提案說明），以防堵酒駕管制之漏洞，有效遏阻酒後駕車行為。系爭規定所採手段，具有杜絕此種僥倖心理，促使汽車駕駛人接受酒測之效果，且尚乏可達成相同效果之較溫和手段，自應認系爭規定係達成前述立法目的之必要手段。

Provisions should be acknowledged as necessary means to achieve the aforementioned legislative purpose.

The penalty for the Disputed Provisions impedes the freedom of movement of driver's license holders, which is protected under the Constitution, yet drivers have the obligation to cooperate with the sobriety test in accordance with the law. In addition, driving under influence not only endangers the life, body, health and property of others and the person himself, it also obstructs public safety and traffic order, the legal interest lies between limiting and protecting without losing balance. As for professional drivers or other professions that rely heavily on operations of motor vehicles as part of their jobs (such as delivery persons, food trucks), apart from the limit on one's freedom of movement and restrictions on their right to work, they should follow road traffic safety rules and regulations even more closely and possess a higher moral for driving than ordinary vehicle drivers. Those professional drivers punished with suspension of their driver's licenses due

系爭規定之處罰，固限制駕駛執照持有人受憲法保障之行動自由，惟駕駛人本有依法配合酒測之義務，且由於酒後駕駛，不只危及他人及自己之生命、身體、健康、財產，亦妨害公共安全及交通秩序，是其所限制與所保護之法益間，尚非顯失均衡。縱對於以駕駛汽車為職業之駕駛人或其他工作上高度倚賴駕駛汽車為工具者（例如送貨員、餐車業者）而言，除行動自由外，尚涉工作權之限制，然作為職業駕駛人，本應更遵守道路交通安全法規，並具備較一般駕駛人為高之駕駛品德。故職業駕駛人因違反系爭規定而受吊銷駕駛執照之處罰者，即不得因工作權而受較輕之處罰。況在執行時警察亦已先行勸導並告知拒絕之法律效果，顯見受檢人已有將受此種處罰之認知，仍執意拒絕接受酒測，是系爭規定之處罰手段尚未過當。綜上所述，尚難遽認系爭規定牴觸憲法第二十三條之比例原則，其與憲法保障人民行動自由及工作權之意旨尚無違背。

to violation of the Disputed Provisions should not be subject to a lesser penalty because of their right to work. Under the condition that the police officer has first advised and informed the subject of the legal consequence if refusing to take the test, the subject is obviously informed of the penalties and yet continues to refuse the sobriety test, the methods of punishment imposed by the Disputed Provisions are not excessive. In summary, it is difficult to conclude that the Disputed Provisions contradict the principle of proportionality in Article 23, as they do not infringe the constitutional safeguards of people's freedom of movement and right to work.

Although the Disputed Provisions do not contradict the principle of proportionality, legislators should have legislative discretion to adopt provisions with separate measures based on different situations. Provided that law enforcement can realize the legislative intent, careful consideration of the specific circumstances of each case, such as whether a driver has previous records of driving

系爭規定雖不違反比例原則，惟立法者宜本其立法裁量，針對不同情況增設分別處理之規定，使執法者在能實現立法目的之前提下，斟酌個案具體情節，諸如駕駛人是否曾有酒駕或拒絕酒測之紀錄、拒絕酒測時所駕駛之車輛種類、所吊銷者是否屬其賴以維持生活之職業駕駛執照等狀況，而得為妥適之處理；另系爭條例有關酒後駕車之檢定測試，其檢測方式、檢測程序等事項，宜

under influence or refusing the sobriety test, the type of vehicle being operated when the driver refused the sobriety test, or whether the driver relies on the suspended professional driver's license for livelihood and other factors, is a proper measure. With regard to the examinations of the Disputed Regulation testing driving under influence, the methods, procedures and other pertinent issues should be in accordance with the law or clearly legally authorized regulations; and the competent authorities should conduct and specify an overall review to amend the relevant provisions with this intention in mind.

Justice Sea-Yau Lin filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion, in which Justice Beyue , Su Chen joined.

Justice Chang-Fa Lo filed concurring opinion.

Justice Dennis Te-Chung Tang filed concurring opinion in part and dissenting opinion in part.

Justice Chen-Shan Li filed dissenting opinion in part, in which Justice Den-

以法律或法律明確授權之規範為之，相關機關宜本此意旨通盤檢討修正有關規定，併此指明。

本號解釋林大法官錫堯提出之協同意見書；陳大法官春生提出、陳大法官碧玉加入之協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出之部分協同暨部分不同意見書；李大法官震山提出、湯大法官德宗加入之不同意見書；黃大法官茂榮與葉大法官百修共同提出之不同意見書。

nis Te-Chung, Tang joined.

Justice Mao-Zong Huang , Justice Pai-Hsiu Yeh filed dissenting opinion.

EDITOR'S NOTE:

Summary of facts: A petition case in which a judge of the Taiwan Changhua District Court reviewed a violation of the Road Traffic Management Penalties Regulation. The petitioner in this case had an ordinary truck driver's license and refused the sobriety test while driving a heavy-duty motorcycle. The petitioner received a NT\$60,000 fine from the Motor Vehicle Supervision Station in accordance with the Disputed Provisions, all his vehicle licenses were suspended and he was not allowed to take any test for a new license within the next three years, thus losing his job as a driver.

An appeal concerning the ruling of the Sixth Criminal Court of the Taiwan High Court, Tainan Branch Court reviewing the Disputed Provisions. The appellant of this case held a professional truck driver's license. Due to refusing a sobriety test while driving a heavy-duty

編者註：

事實摘要：臺灣彰化地方法院法官審理違反道路交通管理處罰條例聲明異議案件。該案異議人持有普通大貨車駕照，於無照駕駛重機車時拒絕酒測，被監理站依系爭規定裁罰新台幣6萬元、吊銷各級車類駕照及三年內不得考領駕照之處分，致失去駕駛之工作。

又臺灣高等法院臺南分院刑事第六庭審理同條例聲明異議抗告案件。該案抗告人持有職業大貨車駕照，亦因駕駛重機車外出時拒絕接受酒測，被監理站處以相同罰鍰及處分，致失去駕駛之工作。

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motorcycle, he was fined and punished as mentioned above by the Motor Vehicle Supervision Station, thus resulting in loss of his job as a driver. The judges in both cases deemed the Disputed Provisions to be in violation of the constitutionally safeguarded principle of proportionality and the right to work, doubting that the right to live was ensured. They separately ruled to suspend the review procedure. Petition for constitutional interpretation filed pursuant to the intent of J.Y. Interpretation No. 371.

抵觸憲法比例原則及工作權、生存權保障之疑義，爰分別裁定停止審理程序，依釋字第 371 號解釋之意旨聲請解釋。