

J. Y. Interpretation No.428 (May 23, 1997) *

ISSUE: (1) Is Article 25 of the Act Governing the Administration of Post Offices constitutional in setting a limitation on the liability of the postal administration, whereby indemnity is available only for the loss of certain categories of registered mails and parcels?

(2) Do Articles 227 and 228 of the Regulation Governing the Administration of Post Offices go beyond the scope of authorization under the Act Governing the Administration of Post Offices in prescribing that the duty of the post office ends when a piece of mail is duly delivered or received by the addressee, who has made no statement with respect to any defect in the mail at the time of receipt thereof?

RELEVANT LAWS:

Articles 15, 23 and 144 of the Constitution (憲法第十五條、第二十三條及第一百四十四條) ; Articles 1, 3, 25, 27 and 28 of the Act Governing the Administration of Post Offices (郵政法第一條、第三條、第二十五條、第二十七條及第二十八條) ; Articles 227 and 228 of the Regulation Governing the Administration of Post Offices (郵政規則第二百二十七條、第二百二十八條) ; Universal Postal Convention, Final Protocol (萬國郵政公約最後議定書) .

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

KEYWORDS:

public utilities (公用事業), state-operated business (國營事業), performance administration (給付行政), postal services (郵政事業), postal administration (郵政機關), indemnity for loss of mails (郵件損失補償), delivery (郵件投遞), value-declared mail (報值郵件), value-insured mail (保價郵件), addressee (收件人), sender (寄件人).**

HOLDING: The Constitution provides explicitly in the first sentence of Article 144 that all public utilities shall in principle be operated by the government. While engaging in the operation of public utilities for the purpose of supplying the people with general and reliable services as needed at reasonable rates under its duty to protect the public interest as a part of its function of *Leistungsverwaltung*, the state may set reasonable limitations on the indemnity for the loss or liability for damages incurred by such public utilities in connection with the operation of their business. As such limitations concern the rights of the people, they must of course be specified to the extent consistent with Article 23 of the Constitution. Article 25

解釋文：公用事業，以公營為原則，憲法第一百四十四條前段定有明文。國家基於對人民生存照顧之義務，達成給付行政之功能，經營各類公用事業，期以合理之費率，普遍而穩定提供人民所需之各項服務，得對公用事業因經營所生之損失補償或損害賠償責任予以相當之限制，惟因涉及人民之權利，自須符合憲法第二十三條之規定。郵政法第二十五條各類掛號郵件之補償僅限於遺失或被竊，而不及於毀損，旨在維持郵政事業之經營，為增進公共利益所必要，尚未逾越立法權自由形成之範圍，與憲法並無牴觸。惟對於特殊類型郵件之投遞與交寄程序、收費標準、保管方式、損失補償要件與範圍等須否加以規定，應由主管機關檢討改進。又郵政規則第二百二十七條及第二百二十八

of the Act Governing the Administration of Post Offices, which prescribes to the effect that indemnity may be given only if registered mail of certain categories is lost or stolen and that no indemnity may be given in case of damage or destruction thereof, is intended to keep the postal services in continuous operation, which is essential to the promotion of the public interest, and does not go beyond the sphere formed by discretion of the legislative power, and is thus not in conflict with the Constitution. However, whether there is any need to make rules on the process of delivery and posting, rates of charges, manner of safekeeping, prerequisites for and coverage of indemnity for loss of mail of special categories is an issue to be reviewed by the competent authority for the purpose of improvement. Moreover, the purpose of Articles 227 and 228 of the Regulation Governing the Administration of Post Offices is to define the elements required for the liability of indemnity for loss of mail. These provisions do not exceed the scope of authority under Article 27 of the Act Governing the Administration of Post Offices, nor do they set any

條之規定，乃在確定郵件損失補償責任之要件，並未逾越郵政法第二十七條之授權，亦未增加郵政法關於郵件補償規定所無之限制，與憲法亦無牴觸。

extra restriction nonexistent in the Act on the indemnity in respect of mail. Accordingly, such articles are not in conflict with the Constitution.

REASONING: The transport of mail is one of the postal services that consists of delivery of mail and parcels posted by the general public, and is a type of public utility for rendering to the general populace the services needed for their daily life. Under Article 144 of the Constitution, the business shall in principle be operated by the government, although it may also be operated by private citizens if permitted by law. Article 1 of the Act Governing the Administration of Post Offices provides that the postal service shall be a state-owned enterprise under the control of the Ministry of Transport and Communications. While engaging in the operation of public utilities for the purpose of supplying the people with general and reliable services needed for their daily life, such as water, electricity and gas supply, mail delivery, and transportation, at reasonable rates under its duty to protect the public interest as a part of its func-

解釋理由書：郵件運送為郵政業務之一種，以遞送公眾交寄之信件或包裹為服務內容，屬於提供一般人民日常生活所需之公用事業，依憲法第一百四十四條規定，以公營為原則，其經法律許可者，亦得由國民經營之。郵政法第一條規定，郵政為國營事業，由交通部掌管。國家基於對人民生存照顧之義務、達成給付行政之功能，經營公用事業，期以合理之費率，普遍而穩定提供人民日常所需，如水、電、瓦斯、郵遞、交通運輸等各項服務，對公用事業之經營，課予特別義務，加強政府監督並在經濟上給予相當之優惠，如獨占權之給予、稅捐之減免、對損失補償或損害賠償責任予以限制等。惟此等措施，涉及相關人民之權利，自須依憲法第二十三條之規定，於增進公共利益之必要範圍內以法律為之。

tion of performance administration, the state may impose special duty on, intensify government supervision over, and grant such reasonable incentives as monopoly and tax exemption or reduction to the operation of public utilities, and set limitations on the indemnity for loss or liability for damage incurred by such public utilities. As such limitations concern the right of the people, they must of course be specified by law to the extent that is necessary for the furtherance of the public interest as required under Article 23 of the Constitution.

Article 25 of the Act Governing the Administration of Post Offices provides that if registered mail is lost or stolen, including the situation where a registered parcel, value-declared mail or value-insured mail is lost, stolen, partly or totally damaged or destroyed, the postal administration shall forthwith pay indemnity to the sender of the mail, with the exception of the circumstances specified in Article 28 of the Act. By the authority granted under Article 27 of the Act, the amounts of indemnity for each category of

郵政法第二十五條規定，各類掛號郵件遺失或被竊：掛號包裹、報值郵件、保價郵件全部或一部遺失、被竊或毀損時，如無同法第二十八條所定各項情形，郵政機關即須向寄件人為補償。而各類郵件補償之金額及其方法，則依同法第二十七條之授權，於郵政規則中定之。顯見郵政法對於郵件之毀損並非完全未設補償之規定。至於掛號郵件毀損之補償範圍僅限於掛號包裹之毀損，而不及於一般掛號郵件全部或一部毀損，乃因此類郵件多屬文件或信函，由寄件人自行封緘後向郵局交寄，其價值

mail and the manner in which indemnity will be paid are specified in the Regulation Governing the Administration of Post Offices. Evidently, the Act is not completely silent with respect to indemnity for damage or destruction of mail. The reason that indemnity is available only for damage to and destruction of registered parcels, exclusive of either totally or partly damaged or destroyed ordinary registered mail, is because most of such ordinary registered mail contains mainly documents and letters, which are sealed by the senders themselves before being handed over to the post office, and the value of these pieces of mail is based on the subjective view of the senders, rather than being easily ascertainable as are the value-declared mail, value-insured mail, and registered parcels. In excluding the ordinary registered mail from the items for which indemnity is available, Article 25 of the Act Governing the Administration of Post Offices is formulated by taking into consideration the balance among such factors as the fees charged, the nature of the services, the operating cost, and the degree of injury to the interest of the

亦易受主觀因素影響而不若報值、保價郵件或掛號包裹等容易認定。是郵政法第二十五條排除一般掛號郵件毀損之補償，乃就其所收取費用、服務性質、經營成本、人民權益所受侵害之程度等因素為衡平考量，並為維持郵政事業之經營所必須，增進公共利益所必要，尚未逾越立法權自由形成範圍，符合憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之規定亦無牴觸。惟特殊類型之郵件，如集郵品等，損害價值之認定缺乏客觀標準，易滋爭議，其投遞交寄之程序、收費標準、保管方式、損失補償之要件與範圍須否加以規定，應由主管機關檢討改進。

people, and is necessary for maintaining the operation of the postal services and essential to the furtherance of the public interest. The statute does not go beyond the sphere formed by the discretion of the legislative power, and is consistent with the principle of proportionality (*Verhältnismäßigkeitsprinzip*) embodied in Article 23 of the Constitution; nor is it in conflict with Article 15 of the Constitution in the protection of the property right of the people. Nevertheless, whether there is any need to make rules on the process of delivery and posting, rates of charges, manner of safekeeping, prerequisites for and coverage of indemnity for loss of mail of special categories such as stamp collections, of which the amount of damage, if any, is liable to dispute due to the lack of objective criteria for value appraisal, is an issue to be reviewed by the competent authority for the purpose of improvement.

Furthermore, Article 227 of the Regulation Governing the Administration of Post Offices, which provides that the duty of the post office ends when a piece

郵政規則第二百二十七條規定，各類郵件一經照章投遞或由收件人領取，郵局責任即為完畢。同規則第二百二十八條規定，收件人接收郵件時，未

of mail is duly delivered according to postal rules or received by the addressee, and Article 228 of the Regulation, which provides that if the addressee makes no statement with regard to defects in the mail at the time of accepting the mail against the issue of a receipt he may not claim for indemnity thereafter, are intended to set out the prerequisites for the liability of indemnity for the loss of mail. Article 3 of the Act Governing the Administration of Post Offices prescribes: "Where there are provisions in international postal conventions or agreements applicable to any category of mail or postal service, such provisions shall govern; if, however, any provision thereof is in disagreement with this Act, then this Act shall be applicable except for cases of international mails and postal services." The Universal Postal Convention, Final Protocol, signed in Seoul, Korea, on September 14, 1994, effective as of January 1, 1996, contains rules identical to those included in the aforesaid Regulation. While the Republic of China is not a signatory to said Convention, the clauses therein set forth may be accepted by us as general

當場聲明有瑕疵，並已出據領取郵件者，事後不得請求補償，係為確定郵件損失補償責任之要件所為之規定。依郵政法第三條規定：「關於各類郵件或其事務，如國際郵政公約或協定有規定者，依其規定。但其規定如與本法相牴觸時，除國際郵件事務外，適用本法之規定。」一九九四年九月十四日於韓國漢城簽訂，於一九九六年一月一日起正式生效之萬國郵政公約最後議定書（Universal Postal Convention, Final Protocol），即有與前開郵政規則相同之規定。我國雖非此公約之締約國，仍可視之為國際間通郵之一般規範。該公約第三十五條第一項規定，掛號函件、保險函件及其他證明函件，凡經按照國內就同類函件所定規章之條件予以投遞者，郵局之責任即告終止。惟同條項第二款規定，收件人或郵件退回原局時之寄件人，於國內規章所許可之情況下，對於被竊或毀損郵件（向郵局）提出保留聲明者，郵局仍須負責。亦即依該公約之規定，各類郵件如經照章投遞而收件人於領取郵件時並未提出保留權利之聲明者，各郵局即無須負責。是郵政規則第二百二十七條及第二百二十八條之規定，與國際公約之規定相符，並未逾越郵政法第二十七條之授權，亦未增加郵

rules of international postal transport. Article 35(1) of the Convention provides that the responsibility of the post office ends when a registered letter, insured letter and any other letter of attestation is delivered in the same manner as required by rules governing delivery of domestic mail of the same category. However, Article 35(2) of the Convention requires that the post office be held responsible if the addressee or the sender of a piece of mail returned to the original post office has presented (to the post office) a reservation of his right in respect of the mail being stolen, damaged or destroyed where it is permissible under domestic regulations. In other words, a post office has no responsibility under the Convention if a piece of mail is delivered as required by postal regulations and the addressee has made no reservation of his right at the time of acceptance of the mail. It follows therefore that Articles 227 and 228 of the Regulation Governing the Administration of Post Offices are in accord with said international convention and do not exceed the scope of authority under Article 27 of the Act Governing the Administration of Post

政法關於郵件補償規定所無之限制，與憲法尚無牴觸。

Offices, nor do they set any extra restriction nonexistent in the Act on the indemnity in respect of mail. Accordingly, such articles are not in conflict with the Constitution.