

## J. Y. Interpretation No.445 ( January 23, 1998 ) \*

**ISSUE:** Are the relevant provisions of the Assembly and Parade Act unconstitutional?

**RELEVANT LAWS:**

Articles 11, 14 and 23 of the Constitution ( 憲法第十一條、第十四條、第二十三條 ) ; Articles 4, 6, 8, 9, 10,11 and 29 of the Assembly and Parade Act (July 27, 1992) ( 集會遊行法第四條、第六條、第八條、第九條、第十條、第十一條、第二十九條(81.07.27) ) .

**KEYWORDS:**

Freedom of assembly ( 集會自由 ) , freedom of expression ( 表現自由 ) , extrinsic freedom in form ( 形式上外在自由 ) , intrinsic freedom in essence ( 實質上內在自由 ) , principle of clarity and definiteness of law ( 法律明確性原則 ) , principle of legal reservation ( 法律保留原則 ) , principle of proportionality ( 比例原則 ) , outdoor assembly and parade ( 室外集會遊行 ) , prior application for approval ( 事前申請許可 ) , system of guided approval ( 準則主義許可制 ) , advocacy of communism or secession of territory ( 主張共產主義或分裂國土 ) , political speech censorship ( 政治上言論審查 ) , clear and present danger ( 明顯而立即之危險 ) , restricted area for assembly and parade ( 集會遊行禁制區 ) ,

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\* Translated by Vincent C. Kuan.

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

social order (社會秩序), public interests (公共利益), generalized provision (概括條款), power of discretion (裁量權), scope of legislative discretion (立法形成之範圍), incidental assembly or parade (偶發性集會遊行), penalty for offense against an administrative order (行政秩序罰), dispersal and restraining order (解散及制止命令), scope of constitutional interpretation (大法官解釋憲法之範圍), provisions of law relevant and necessary to a specific case (具體事件相關聯且必要之法條內容).\*\*

**HOLDING:** Article 14 of the Constitution provides that the people have the freedom of assembly. Like Article 11 of the Constitution, which provides for the freedom of speech, teaching, writing and publication, it is also a kind of freedom of expression that is the most important fundamental human right in practicing democracy. In order to guarantee the people's freedom of assembly, the nation shall provide appropriate places for, and ensure the safety and regular process of, assemblies and parades. In restricting the rights of assembly and parade by law, the principle of clarity and definiteness of law and the provisions of Article 23 of the

**解釋文：**憲法第十四條規定人民有集會之自由，此與憲法第十一條規定之言論、講學、著作及出版之自由，同屬表現自由之範疇，為實施民主政治最重要的基本人權。國家為保障人民之集會自由，應提供適當集會場所，並保護集會、遊行之安全，使其得以順利進行。以法律限制集會、遊行之權利，必須符合明確性原則與憲法第二十三條之規定。集會遊行法第八條第一項規定室外集會、遊行除同條項但書所定各款情形外，應向主管機關申請許可。同法第十一條則規定申請室外集會、遊行除有同條所列情形之一者外，應予許可。其中有關時間、地點及方式等未涉及集會、遊行之目的或內容之事項，為維持

Constitution must be complied with. Article 8-I of the Assembly and Parade Act provides that, unless any of the situations otherwise provided in the proviso of the same paragraph exists, anyone who wants to hold an outdoor assembly or a parade shall apply for permission from the competent authority. Article 11 of said Act provides that, unless any of the situations listed in the same article exists, the application for an outdoor assembly or a parade shall be approved. To the extent that those items in regard to time, place, and manner are irrelevant to the purposes or contents of the assembly or parade, and that they are necessary to the maintenance of social order and the advancement of public welfare, they should fall within the scope of legislative discretion and will not result in any infringement of the purpose of freedom of expression. Therefore, the constitutional intent of protecting the freedom of assembly is not violated.

Article 11 (i) of the Assembly and Parade Act, which provides that any violation of Article 4 of the said Act is one of the essential conditions for which the

社會秩序及增進公共利益所必要，屬立法自由形成之範圍，於表現自由之訴求不致有所侵害，與憲法保障集會自由之意旨尚無牴觸。

集會遊行法第十一條第一款規定違反同法第四條規定者，為不予許可之要件，乃對「主張共產主義或分裂國土」之言論，使主管機關於許可集會、

competent authority may deny the application for an outdoor assembly, prohibits any speech that “advocates communism or secession of territory.” The said provision, which allows the competent authority to censor the contents of a political speech prior to the approval of an assembly or a parade, is inconsistent with the intention of protecting the freedom of expression under the Constitution. Subparagraph 2 of said article, providing that “There are facts showing the likelihood that national security, social order or public welfare will be jeopardized,” and Subparagraph 3 thereof, providing that “There is the likelihood that public safety or freedom will be jeopardized, or there will be serious damage to property,” are neither specific nor clear enough. The mere basis on which the competent authority may either approve or deny an application for an assembly or a parade is the future possibility of occurrence instead of a factual showing of clear and present danger. As such, the said provisions are inconsistent with the constitutional intention of protecting the freedom of assembly, and thus shall become null and void from the date

遊行以前，得就人民政治上之言論而為審查，與憲法保障表現自由之意旨有違；同條第二款規定：「有事實足認為有危害國家安全、社會秩序或公共利益之虞者」，第三款規定：「有危害生命、身體、自由或對財物造成重大損壞之虞者」，有欠具體明確，對於在舉行集會、遊行以前，尚無明顯而立即危險之事實狀態，僅憑將來有發生之可能，即由主管機關以此作為集會、遊行准否之依據部分，與憲法保障集會自由之意旨不符，均應自本解釋公布之日起失其效力。

of this Interpretation.

Article 6 of the Assembly and Parade Act, which stipulates a restricted area for assembly and parade, is intended to protect the security of government leaders and military facilities, and to maintain the unobstructed flow of traffic and communications. Article 10 of said Act stipulates the qualifications for the person in charge of the assembly or parade, his or her agent or picket. Article 11(iv) thereof provides that an application for an assembly or a parade shall be denied if the same time, place, and route have been applied for by another and been approved. Article 11(v) thereof provides that the application for an assembly or a parade by a group may be denied if such group is not established according to the law, or permission for its establishment has been withdrawn, or it has been ordered to dissolve. Article 11(vi) thereof provides that the application may not be approved if the application does not conform to Article 9, which, among other things, requires the applicant to submit a completely filled-out application form. All of the foregoing provisions

集會遊行法第六條規定集會遊行之禁制區，係為保護國家重要機關與軍事設施之安全、維持對外交通之暢通；同法第十條規定限制集會、遊行之負責人、其代理人或糾察員之資格；第十一條第四款規定同一時間、處所、路線已有他人申請並經許可者，為不許可集會、遊行之要件；第五款規定未經依法設立或經撤銷許可或命令解散之團體，以該團體名義申請者得不許可集會、遊行；第六款規定申請不合第九條有關責令申請人提出申請書填具之各事項者為不許可之要件，係為確保集會、遊行活動之和平進行，避免影響民眾之生活安寧，均屬防止妨礙他人自由、維持社會秩序或增進公共利益所必要，與憲法第二十三條規定並無牴觸。惟集會遊行法第九條第一項但書規定：「因天然災變或其他不可預見之重大事故而有正當理由者，得於二日前提出申請。」對此偶發性集會、遊行，不及於二日前申請者不予許可，與憲法保障人民集會自由之意旨有違，亟待檢討改進。

are meant to ensure a peaceful assembly or parade and to prevent any disturbance of the public quiet, which are necessary to either prevent infringement upon the freedom of other people, to maintain social order or to advance public welfare, and thus are not in conflict with Article 23 of the Constitution. Nonetheless, the proviso of Article 9-I of the said Act reads, “An application may be submitted two days (prior to an assembly or parade) where there is any justifiable reason because of any natural disaster or any other unforeseeable major accident.” Denying an application for an incidental assembly or parade that is not filed two days prior to such assembly or parade is in violation of the constitutional intention of protecting the people’s freedom of assembly and thus requires prompt and speedy review and revision.

Article 29 of the Assembly and Parade Act, which imposes criminal liability on a chief violator who disobeys a dispersal and restraining order, is within the scope of legislative discretion and, as such, is not in conflict with Article 23 of

集會遊行法第二十九條對於不遵從解散及制止命令之首謀者科以刑責，為立法自由形成範圍，與憲法第二十三條之規定尚無牴觸。

the Constitution.

**REASONING:** The Petitioners, Kao Cheng-Yien, Chen Mao-Nang, and Chang Cheng-Shiu, alleging that the Assembly and Parade Act invoked in Judgment S.Y.T. No. 5278 (H. Ct., 1994) is unconstitutional, duly initiated a petition for interpretation and the petition is admitted by the Justices for that purpose. In accordance with Article 13-I of the Constitutional Interpretation Procedure Act, the Justices ordered the petitioners and the authorities concerned, i.e., the Executive Yuan, Ministry of the Interior, Ministry of Justice, Ministry of Transportation and Communications, and National Police Agency, Ministry of the Interior, to appoint their respective agents to attend the oral argument held in the Constitutional Court on December 5, 1997.

The Petitioners have alleged summarily that: Article 14 of the Constitution provides, “The people shall have freedom of assembly and association.” In addition, Article 11 thereof provides, “The people shall have freedom of speech, teaching,

**解釋理由書：**本件係因高成炎、陳茂男、張正修為台灣高等法院八十三年度上易字第五二七八號判決所適用之集會遊行法有違憲之疑義，聲請解釋，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關係機關行政院、內政部、法務部、交通部及內政部警政署指派代表，於中華民國八十六年十二月五日在憲法法庭行言詞辯論，合先說明。

次查聲請人主張略稱：憲法第十四條規定：「人民有集會及結社之自由。」第十一條並規定：「人民有言論、講學、著作及出版之自由。」均係表示憲法保障人民之表現自由。因為人民有參與政治意思決定之權利，表現自

writing and publication.” Both articles are designed to guarantee the people’s freedom of expression under the Constitution. Since the people have the right to participate in the political decision-making process, the freedom of expression enables an individual to fully and completely express his or her will during the formative process of the public will. As such, it is an important fundamental human right in practicing democracy. Of those rights, the freedoms of teaching, writing, and publication are mainly exercised by intellectuals. As to the freedom of association, which is a kind of freedom of expression exercised mainly by action, it is a direct means for the general public, who do not have easy access to the media, to express their opinions openly. And, as the participants of collective will use an assembly or a parade as a way “to actively participate in the formation of the national will,” it is also, in nature, a right of utility. Surprisingly, Article 8-I of the Assembly and Parade Act provides that, unless any of the situations otherwise provided in the proviso of the same paragraph exists, anyone who wants to hold an outdoor assembly or parade shall apply

由使個人之意思，於公意形成之過程中，得充分表達，是為實施民主政治重要之基本人權。其中講學、著作及出版之自由，大多由知識分子行使，至於集會自由是以行動為主的表現自由，對於不易利用媒體言論管道之眾人，為公開表達意見之直接途徑，集體意見之參與者使集會、遊行發展成「積極參與國家意思形成之參與權」，故兼有受益權之性質。詎集會遊行法第八條第一項規定，室外集會、遊行，除有同條項但書所列各款情形外，應向主管機關申請許可，對於人民集會、遊行之權利為概括性之限制，賦予主管機關事前抑制、禁止人民集會、遊行之權限。再依同法第十一條規定，申請室外集會、遊行，除有(一)違反第四條、第六條、第十條之規定，(二)有事實足認為有危害國家安全、社會秩序或公共利益之虞，(三)有危害生命、身體、自由或對財物造成重大損壞之虞，(四)同一時間、處所、路線已有他人申請並經許可，(五)未經依法設立或經撤銷許可或命令解散之團體，以該團體名義申請，(六)申請不合第九條規定等情形外，應予許可。其中第一款所指同法第四條「集會遊行不得主張共產主義或分裂國土」，乃具有高度政治性之議題，其概念有欠明確。蓋



for permission from the competent authority, thus broadly restricting the people's right to assemble and parade and empowering the competent authorities to restrain and forbid people from holding an assembly or a parade in advance. According to Article 11 of said Act, the application for an outdoor assembly or parade shall be approved unless there is any violation of Articles 4, 6, or 10, that is: there are facts showing the likelihood that national security, social order or public welfare will be jeopardized; there is likelihood that public safety or freedom will be jeopardized, or there will be serious damage to property; the same time, place, and route have been applied for by another and been approved; a group applicant is not established according to the law, or permission for its establishment has been withdrawn, or it has been ordered to dissolve; or the application does not conform to Article 9 thereof. Article 4 of the said Act, as referred to in Subparagraph 1 thereof, addresses a highly political issue, that "there shall be no advocacy of communism or secession of territory during an assembly or a parade," whose concept is unclear.

以集會、遊行之方式主張共產主義或分裂國土，若未妨礙或侵犯他人之權利或自由，應為表現自由所保障之範圍。如果主張馬列氏之共產主義，並欲以暴力推翻體制，以達到共產主義之目的而積極進行組織者，顯然已超越集會、遊行權利之內在限制，當可另立特別法予以規範。於集會遊行法為不明確之禁止規定，任由警察機關予以認定，使警察機關捲入政治漩渦中，違背警察政治中立之要求，且無異對意見之表達為事前之檢查，復未經法院依嚴謹之訴訟程序決定之，欠缺必要之防護措施，對言論自由之保障，實有未足。又第六條所列禁制區之範圍係授權內政部及國防部劃定公告，於採報備制之國家，集會不須得警察機關之許可，故於禁制區為集會、遊行，須得禁制區保護機關之同意，集會遊行法第六條規定禁制區範圍過於浮濫，且同條第一項但書規定在禁制區集會之例外許可，與集會之許可均由同一主管機關核准，亦屬重複。至第十條關於負責人、其代理人或糾察員之消極資格規定，僅具形式意義。其次，第十一條第一項第二款及第三款規定，均屬不確定法律概念，因為室外集會、遊行難免對他人之自由、社會秩序或公共利益產生影響，其認定之標準，如缺乏明確

Advocacy of communism or secession of territory, to the extent that no right or freedom of another person is interfered with or infringed upon, should be protected under the right of freedom of expression. While advocating Marxist or Leninist communism, if a person actively organizes in order to overthrow the governmental system by violence for the purpose of establishing a communist state, such behavior is obviously beyond the internal limitations of the rights of assembly and parade, which should be regulated by enacting a special law. In drawing up an ambiguously prohibitive provision in the Assembly and Parade Act and thus empowering the police agency with the discretion to make determinations, the legislature has placed the police in a political quandary that violates the requirement that the police must be politically neutral. Furthermore, it is no different from prior censorship of the expression of opinions, which, is also not determined by a court of law through a carefully formulated litigation procedure. As such, it is lacking in necessary protective measures, and does not adequately protect the free-

之準則，人民之集會自由即遭干預。第四款規定同一時間、處所、路線已有他人申請並經許可者，惟於例外情形構成「警察緊急狀態」下，始得對後申請之室外集會或反制之示威加以禁止或不許可。倘不論原因一律不許可，亦有違憲法第十四條規定保障集會自由之趣旨，且不符比例原則之要求。第五款規定涉及集會自由之主體問題，實則未經依法設立或經撤銷許可或命令解散之團體，仍得由其構成員以自然人或其他依法設立之團體名義申請，是本款規定並無意義。第六款係謂申請不合第九條規定者不予許可，惟第九條規定申請許可之方式及其期間之遵守，不符比例原則且排除自發性集會之合法性，尤屬可議。綜上可知集會遊行法第十一條規定所列不予許可之事由，或過於抽象而無實質意義，或牴觸憲法第十四條規定保障集會自由之旨意，與憲法第二十三條規定之要求亦有未符。依集會遊行法之規定，集會、遊行之申請應向警察機關為之，而警察機關又是維持集會、遊行秩序並依法得將違反集會遊行法規定者移送司法機關偵辦之機關。在目前的警察體制下，極易為經由選舉而執政之政黨所利用，以干預人民集會之自由。自人民之立場言，集會之申請經拒絕以後，雖可

dom of speech. In addition, the power to demarcate and announce the restricted areas referred to in Article 6 thereof is entrusted to the Ministry of the Interior and the Ministry of National Defense. In those nations that adopt a system of reporting, it is not necessary to obtain approval from the police agency before holding an assembly or a parade. Therefore, the consent from a protected agency in a restricted area must be obtained before an assembly or a parade may be held in such area. Article 6 of the Assembly and Parade Act is too broad in providing for the range of restricted areas. Furthermore, it is unnecessarily redundant that the proviso of Paragraph 1 of the same Article stipulates that the exceptive approval for assembly in the restricted area, as well as the approval for assembly, will be given by the same authority. As for Article 10, which provides for the negative qualifications of the person in charge, the agent, or the picket, has no material meaning. Besides, the provisions of Article 11-I (ii) and (iii) are indefinite concepts of law because an outdoor assembly or parade will inevitably affect the free-

申復，然申復之審查仍由警察機關單方面為之，即欠缺正當法律程序為之救濟。為使國民能機會均等參與公共事務，國家必須積極制定相關制度，保障人民之表現自由，公意政治方能實現。集會遊行法採取事前許可制，限制人民之基本權利，自屬牴觸憲法保障人民集會自由之權利。又集會遊行法第二十九條規定：「集會、遊行經該管主管機關命令解散而不解散，仍繼續舉行經制止而不遵從，首謀者處二年以下有期徒刑或拘役。」此項規定與刑法第一百四十九條規定公然聚眾不遵令解散罪之構成要件比較，寬嚴之間有失均衡。由於集會自由有無可替代之民主功能，和平進行之集會應受法律之充分保障，集會遊行法第二十九條規定之情形，僅課以較高額之行政罰即可，應無必要處以刑罰。依集會遊行法第二十五條規定，未經許可或許可經撤銷而擅自舉行者，或違反許可事項、許可限制事項者，該管主管機關得予警告、制止或命令解散。基本上係以事前許可為前提，惟有主管機關許可時，方得免受刑事追訴，顯然為箝制表現自由重大的規定。為調節集會、遊行與一般民眾因此感受之不便，採用報備制，使警察機關得預為綢繆，避免參與集會者之利益與第三人之安全

dom of other people, the social order, or public interests. And, if clear determining standards are lacking, the people's freedom of assembly will be infringed. Subparagraph 4 thereof provides that a later application for an assembly or a parade may be prohibited or denied only if the same time, place, and route have been previously applied for by another and been approved, and if such later application for an outdoor assembly or a counter-demonstration may constitute "police emergency circumstances." If an application is denied for any reason, such denial will violate the intention of protecting freedom of assembly according to Article 14 of the Constitution and will be inconsistent with what is guaranteed under the principle of proportionality. Subparagraph 5 concerns the subject of freedom of assembly. Since a group which is not legally established, whose permission has been withdrawn, or which is ordered to dissolve, can still apply under the name of any of its individual members or that of another legally established group, this subparagraph is meaningless. Subparagraph 6 provides that an application shall

利益發生不必要之衝突，並視情況採取維持秩序之措施，以資兼顧。集會、遊行為人民表達思想的重要手段，為憲法所保障，集會遊行法採許可制，依上說明，自屬牴觸憲法，侵犯人民之基本權等語。

not be approved if it is inconsistent with Article 9. However, the manner of application for approval and the period allowed for filing an application as provided by Article 9 are inconsistent with the principle of proportionality, and the legality of its exclusion of spontaneous assembly is especially questionable. In conclusion, the reasons for disapproval listed in Article 11 of the Assembly and Parade Act are either too abstract and without material meaning or in conflict with the intention of protecting the freedom of assembly provided in Article 14 of the Constitution, and they are also inconsistent with what is required under Article 23 of the Constitution. Under the Assembly and Parade Act, an application for an assembly or a parade shall be filed with the police agency, which, however, is also the agency in charge of maintaining the order of an assembly or a parade and of removing the violators of the Assembly and Parade Act and escorting them to the judicial authorities. Under the current police system, the police agency may be used as a tool of the elected ruling party to interfere with the people's freedom of assembly. From the

people's point of view, although an application for assembly may be re-filed, the review of the re-application will still be conducted by the police agency itself and, therefore, adequate remedy is lacking under due process of law. In order to provide the citizens with an equal opportunity to participate in public affairs, the state must vigorously establish related systems to protect the people's freedom of expression and only then can the public's political will be realized. The Assembly and Parade Act, in adopting the system of prior approval, restricts people's fundamental rights and thus is in conflict with the constitutional guarantee of the people's rights and freedom of assembly. Furthermore, Article 29 of the Assembly and Parade Act provides, "Where those engaging in an assembly or parade do not disperse after an order to disperse is given by the competent authority, and continue the assembly or parade in disobedience of an order to stop, the chief violator shall be subject to punishment of imprisonment for a term of not more than two years or for detention." When compared with the offense of gathering in public and dis-

obeying the order to disperse as provided by Article 149 of the Criminal Code, the punishment stipulated in the aforesaid Article is unbalanced as far as the requisite elements are concerned. Due to the irrevocable democratic function of freedom of assembly, a peaceful assembly should be adequately protected by law. The situations referred to in Article 29 should be merely punishable by a higher amount of fine and no criminal punishment should be necessary. In accordance with Article 25 of the Assembly and Parade Act, where an assembly or a parade is held without approval, with approval having been withdrawn, or in violation of the conditions or restrictive requirements for approval, the competent authority may warn, restrain, or issue an order to disperse. Basically, prior approval is a prerequisite and criminal prosecution can be avoided only if and when approval is given by the competent authority; therefore, it is obviously a regulation that severely restricts the freedom of expression. In order to balance the freedom of assembly and parade and the inconvenience to others caused by an assembly or a parade, the government

should adopt the system of reporting to prepare the police agency in advance to prevent any unnecessary conflict between the interests of the participants in the assembly and the interests of the safety of third parties. They should also take any measures necessary to maintain order as the circumstances dictate so as to give due consideration to both sides. Assemblies and parades are important ways for the people to express their will, and are guaranteed by the Constitution. The system of approval as adopted for the Assembly and Parade Act, as stated above, is in conflict with the Constitution and thus infringes upon the people's fundamental rights.

The Executive Yuan, as the relevant authority, has alleged that: In a democratic society, the people usually display the public will in respect to the administrative measures of the government by expressing their opinions through an assembly or a parade. However, unpredictability and uncontrollability are characteristics of assemblies and parades, which may pose potential threats to social order. In order to protect the people's legal rights of assem-

相關機關行政院則主張：民主社會中，人民對於政府施政措施，常藉集會、遊行之方式表達意見，形成公意。惟集會、遊行亦具有容易感染及不可控制的特質，對於社會治安可能產生潛在威脅。為維護人民集會、遊行的合法權益，並確保社會秩序安寧，自有制定法律，將之限定於和平表達意見範疇之必要。集會遊行法係解嚴後為因應社會變遷，於七十七年一月二十日所制定，八十一年七月二十七日復因終止戡亂而修



bly and parade and to ensure social order and safety, it is necessary to enact laws that limit an assembly or a parade to a peaceful expression of will. The Assembly and Parade Act was enacted on January 20, 1988, in response to changes in society after the martial law was lifted and said Act was amended and promulgated on July 27, 1992, after the termination of the Act for the Suppression of the Communist Rebellion. Obviously, as the circumstances of the society have changed, so has the Act, as a product of democratization, evolved. With respect to the legislations regulating assemblies and parades, some nations have adopted the system of reporting, whereas others have adopted the system of approval. Although the system of approval was adopted by the Legislative Yuan when it designed the Assembly and Parade Act, it is, in nature, closer to a system of guided approval than to charters, and, as such, it does not transgress the boundary delineated by Article 23 of the Constitution, which requires that abridgement of freedoms is necessary to prevent infringement of the freedom of other persons, to avert an imminent crisis,

正公布，顯係隨社會之變動而演進，為民主化的產物。顧各國立法例對於集會、遊行之管理方式有採報備制者，有採許可制者，集會遊行法所採，雖為許可制，惟其性質非屬特許而近準則主義，尚未逾憲法第二十三條所定防止妨礙他人自由、避免緊急危難、維持社會秩序或增進公共利益所必要之程度，以近五年來警察機關受理集會、遊行申請案資料統計分析，共受理申請三一、七二五件，不准許者僅一〇八件，約佔千分之三點四，所佔比例甚低，即可明瞭。又集會遊行法第四條規定集會遊行不得主張共產主義或分裂國土，乃因共產主義本質上與三民主義背道而馳，且現階段大陸政權仍屬敵對團體，對我國仍具武力威脅，集會、遊行活動主張共產主義不但違反立國精神，且參照憲法增修條文第五條第五項規定，尚有危害中華民國之存在或自由民主憲政秩序之虞。因此，集會、遊行不得主張共產主義。其次，主張分裂國土，乃違背憲法第四條規定，集會遊行法第四條規定不得主張分裂國土，亦無不合。再查國家安全法第二條雖針對集會、結社為上開二原則之規定，惟違反者，同法並未規定其法律效果。若違反集會遊行法第四條規定，則不許可或撤銷許可集會、遊

to maintain the social order, or to advance the public welfare. It This should be clear by taking note of the low percentage of applications for assemblies or parades denied by the police agency in the past five years: only 108 out of a total of 31,725 applications filed were denied, resulting in a rate of about 0.34%. Article 4 of the Assembly and Parade Act provides that an assembly or a parade in advocacy of communism or secession of territory shall not be approved because communism, in nature, runs counter to the Three Principles of the People. Besides, the government of mainland China is still hostile to the interests of Taiwan, and has threatened our nation with military force. Advocating communism during an assembly or a parade not only violates the founding spirit of the nation but, by referring to Article 5-V of the Amendments to the Constitution, also raises concerns about putting the very existence of the Republic of China or the nation's constitutional order of freedom and democracy in danger. Therefore, advocacy of communism or secession of territory is not allowed during an assembly or a parade.

行之申請，同時可達成國家安全法所揭示二原則之立法目的。至於集會遊行法第二十九條對於首謀者處以刑事罰，乃因首謀者業經警察機關警告、制止、命令解散，仍繼續進行，不遵制止等四階段程序，其主觀惡性已表露無遺，非處行政罰所能奏效，較之德國集會法第二十六條第一款規定採二階段程序者更為嚴謹，自無違反憲法可言云云。

Secondly, advocacy of secession of territory violates Article 4 of the Constitution, so Article 4 of the Assembly and Parade Act rightfully and legitimately disallows secession of territory. Additionally, Article 2 of the National Security Act provides for the foregoing two principles about assemblies and associations but is silent as to the legal consequences of violations of said principles. In the case of any violation of Article 4 of the Assembly and Parade Act, the application for an assembly or a parade shall be denied, and, as such, the legislative purpose of the said principles of the National Security Act shall be achieved at once. As to Article 29 of the Assembly and Parade Act, which imposes a criminal penalty on the chief violator who has been warned, stopped, or ordered to disperse but still proceeds without obeying the order, the reason for the criminal punishment is that an administrative punishment will not obtain the desired results since a four-stage procedure has proven futile in deterring the chief violator whose subjective maliciousness has been manifested in the case at hand. When compared with Article 26 (i) of the

Assembly Act of Germany, which adopts a two-phase procedure, such criminal penalty is even more exact and thus is not inconsistent with the Constitution.

The Ministry of Justice (concurrently representing the Executive Yuan) has alleged that: Promulgated by the President on January 20, 1988, and named the Assembly and Parade Act during the Period of National Mobilization for Suppression of the Communist Rebellion, the law governing assemblies and parades in our nation was enacted for the purpose of protecting legally held assemblies and parades in response to the political environment following the lifting of martial law. Because of the subsequent termination of the period of mobilization for suppression of the communist rebellion, the law was renamed the Assembly and Parade Act on July 27, 1992, and relevant provisions thereof were amended to be in accord with the changes in society. The Assembly and Parade Act, therefore, is not a product of martial law. The reason for enacting the law is that the activities of assemblies and parades may incidentally breach the pub-

法務部（兼代行政院）主張：我國集會、遊行之法律係解嚴後，為保障合法舉行之集會、遊行及順應當時環境之需要所制定，由總統於七十七年一月二十日公布施行，名稱為動員戡亂時期集會遊行法。其後因動員戡亂時期之終止，於八十一年七月二十七日將名稱修正為集會遊行法，並修正相關規定，以應社會之新發展趨勢，故集會遊行法非戒嚴制度之產物。其制定之原因係本於集會、遊行活動可能有侵害公共秩序之虞，基於維護公益及保障社會大眾人權之衡平，對集會、遊行之場所、時間、方式等，酌予合理限制，要非賦予公權力對表現自由予以壓制或剝奪為目的，符合憲法第十一條保障表現自由所追求探究真理、健全民主程序、自我實現等基本價值。為避免集會、遊行活動侵害公益而對民眾之生活安寧與安全，交通秩序、居家品質或環境衛生產生影響或發生侵害情事，依憲法第二十三條規定，以法律為必要之限制，而採準則主義之許可制，亦符合比例原則。至於集

lic order. In order to balance the preservation of public interests and the protection of human rights, the place, time, manner, etc., of assemblies and parades are reasonably restricted. The restrictions are not intended to confer on the government the power to suppress or withhold the freedom of expression and are thus consistent with the basic values of pursuit of the truth, integration of democratic procedures, and self-realization that are embodied in the protection of freedom of expression under Article 11 of the Constitution. To prevent the infringement of public interests and thus any influence on, or breach of, the public quiet and safety, the traffic order, quality of residence, or environmental sanitation, certain necessary restrictions, adopting the system of guided approval, are prescribed by law in accordance with Article 23 of the Constitution, which are consistent with the principle of proportionality. As to Article 29 of the Assembly and Parade Act, which imposes criminal penalties on violators, the legislators enacted it after evaluating its deterrence and punitive levels, which are not inappropriate from the viewpoint of legis-

會遊行法第二十九條規定對於觸犯者處以刑事罰，係立法上衡量其反社會性之強弱、可非難性之高低而制定，自立法政策言，並無不妥。又我國自七十六年七月十五日解嚴、八十年五月一日終止動員戡亂，回復平時憲政。惟衡諸兩岸關係，中共對我之敵對狀態並未消除，其以武力威脅、飛彈恫嚇之危險仍然存在，為維護國家安全及社會秩序，對於集會、遊行所涉及有關國家安全之言論因可能產生內部不安，自有限制必要。主張共產主義與分裂國土之集會、遊行，危害中華民國之存在或自由民主之憲政秩序，參照憲法增修條文第五條第五項之規定意旨，應不受憲法保障云云。

lative policy. Our nation abolished the martial law on July 15, 1987, terminated the mobilization for suppression of the communist rebellion on May 1, 1991, and returned to a peacetime constitutional government. However, considering the cross-strait relationship, mainland China's hostility toward Taiwan has not been eliminated, with ever-present dangers of military threat and missile intimidation. Therefore, in order to maintain national security and the social order, it is necessary to restrict national security-related speech made during an assembly or a parade that may give rise to internal insecurity. An assembly or a parade that advocates communism and secession of territory endangers the existence of the Republic of China or the constitutional order of freedom and democracy, which, in reference to the intention of Article 5-V of the Amendments to the Constitution, should not be protected by the Constitution.

Citing the foregoing arguments of the Executive Yuan, the Ministry of the Interior and the Police Agency of the Min-

內政部及內政部警政署之主張除與前述行政院之主張相同者予以引用外，並稱：集會遊行法對於集會、遊行

istry of the Interior, have additionally alleged that: The Assembly and Parade Act has adopted the system of approval to review the applications for assemblies and parades due to concerns about the public interests of society and fundamental rights and interests of third parties when an assembly or a parade, as a constitutionally protected fundamental human right, is in progress. In order to guarantee the people's legitimate rights of assembly and parade and to ensure the stability of social order, it is not inconsistent with Article 23 of the Constitution that the Assembly and Parade Act imposes an obligation of prior application for approval. Besides, the Act adopts the principle of guidelines and, when making a decision as to an application for an assembly or a parade, the police agency must approve or deny according to the law and cannot legally deny a duly filed application. The system of prior approval is designed to allow an applicant enough time to prepare so that the competent authority will also be prepared in time and be able to respond properly. Sociological studies on the dangerous nature of crowds also reinforce the necessity of

之申請採用許可制，乃因集會、遊行固為憲法所保障之基本人權，惟其享有及行使，應顧及社會公益及他人之基本權益，集會遊行法為維護人民集會、遊行之合法權益，並確保社會秩序之安寧，課以事前申請許可之義務，於憲法第二十三條規定，並無不合。況同法係採準則主義，警察機關對於集會、遊行，唯有依法為準駁之處分，不得違法不予許可。採行事前許可制，既可使申請人有充裕時間準備，亦可使主管機關即時瞭解事態，妥為因應。社會學家對群眾危險性格之實證研究，亦認為有強化許可制之必要。在經驗法則上，對之實施事前許可規制，應屬必要，經民意調查結果，並為多數人所認同。再就本件事實以言，聲請人係因遊行前五日向警察機關申請，因不符集會遊行法第九條第一項規定而未獲許可，於集會、遊行中，經警察主管機關依同法第二十五條第一項規定警告、制止及命令解散仍不遵從，因而受刑事處罰。其涉及之法律僅同法第九條第一項、第二十五條第一項第一款及第二十九條規定而已。至於同法第四條規定則與聲請解釋之原因事實無關，違反其規定而主張共產主義或分裂國土，同法未設行政或刑事責任，可知其性質並非許可管制的主要目的。司

strengthening the system of approval. Empirically, it is necessary to implement the system of prior approval, which has also been endorsed by the majority of people based on their response to a public survey on the issue. Furthermore, as far as the facts of this case are concerned, the petitioner filed the application with the police agency five days before the parade. It is because of non-compliance with Article 9-I of the Assembly and Parade Act that the application was denied. Due to the refusal to obey the competent police authority's warning, a stop and dispersal order was issued during the assembly and parade and, based on Article 25-I of said Act, criminal penalties were imposed. The only provisions at issue are Articles 9-I, 25-I (i) and 29 of said Act. Article 4 of said Act is irrelevant to the facts on which this petition is based. Neither administrative nor criminal liability is prescribed as to any violation of said provision by advocating communism or secession of territory. It may thus be reasoned that the nature of this provision is not the main purpose of the control of approval. Therefore, the Judicial Yuan cannot make any

法院即不得為訴外解釋，就與確定終局裁判無關聯部分為合憲性審查。集會、遊行涉及集體意見的表達與溝通，影響公共政策的形成，終致參政權及請願權之行使，為社會少數族群藉以表達訴求之重要管道。惟因群眾活動易引起衝動、脫軌而影響安寧、交通及衛生等問題，自有必要以法律為相當之限制。其限制之寬嚴原有多樣，集會遊行法第八條、第十一條所採實係準則許可制，其與報備制之差別僅在行政程序有異，兩者在本質上並無不同。涉及公意形成之集會、遊行，若非有極重要之公共利益考量，事前管制集會、遊行之言論內容亦非憲法所能容許。集會遊行法第九條規定申請書應記載集會、遊行之目的，固可認為一種言論檢查，其用意僅在考量其造成公共危險之可能性，非對言論為抽象之價值判斷，雖然目的的檢驗可能涉及同法第十一條第一款所定違反第四條問題，因而是一種審查言論本身的標準。惟此規定實與憲法增修條文第五條第五項規定：「政黨之目的或其行為，危害中華民國之存在或自由民主之憲政秩序者為違憲」相呼應，此際警察機關仍得依同法第二十六條規定為準否之判斷。由於集會、遊行可能對公共秩序發生影響，集會遊行法對於室外集



interpretation beyond the scope of the petition by reviewing the constitutionality of any part irrelevant to the final and conclusive judgment. Assemblies and parades concern the expression and communication of collective will, affect the formation of public policies, and eventually relate to the exercise of the right to suffrage and to petition, which are significant means for the society's minority groups to express their views. Nevertheless, as activities of the masses tend to trigger reactions that will impact on peace, traffic and sanitation, it is necessary to impose reasonable restrictions by law. Nevertheless, the strictness of such restrictions varies. It is the system of guided approval that is adopted by Articles 8 and 11 of the Assembly and Parade Act, which differs from the system of reporting only in the administrative procedures, not in nature. With respect to an assembly or a parade involving the formation of the public will, prior control of the contents of the speech to be made during the assembly or parade is not allowed by the Constitution unless there are any compelling public interest considerations. Although the provisions of

會、遊行所採許可管制，符合比例原則。關此，同法第十一條規定除列舉情事外，主管機關應予許可，全無裁量餘地。即使具有上開除外情事，仍須依比例原則加以裁量。如不予許可，應附理由於三日內以書面通知負責人，並記載不服之救濟程序。其依第九條第一項但書之規定提出申請者，不許可之通知應於二十四小時內為之。集會、遊行之申請於六日前提出；如因天然災害或其他不可預見之重大事故而有正當理由者，則於二日前提出即可。此項期間之規定與其他民主國家之管制規定比較並不為過。至於偶發性遊行，雖因無發起人而無從申請，主管機關亦得斟酌第二十六條規定之比例原則而為處理。從而對於集會、遊行，即不得謂已為過度之限制。又集會遊行法僅對負責人、代理人或首謀者課以法律責任，對於參加者則未加限制；第十四條對於許可集會、遊行，亦得課以六項必要之限制；第十五條復規定撤銷或變更許可之要件，無非因人、事、時、地、物之不同而避免過度管制。事後報備制對已造成之公益損害僅能追懲而不能預防，對於社會趨於多元化、利益與觀念衝突不斷滋生、寬容的政治文化尚未形成而又地狹人稠的台灣，可能造成難以估計的不利影

Article 9 of the Assembly and Parade Act, in requiring that the purpose of the assembly or parade be specified, may be regarded as a form of speech censorship, the mere intention thereof is to assess the likelihood of public danger that may be caused by the assembly or parade, but not to pass any judgment on the abstract value of the speech. Although the review of the purpose may imply the violation of Article 4 of said Act as provided by Article 11 (i) thereof, thus qualifying as a criterion by which the speech itself is censored, the said provision actually echoes Article 5-V of the Amendments to the Constitution, which provides, “A political party shall be considered unconstitutional if its goals or activities endanger the existence of the Republic of China or the nation's constitutional order of freedom and democracy.” At that point, the police agency may still decide whether or not an application should be approved in accordance with Article 26 of said Act. Since an assembly or parade may impact on public order, the control of approval as adopted by the Assembly and Parade Act is in line with the principle of proportionality. In that re-

響。再第十一條第二款規定既云有事實足認為有危害國家安全、社會秩序或公共利益之虞等語，即不得謂其意義過於含混，主管機關亦未因規定含混而有濫用情事。關於未經許可之集會、遊行科處刑罰之問題，集會遊行法對於領導者違反事前與事中之行政管制所定兩階段處罰要件並無過當限制情形，其有違憲之虞者無寧為行政濫權是否未在制度上有效防止，亦即解散命令及其後的制止行為，於刑事法院應同時審酌其合法性，始能將行政濫權之機會，降低到最低。就集會遊行法第二十九條之規定以言，室外之集會、遊行可能造成其他法益之妨礙，並非單純行政上之不利益而已，對於違反者處以刑罰並未逾越立法形成自由之範圍。此與同法第二十八條規定之構成要件，就主觀及客觀情形比較，有程度上之差別者，尚屬不同。若刪除同法第二十九條規定，則如集會、遊行不遵解散命令，且又不聽制止，而未達刑法第一百四十九條規定之要件時，即無任何刑責可言，對於集會遊行法第二十九條所定重複違法之主觀惡性，仍應處以刑罰，始屬合理。依合憲推定原則，釋憲者在解釋憲法時，對國會制定之法律，在有明確之依據足以宣告其違憲無效之前，應為合憲之解釋。

gard, the competent authority has no discretionary power to deny any application unless any of the situations enumerated in Article 11 of said Act exist. Even if any of the enumerated situations exist, discretion should still be used to such extent as is consistent with the principle of proportionality. If an application is denied, the reasons thereof, along with any remedial procedure, shall be given in writing to the responsible person within three days. A notice of denial shall be provided within twenty-four hours if an application is submitted in accordance with the proviso of Article 9 of said Act. An application shall be submitted six days prior to an assembly or a parade unless there is any justifiable reason, because of a natural disaster or any other unforeseeable major accident, in which case an application may be submitted two days prior to an assembly or parade. As for an incidental parade, the competent authority may approve it after giving due consideration to the principle of proportionality as provided by Article 26 thereof even though no application can be submitted in the absence of an originator. As a result, it

集會遊行法採事前許可制，揆諸群眾之危險特性並影響交通、警力之分配及群眾相互間之對立、同法第二十六條有關比例原則之規定等情形，尚未違反憲法第二十三條所定必要之程度。至於因情況危迫，有正當理由，不及依現行集會遊行法之規定提出申請者，可從立法技術上予以解決，要與違憲與否無涉云云。

should not be reasoned that excessive restrictions have been imposed on assemblies and parades. In addition, the Assembly and Parade Act merely imposes legal liability on a responsible person, agent or chief violator, but imposes no restrictions on the participants. Article 14 thereof also imposes six restrictions on an approved assembly or parade. In addition, Article 15 thereof provides the requirements for withdrawal or modification of an approval. All of the foregoing provisions are meant to prevent excessive control due to the differences in persons, matters, times, places and objects. A system of subsequent reporting can not prevent damage to public interests, but can merely punish unlawful behavior. As such, it may cause inestimable negative influence on the densely populated nation of Taiwan, which is moving towards a pluralistic society, with ever-increasing conflicts of interests and ideas and yet without a political culture of tolerance. Furthermore, since Article 11 (ii) thereof provides that there are facts showing the likelihood that national security, social order or public welfare will be jeopardized, it should not

be regarded as being overly ambiguous. Moreover, the competent authority has never taken any abusive action due to the ambiguity of said provision. As to the issue regarding the imposition of criminal penalties on the leader of an assembly or a parade which has not been approved, the Assembly and Parade Act does not impose any undue restrictions insofar as the two-phase punitive measures for a leader who breaches prior and on-the-spot administrative control are concerned. A question that is likely to raise constitutional concerns, if any, may be whether administrative abuse of power has not been prevented from a systemic perspective. In other words, a criminal court should simultaneously consider the legality of an order to disperse and the subsequent action to stop so as to ensure that abuse of administrative power does not occur. In respect of Article 29 of the Assembly and Parade Act, an outdoor assembly or parade may infringe upon other legally recognized and protected interests, rather than pose mere inconveniences for the administration, and, as such, imposition of criminal penalties on violators

does not transgress the scope of legislative discretion. The said provision and Article 28 of said Act vary in that their respective requisite elements, as far as both subjective and objective conditions are concerned, differ to some extent. Should Article 29 of said Act be deleted, any refusal to obey an order to disperse and any non-compliance with an order to stop during an assembly or a parade would not be subject to any criminal liability if and when the requisite elements of Article 149 of the Criminal Code are not satisfied. It would not be rational to do so unless such maliciousness as manifested by the repeated violations prescribed in Article 29 of the Assembly and Parade Act is subject to criminal punishment. Under the principle of constitutional interpretation, a law enacted by the legislature should be so interpreted as to regard it as constitutional unless there is any clear basis on which a declaration of its unconstitutionality and voidance is warranted. Having considered such circumstances as the potentially dangerous nature of a crowd, distribution of the police force, confrontation between opposing groups, and the principle of pro-

portionality as provided in Article 26 of said Act, the system of prior approval as adopted by the Assembly and Parade Act does not go beyond the extent of necessity as provided in Article 23 of the Constitution. As for the emergency situations that justify approval of an application not meeting the deadline required by the existing Assembly and Parade Act, the problem may be solved by means of legislative provisions, which should not involve any issue of unconstitutionality.

The Ministry of Transportation and Communications has alleged that: Since an assembly or a parade may escalate into something unforeseen as the number of the people involved increases, thus affecting traffic order and safety, the adoption of the system of guided approval may enable the competent authority to take timely precautions by making adequate traffic control plans, thus avoiding traffic tie-ups or chaos that will infringe upon the rights and interests of other road users. According to earlier cases, the social costs have indeed been incalculable when an assembly or parade led to the blocking of

交通部提出書狀主張：因集會、遊行可能因量增而產生質變，易影響交通秩序，妨礙交通安全，採用準則許可制，可使主管機關對集會、遊行及早未雨綢繆，妥善規劃交通管制，避免交通陷於停滯或混亂，造成妨礙他人使用道路之權益。依過去發生之實例，因集會、遊行而霸佔高速公路、率眾夜宿車站前廣場、臥軌妨礙鐵路交通，對於社會秩序及公共利益之危害，均屬顯著而首當其衝，所付出之社會成本實難以估計。集會遊行法現行規定應符合憲法第十四條保障人民集會自由之意旨及第二十三條法律保留之原則等語。

superhighways, the overnight stay of a large crowd at a plaza in front of a railroad station, or people lying on the tracks to stop rail traffic, noticeably threatening the social order and public interests. The current provisions of the Assembly and Parade Act should be consistent with the constitutional intent of Article 14 of the Constitution, which protects the people's freedom of assembly, and in line with the principle of legal reservation as embodied in Article 23 thereof.

Having examined the substance of all the arguments, this Court hereby issues this Interpretation based on the following reasons:

It is unambiguously provided by Article 78 of the Constitution that the Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders. Naturally, an interpretation made by said Yuan shall be binding on various state organs, as well as the people. As such, it differs distinctly from an ordinary court, which accepts and hears civil and criminal cases, from an

本院斟酌全辯論意旨，作成本解釋，其理由如左：

司法院解釋憲法，並有統一解釋法律及命令之權，為憲法第七十八條所明定。其所為之解釋，自有拘束全國各機關及人民之效力。此與普通法院受理民、刑事訴訟事件；行政法院審理行政訴訟案件；公務員懲戒委員會審議公務員之懲戒案件，其所為裁判或議決，僅於該具體事件有拘束力者迥然有異。人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起



administrative court, which hears administrative litigation cases, and from the Commission on the Discipline of Public Functionaries, which deliberates on cases regarding the discipline of public functionaries, in that the judgments or resolutions rendered or made by the aforesaid bodies merely have binding force on the specific cases heard by them. When an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has questions about the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment, petitions for interpretation may be made in accordance with Article 5-I (ii) of the Constitutional Interpretation Procedure Act. Undoubtedly, in making an interpretation pursuant to said provision, the Justices will focus upon the statute or regulation relied thereupon by the court of last resort in its final judgment and determine whether or not a constitutional right of an individual, a legal entity or a political party was infringed upon. However, in respect of the system under

訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得依司法院大法官審理案件法第五條第一項第二款規定聲請解釋。大法官依此規定所為解釋，固以該確定終局裁判所適用之法律或命令為標的，就人民、法人或政黨於其憲法上所保障之權利有無遭受不法侵害為審理對象。惟人民聲請憲法解釋之制度，除為保障當事人之基本權利外，亦有闡明憲法真義以維護憲政秩序之目的，故其解釋範圍自得及於該具體事件相關聯且必要之法條內容有無牴觸憲法情事而為審理。揆諸本院釋字第二一六號解釋，聲請意旨係就前司法行政部發布關於強制執行事件之兩項函示，發生牴觸關稅法疑義，聲請解釋，該號解釋則對法官在審判上不受司法行政機關所發命令拘束，作成明確之釋示。釋字第二八九號解釋，其聲請意旨僅係主張財務案件處理辦法第六條有牴觸憲法之疑義，本院大法官則解釋同辦法之訂定係法制未備前之措施，爰定期間宣告辦法之全部失其效力。釋字第三二四號解釋，其聲請意旨係謂海關管理貨櫃辦法第二十六條規定有牴觸憲法之疑義，上開解釋則附加「該辦法尚涉及公法契約之問題，關於公法契約之基本規範，亦宜由有關機關儘速立法，妥為

which the people petition for a constitutional interpretation, the purposes thereof are not only to protect the fundamental rights of the parties concerned, but also to elaborate on the genuine intent of the Constitution so as to safeguard the constitutional order. Therefore, the scope of interpretation may, of course, so extend as to review the constitutionality of the provisions of law relevant and necessary to a specific case. For instance, in respect of J. Y. Interpretation No. 216, the purport of the petition for interpretation was that there had been questions about two directives issued by the erstwhile Ministry of Judicial Administration in regard to compulsory enforcement matters, which were thought to be in conflict with the Customs Act. The said interpretation gave a clear explanation that judges are not bound by directives issued by a judicial administration body. As for J. Y. Interpretation No. 289, the purport of the petition for interpretation was merely that Article 6 of the Regulation on the Handling of Financial Matters might have violated the Constitution. Nonetheless, the Justices opined that said Regulation had been a temporary

訂定。」釋字第三三九號解釋，其聲請人謂財政部六十六年十二月二十日台財稅字第三八五七二號函釋意旨牴觸憲法第十九條及貨物稅條例第十八條規定，並違反「從新從輕」之原則，本院大法官則併將六十年一月九日修正公布之貨物稅條例第十八條第一項第十二款規定宣告應不予援用。釋字第三九六號解釋，其聲請人係以公務員懲戒法未規定審級救濟，牴觸憲法第十六條關於保障人民訴訟權之意旨，聲請解釋。本院大法官則引申其義，謂懲戒機關應採法院之體制，懲戒案件之審議亦應本正當法律程序之原則，對被付懲戒人予以充分之程序保障，為合憲性之立法建制之宣示。此外，本院大法官對於立法委員依司法院大法官審理案件法第五條第一項第三款規定提出之聲請所為釋字第四三六號解釋，亦就聲請意旨涉及軍事審判制度之全盤，宣示「為貫徹審判獨立原則，關於軍事審判之審檢分立、參與審判軍官之選任標準及軍法官之身分保障等事項，亦應一併檢討改進。」以上僅就本院解釋中擇其數則而為例示，足以說明大法官解釋憲法之範圍，不全以聲請意旨所述者為限。本件聲請人因違反集會遊行法案件，經台灣高等法院八十三年度上易字第五二七八號刑事判決以

measure adopted before a full-fledged statute was in place, and thus declared a deadline for said Regulation to completely cease to be effective. As to J. Y. Interpretation No. 324, the purport of the petition for interpretation was that Article 26 of the Regulation Governing the Customs Supervision of Containers might have been in conflict with the Constitution. The said interpretation added, *inter alia*, that “said Regulation also concerns the issues of contracts under public law, and, as such, the authorities concerned should enact appropriate laws as soon as possible in regard to the basic norms of contracts under public law.” As to J. Y. Interpretation No. 339, the petitioner at issue alleged that Directive TTS-38572 issued by the Ministry of Finance on December 20, 1977, was not only inconsistent with Article 19 of the Constitution and Article 18 of the Commodity Tax Act, but also in violation of the principle of “preference of later in time and slighter in degree.” The Justices, however, also declared that Article 18-I (xii) of the Commodity Tax Act as amended and promulgated on January 9, 1971, should no longer apply. In respect

犯集會遊行法第二十九條之罪處以刑罰，因認其於憲法第十四條規定所保障之集會自由遭受不法侵害，對於確定判決所適用集會遊行法以不確定法律概念賦予警察機關事前抑制與禁止集會、遊行，發生有牴觸憲法之疑義，聲請解釋。查聲請人所以受刑事法院判以罪刑，雖係因舉行室外集會、遊行未依集會遊行法第九條第一項規定於六日前向主管機關申請，致未獲許可，竟引導車隊及群眾遊行，經主管機關命令解散而不解散，仍繼續舉行，經制止而不遵從，為其原因事實，其牽涉之問題實係集會遊行法第八條第一項前段規定室外集會、遊行應向主管機關申請許可及相關規定是否牴觸憲法所發生之疑義，殊難僅就同法第九條第一項所定申請期限是否違憲一事為論斷。從而本件解釋應就集會遊行法所採室外集會、遊行應經事前申請許可之制度是否有牴觸憲法之疑義而為審理。

of J. Y. Interpretation No. 396, the petitioner filed a petition for interpretation on the ground that the Public Functionaries Disciplinary Act was in violation of Article 16 of the Constitution, which is intended to protect the people's right to institute legal proceedings, for failure to provide for any remedial hierarchy. Nonetheless, the Justices went beyond the purport of said petition to pronounce that the disciplinary authority should follow the court system and that, in deliberating on disciplinary matters, adequate procedural protection should be provided to a person subject to discipline based on the principle of due process of law, which is a pronouncement on the constitutionality of an organizational system. Additionally, in respect of J. Y. Interpretation No. 436, rendered in response to the petition filed by the legislators in accordance with Article 5-I (iii) of the Constitutional Interpretation Procedure Act, the justices declared that "such matters as the separation of the bench and the prosecution in a court-martial trial, the criteria for the selection of military officers participating in such a trial and the guarantee of court-martial

judgeship, should be reviewed and improved at once so as to maintain the principle of judicial independence.” The foregoing are merely some examples of the interpretations made by this Court, which should be sufficient to explain that the scope of constitutional interpretation is not always limited to the purport of a petition. Criminal penalty was imposed on the petitioners at issue by the Taiwan High Court as per its Judgment S.Y.T No. 5278 (H. Ct., 1994) for violation of the Assembly and Parade Act. A petition for interpretation was duly filed by the petitioners on the ground that their constitutionally protected freedom of assembly as provided in Article 14 of the Constitution was wrongfully infringed upon, and that they had questions about the constitutionality of the Assembly and Parade Act relied upon by the court of last resort in its final judgment as said Act, by means of indefinite concepts of law, had empowered the police agency to restrain and prohibit an assembly or a parade prior to the occurrence thereof. The facts relevant to the criminal penalty imposed by a criminal court on the petitioners are that they failed

to submit an application to the competent authority six days prior to the outdoor assembly or parade in accordance with Article 9-I of the Assembly and Parade Act, that they nonetheless led the motorcade and the crowd marching in procession without approval, that they continued the march disregarding the order to disperse given by the competent authority, and that they disobeyed the order to stop given by same. Actually, the genuine issues involved should be the questions about the constitutionality of the first part of Article 8-I of the Assembly and Parade Act, which provides that an application for approval should be submitted to the competent authority in respect of an outdoor assembly or parade, as well as the relevant provisions. It is hard to merely pass any judgment on the constitutionality of the deadline for application as set forth in Article 9-I of said Act. Therefore, this Interpretation should rightfully examine the questions about the constitutionality of the Assembly and Parade Act in adopting the system of prior approval in respect of an outdoor assembly or parade.

Furthermore, Article 14 of the Constitution provides that the people have freedom of assembly. Like Article 11 of the Constitution, which provides for the freedom of speech, teaching, writing and publication, it is also a kind of freedom of expression. Based on the idea that sovereignty lies with the people, the people shall enjoy the right to freely discuss and fully express their opinions so that facts will be sought after and the truth will be discovered, and that the public will be formed by means of the democratic process to propose policies and enact laws. Therefore, the freedom of expression is the most important fundamental human right in practicing democracy. The purposes of the State, in protecting said right of the people, are to respect the dignity of an individual's independent existence and his or her autonomy to freely engage in activities. Of those rights, the freedom of assembly is mainly a form of freedom of speech exercised by the people through action, whereas the freedoms of teaching, writing, and publication are expression of opinions in spoken or written form. For the general public who do not have easy ac-

次查憲法第十四條規定人民有集會之自由，此與憲法第十一條規定之言論、講學、著作及出版之自由，同屬表現自由之範疇。本於主權在民之理念，人民享有自由討論、充分表達意見之權利，方能探究事實，發見真理，並經由民主程序形成公意，制定政策或法律。因此，表現自由為實施民主政治最重要的基本人權。國家所以保障人民之此項權利，乃以尊重個人獨立存在之尊嚴及自由活動之自主權為目的。其中集會自由主要係人民以行動表現言論自由；至於講學、著作、出版自由係以言論或文字表達其意見，對於一般不易接近或使用媒體言論管道之人，集會自由係保障其公開表達意見之重要途徑。依集會遊行法第二條規定，所謂集會係指於公共場所或公眾得出入之場所舉行會議、演說或其他聚眾活動。遊行則指於市街、道路、巷弄或其他公共場所或公眾得出入之場所之集體行進。集會自由以集體方式表達意見，為人民與政府間溝通之一種方式。人民經由此方式，主動提供意見於政府，參與國家意思之形成或影響政策之制定。從而國家在消極方面應保障人民有此自由而不予干預；積極方面應提供適當集會場所，並保護集會、遊行之安全，使其得以順利進行。又集

cess to the media, the freedom of assembly is an important means to express their opinions openly. According to Article 2 of the Assembly and Parade Act, an assembly is a meeting, speech or any other crowd-gathering activity held on the streets, roads, lanes or alleys, or at any other public places or areas accessible to the general public. A parade is a march by a crowd on the streets, roads, lanes or alleys or at any other public places or areas accessible to the general public. The freedom of assembly is a collective expression of opinions, which is a means of communication between the people and the government. By such means, the people may take the initiative in offering their opinions to the government, thus participating in the formation of the State's will or influencing the policy-making process. Accordingly, the State should not only passively protect said right of the people and not interfere with it, but also actively provide appropriate places for assembly and protect the safety of assemblies and parades so as to facilitate their smooth proceeding. Moreover, the protection of the freedom of assembly should not only

會自由之保障，不僅及於形式上外在自由，亦應及於實質上內在自由，俾使參與集會、遊行者在毫無恐懼的情況下進行。是以法律限制集會、遊行之權利，除應遵守憲法第二十三條必要性原則外，尚須符合明確性原則，使主管機關於決定是否限制人民之此項權利時，有明確規定其要件之法律為依據，人民亦得據此，依正當法律程序陳述己見，以維護憲法所保障之權利。



extend to the extrinsic freedom in form, but also to the intrinsic freedom in essence, thus enabling the participants in an assembly or a parade to proceed without fear. Therefore, in restricting the rights of assembly and parade by law, the principle of necessity as provided in Article 23 of the Constitution, as well as the principle of clarity and definiteness of law, must be complied with. Thus, the competent authority, in deciding if said right of the people should be restricted, will have a clearly defined legal basis to act upon, whereas the people, on the same basis, may also express their opinions under due process of law so as to preserve their constitutional right.

An assembly or a parade may be held either indoors or outdoors. An outdoor assembly or parade inevitably will affect public peace and safety, traffic order, quality of residence, or environmental sanitation. In order to prevent infringement upon other people's freedom, to maintain social order or public interests, the State may certainly make laws to impose necessary restrictions. Having con-

按集會、遊行有室內、室外之分，其中室外集會、遊行對於他人之生活安寧與安全、交通秩序、居家品質或環境衛生難免有不良影響。國家為防止妨礙他人自由、維持社會秩序或公共利益，自得制定法律為必要之限制。其規範之內容仍應衡量表現自由與其所影響社會法益之價值，決定限制之幅度，以適當之方法，擇其干預最小者為之。對於集會、遊行之限制，大別之，有追懲

sidered the value of the freedom of expression and that of other legally recognized and protected interests of the society affected by said freedom, in formulating relevant regulations, the extent of restrictions should then be determined, using proper methods and selecting the least intrusive means. In respect of the restrictions on an assembly or a parade, there are roughly three systems in place, i.e., the punitive, reporting and approval systems. Article 8-II of the Assembly and Parade Act provides that no application for approval is required for an indoor assembly. Although the first part of Paragraph I of said Article provides that an application for approval shall be submitted to the competent authority in the case of an outdoor assembly or parade, the proviso thereof excludes its application to the following: (i) (an assembly or a parade) held in accordance with law or regulation; (ii) academic, artistic, literary, travel, or sports contests or other activities of similar nature; and (iii) religious, folk, wedding, funeral, festive, or celebratory activities. Apparently, the system of approval is the one adopted by the Assembly and Parade

制、報備制及許可制之分。集會遊行法第八條第二項規定室內集會無須申請許可，同條第一項前段雖規定室外集會、遊行，應向主管機關申請許可，惟其但書則規定：一、依法令規定舉行者。二、學術、藝文、旅遊、體育競賽或其他性質相類之活動。三、宗教、民俗、婚、喪、喜、慶活動，則均在除外之列，可見集會遊行法係採許可制。對此事前行政管制之規定，判斷是否符合憲法第二十三條之比例原則，仍應就相關聯且必要之規定逐一審查，並非採用追懲制或報備制始得謂為符合憲政原則，採用事前管制則係侵害集會自由之基本人權。聲請意旨執此指摘，自非有理由。於事前審查集會、遊行之申請時，苟著重於時間、地點及方式等形式要件，以法律為明確之規定，不涉及集會、遊行之目的或內容者，則於表現自由之訴求不致有所侵害。主管機關為維護交通安全或社會安寧等重要公益，亦得於事前採行必要措施，妥為因應。

Act. In deciding whether the relevant provisions regarding prior administrative control are in line with the principle of proportionality set forth in Article 23 of the Constitution, the provisions of law relevant and necessary to a specific case must be examined one by one. It ought not to be reasoned that the system will be unconstitutional unless either the punitive system or reporting system is adopted, or that the system will be in violation of the freedom of assembly as a fundamental human right if the system of approval is used. Having so framed its argument, the purport of the petition at issue is considered groundless. In conducting a prior review of an application for an assembly or a parade, if the focus is on such formal requirements as time, place and methods, which are clearly prescribed by law, but not on the purposes or contents of the assembly or parade, there should be no infringement upon the freedom of expression. In order to maintain important public interests such as traffic safety or social peace, the competent authority may also take necessary precautions in advance and respond properly.

Article 11 of the Assembly and Parade Act provides that an application for an outdoor assembly or parade shall be approved unless any of the situations described in said Article exists. Hence, excepting any of the various situations described in said article, the competent authority is not allowed to deny any application for an assembly or a parade. As such, it is a system of guided approval. The constitutionality of the various situations enumerated in Article 11 of the Assembly and Parade Act will be explained as follows:

Subparagraph I: “Any violation of Articles 4, 6 or 10.” Article 4 thereof provides, “There shall be no advocacy of communism or secession of territory during an assembly or a parade.” “Advocacy of communism or secession of territory” is a political position. By making it a requirement for approval or denial of an assembly or parade, the competent authority is empowered to review the speech itself, thus abridging the freedom of expression as a fundamental right. Despite the provision of Article 5-V of the

集會遊行法第十一條規定申請室外集會、遊行，除有同條所列情形之一者外，應予許可。從而申請集會、遊行，苟無同條所列各款情形，主管機關不得不予許可，是為準則主義之許可制。茲就集會遊行法第十一條所列各款情形，是否符合憲法意旨，分述之。

第一款：「違反第四條、第六條、第十條之規定者。」按第四條規定「集會遊行不得主張共產主義或分裂國土。」所謂「主張共產主義或分裂國土」原係政治主張之一種，以之為不許可集會、遊行之要件，即係賦予主管機關審查言論本身的職權，直接限制表現自由之基本權。雖然憲法增修條文第五條第五項規定：「政黨之目的或其行為，危害中華民國之存在或自由民主之憲政秩序者為違憲。」惟政黨之組成為結社自由之保障範圍，且組織政黨既無須事前許可，須俟政黨成立後發生其目

Amendments to the Constitution, which reads, “A political party shall be considered unconstitutional if its goals or active ties endanger the existence of the Republic of China or the nation's constitutional order of freedom and democracy,” the organization of a political party is protected under the freedom of association. Besides, the organization of a political party does not require prior approval, and cannot be prohibited unless and until, subsequent to the establishment of the party, its goals or activities endanger the existence of the Republic of China or the nation's constitutional order of freedom and democracy, and a judgment is rendered by the Constitutional Court ordering its dissolution. There is no point in any existing law that forbids organizing a political party in advance. The Ministry of the Interior's contention that Article 4 of the Assembly and Parade Act echoes the aforesaid provisions of Article 5 of the Amendments to the Constitution is simply not well reasoned. By making violation of Article 4 of the Assembly and Parade Act a requirement for denial of an assembly or a parade, the competent authority is em-

的或行為危害中華民國之存在或自由民主之憲政秩序者，經憲法法庭作成解散之判決後，始得禁止，現行法律亦未有事前禁止組成政黨之規定。相關機關內政部以集會遊行法第四條與憲法增修條文第五條上開規定相呼應云云，自非可採。以違反集會遊行法第四條規定為不許可之要件，係授權主管機關於許可集會、遊行以前，先就言論之內容為實質之審查。關此，若申請人於申請書未依集會遊行法第九條第一項第二款規定，於集會、遊行之目的為明確之記載，則主管機關固無從審查及此，至若室外集會、遊行經許可後發見有此主張，依當時之事實狀態為維護社會秩序、公共利益或集會、遊行安全之緊急必要，自得依同法第十五條第一項撤銷許可，而達禁止之目的；倘於申請集會、遊行之始，僅有此主張而於社會秩序、公共利益並無明顯而立即危害之事實，即不予許可或逕行撤銷許可，則無異僅因主張共產主義或分裂國土，即禁止集會、遊行，不僅干預集會、遊行參與者之政治上意見表達之自由，且逾越憲法第二十三條所定之必要性。又集會遊行法第六條係規定集會、遊行禁制區，禁止集會、遊行之地區為：一、總統府、行政院、司法院、考試院、各級法院。二、

powered to conduct a substantive review of the contents of the speech prior to the assembly or parade. In that regard, if an applicant does not specify in the application the purposes of an assembly or a parade in accordance with Article 9-I (ii) of the Assembly and Parade Act, then the competent authority will not be able to review such purposes. If such advocacy is later found during a previously approved outdoor assembly or parade, the permission may certainly be withdrawn in accordance with Article 15-I of said Act to achieve the objective of prohibiting the assembly or parade based on the facts and circumstances and as dictated by the urgency and necessity of maintaining social order, public interests or the safety of the assembly or parade. If, at the beginning of the application for an assembly or parade, the mere existence of such advocacy does not pose any clear and present danger to social order or public interests, but the application is nonetheless denied or an approval thereof is withdrawn, it is tantamount to prohibiting the assembly or parade merely for its advocacy of communism or secession of territory. As such, it

國際機場、港口。三、重要軍事設施地區。其範圍包括各該地區之週邊，同條第二項授權內政部及國防部劃定之。上開地區經主管機關核准者，仍得舉行。禁制區之劃定在維護國家元首、憲法機關及審判機關之功能、對外交通之順暢及重要軍事設施之安全，故除經主管機關核准者外，不得在此範圍舉行集會、遊行，乃為維持社會秩序或增進公共利益所必要，同條就禁制地區及其週邊範圍之規定亦甚明確，自屬符合法律明確性原則，並無牴觸憲法情事。至集會遊行法第十條規定不得為應經許可之室外集會、遊行之負責人、其代理人或糾察員資格係：一、未滿二十歲者。二、無中華民國國籍者。三、經判處有期徒刑以上之刑確定，尚未執行或執行未畢者。但受緩刑之宣告者，不在此限。四、受保安處分或感訓處分之裁判確定，尚未執行或執行未畢者。五、受禁治產宣告尚未撤銷者。以上規定限制集會、遊行之負責人、其代理人或糾察員應具中華民國國籍、具有完全行為能力之人、經法院判處有期徒刑以上之刑確定、或受保安處分、感訓處分之裁判確定，已執行完畢或受緩刑之宣告者，係限制此等人員主導公意之形成，要屬立法機關之職權行使範圍，與憲法第二十

not only interferes with the participants' freedom to express their political opinions, but also goes beyond the necessity as set forth in Article 23 of the Constitution. Furthermore, Article 6 of the Assembly and Parade Act provides for a restricted area for an assembly or a parade, which include the following: (i) Office of the President, Executive Yuan, Judicial Yuan, Examination Yuan, and various levels of courts; (ii) international airports and sea-ports; and (iii) important military facilities. The scope thereof includes the areas adjacent to the respective areas, which should be demarcated by the Ministry of the Interior and the Ministry of National Defense, as authorized by Paragraph II of said Article. Upon approval by the competent authority, an assembly or a parade may still be held in the aforesaid areas. The demarcation of the restricted areas is intended to preserve the functions of the head of state, constitutional organs and adjudicative body, unhindered flow of traffic and communications, and security of important military facilities. Therefore, no assembly or parade shall be held in said areas except as otherwise approved

三條規定亦無違背。

by the competent authority, which is necessary to maintain social order or to advance public interests. As the provisions of said Article are quite clear as to the restricted areas and adjacent areas, there is no breach of the principle of clarity and definiteness of law, and thus no violation of the Constitution. Article 10 of the Assembly and Parade Act provides for the negative qualifications for the person in charge of the assembly or parade that requires approval, as well as his or her agent or picket. Such qualifications are as follows: (i) any person under the age of twenty; (ii) any person who is not an R.O.C. citizen; (iii) any person who has been conclusively sentenced to imprisonment for a definite term, with such imprisonment not yet having been completed, except one who is on probation; (iv) any person who is subject to rehabilitative or reformatory measures that have not been completed; or (v) any person who is subject to interdiction, which has not been revoked. The foregoing provisions, which limit the responsible person, his or her agent or picket to one who is an R.O.C. citizen, with full and complete



legal capacity, and, if conclusively sentenced to a fixed-term imprisonment or subject to rehabilitative or reformatory measures, has fully served such term or punishment or is on probation, are meant to restrain such person from playing a leading role in the formation of the public will. As such, it is in the legislature's power and authority to do so, which does not contradict Article 23 of the Constitution.

Subparagraph II: "There are facts showing the likelihood that national security, social order or public welfare will be jeopardized." An assembly or a parade is a group activity engaged in by numerous persons to achieve a particular common goal, which, in a democratic society, is a means through which the people express their opinions in respect of the administrative measures of the government so as to form the public will. In order to ensure social order and safety, the constitutionally protected assemblies and parades must be conducted in a peaceful manner. Furthermore, the law shall not impose any restrictions thereupon unless an assembly

第二款：「有事實足認為有危害國家安全、社會秩序或公共利益之虞者。」按集會、遊行乃多數人為達到特定共同目的而從事的群體活動，在民主社會中，人民對於政府施政措施，常藉此方式表達意見，形成公意。為確保社會安寧秩序，憲法所保障之集會、遊行，必須以和平方式為之，若逾此限度，法律始得加以限制，惟法律限制之要件，應明確而具體。本款規定所稱「危害國家安全、社會秩序或公共利益」均為概括條款，有欠具體明確，委諸主管之警察機關，於短期間內判斷有此事實足認有妨害上開法益之虞，由於室外集會、遊行難免對他人之自由、社會秩序或公共利益有不利影響，主管機

or a parade is in violation of the law, provided that such law shall still be clear and definite in formulating its restrictive conditions. The phrase “national security, social order or public welfare will be jeopardized” as contained in said subparagraph is a generalized provision lacking specificity and definiteness, which empowers the competent police agency to pass judgment on the existence or non-existence of said facts within a short period. As such, it is likely to infringe upon the aforesaid legally recognized and protected interest. Since an outdoor assembly or parade inevitably will affect the freedom of other people, social order or public interests, it is more likely than not that the people’s freedom of assembly will be interfered with and thus such provision is not in line with the legislative intent of Article 11 of the Assembly and Parade Act in limiting the competent authority’s power of discretion, if the mere basis on which the competent authority, after conducting a substantive review of the facts short of a clear and present danger, may either approve or deny an application is the possibility of future occurrence.

關對此尚未達到明顯而立即危險之事實若為實質審查，僅憑將來有發生之可能，即以之為準否之依據，易生干預人民集會自由之情事，與集會遊行法第十一條限制主管機關裁量權之立法意旨亦有未符。是本款規定列為事前審查之許可要件，即係侵害憲法所保障集會自由之權利。至若應經許可之集會、遊行未經許可者；或經許可以後有明顯而立即危險之事實者，主管機關為維護集會、遊行安全之緊急必要，得分別依集會遊行法第二十五條第一項第一款及第十五條第一項為適當之處置；又已有明顯而立即危險之事實發生，猶申請集會、遊行助長其危害之情事者，仍得不予許可，要屬當然。

Therefore, the requirements subject to prior censorship as listed in said subparagraph have infringed upon the constitutional right and freedom to assemble. As for an assembly or a parade subject to approval, if no approval is obtained or if, subsequent to approval, there are any facts showing a clear and present danger, the competent authority, as dictated by the urgency and necessity of maintaining the safety of the assembly or parade, may take appropriate action in accordance with Articles 25-I (i) and 15-I of the Assembly and Parade Act, respectively. Additionally, in the event that an application for an assembly or a parade is submitted despite a factual showing of clear and present danger, which will intensify the danger, the approval may be denied as a matter of course.

Subparagraph III: “There is likelihood that public safety or freedom will be jeopardized, or there will be serious damage to property.” The provision of said subparagraph is inconsistent with the constitutional intent partly due to the reasons described in the preceding paragraph. Ad-

第三款：「有危害生命、身體、自由或對財物造成重大損壞之虞者。」此款規定與憲法意旨不符，其理由除前段所述外，所稱「有危害生命、身體、自由或對財物造成重大損壞之虞者」，如僅一二參與者有此情形，是否即得不許可其他參與人舉辦集會、遊行；又既

ditionally, in respect of the “likelihood that public safety or freedom will be jeopardized, or there will be serious damage to property,” is it appropriate to deny other participants the right to hold an assembly or a parade if merely a couple of participants have acted to that effect? Besides, even though there is the abovementioned “likelihood”, it has not gone so far as to give rise to criminal liability. In case any behavior breaches peace or order, resort to the penal provisions of the Social Order Maintenance Act should suffice. If an assembly or a parade is prohibited simply due to such situation, the principle of proportionality will be violated. Since the criteria for determining “likelihood” is neither specific nor clear, a substantive review thereof conducted by the competent authority prior to the assembly or parade will be in violation of the constitutional intent to protect such right. As with the preceding subparagraph, if any major event occurs subsequent to the approval of an outdoor assembly or parade, the competent authority, as dictated by the urgency and necessity of maintaining the safety of the assembly or parade, may still

有危害生命、身體、自由或對財物造成重大損壞之虞，即尚未至構成刑事責任之程度；倘有妨害安寧秩序之行為，則有社會秩序維護法之規定可資處罰。以有此情形，即禁止為集會、遊行，亦違反比例原則。所謂「之虞」認定之標準如何，既欠具體明確，則在舉辦集會、遊行以前，由主管機關就此為實質上之審查，與憲法保障之旨意，不無違背。室外集會、遊行於許可以後，若發生重大事故，主管機關為維護集會、遊行安全之緊急必要，仍有同法第十五條第一項前段規定之適用，與前款所述同。

act in accordance with the first part of Article 15-I of said Act.

Subparagraph IV: “The same time, place, and route have been applied for by another and been approved.” If the same time, place, and route have been applied for by another and been approved, any additional assembly or parade, if approved, will give rise to confusion over the objectives of the assemblies or parades. And if the assemblies or parades are held in different ways, the possibility of breaching the social order will be even higher. If any people oppose the assembly or parade, the chance of crowd-agitating conflicts will increase proportionally. According to Article 26 of the Assembly and Parade Act, if the competent authority denies an application in accordance with said provision, it shall still do so in an equitable manner within the necessary scope of achieving the objectives after taking into consideration the balance and preservation of the people’s right to assemble and parade and other legally recognized and protected interests. Thus, the provision of said subparagraph is consis-

第四款：「同一時間、處所、路線已有他人申請並經許可者。」同一時間、處所、路線已有他人申請集會、遊行，並經許可者，如再許可舉辦集會、遊行，將發生集會、遊行目的之混淆；倘舉辦之方式不同，其妨礙社會秩序之可能性亦更擴大，遇有反制集會、遊行，激起群眾衝突之機會即相對增加。主管機關依此規定不予許可時，依集會遊行法第二十六條規定，固應公平合理考量人民集會、遊行權利與其他法益間之均衡維護，於不逾越所欲達成目的之必要限度，以適當之方式為之。此款規定符合憲法意旨。

tent with the constitutional intent.

Subparagraph V: “An application is submitted by a group that is not established according to the law, or permission for its establishment has been withdrawn, or it has been ordered to dissolve.” The provision of said subparagraph limits an applicant for an assembly or a parade to a natural or juristic person, or any other group duly established pursuant to law due to the provisions of Article 7-I of the Assembly and Parade Act, which provides, “There shall be a person in charge of an assembly or parade,” and Article 7-II thereof, which further provides, “In respect of an assembly or a parade held by a group duly established according to the law, the responsible person thereof shall be the representative of the group or anyone designated by him or her.” A complete background check may be conducted on the representative of a group duly established according to the law, and an objective basis also exists, on which the identity of the responsible person will be determined. As such, it falls within the scope of legislative discretion and, there-

第五款：「未經依法設立或經撤銷許可或命令解散之團體，以該團體名義申請者。」本款規定所以限制集會、遊行之申請人為自然人、法人或其他經依法設立之團體，乃因集會遊行法第七條第一項規定：「集會、遊行應有負責人。」第二項又規定：「依法設立之團體舉行之集會、遊行，其負責人為該團體之代表人或其指定之人。」對於依法設立團體之代表人得為確實之審查，負責人之身分亦有客觀的認定依據，屬於立法自由形成範圍，尚未抵觸憲法意旨。

fore, is not in violation of the constitutional intent.

Subparagraph VI: “The application does not conform to the provisions of Article 9.” Article 9-I of the Assembly and Parade Act provides that the person in charge of an outdoor assembly or parade shall fill out an application form, which shall be submitted to the competent authority for approval six days prior to the assembly or parade, specifying the following: (i) the personal information of the responsible person or his or her agent or picket, such as his or her name, residence, etc.; (ii) the purpose, methods, and the beginning and ending time of the assembly or parade; (iii) the place of the assembly or the route of the parade and the roundup and breakup points; (iv) the expected number of participants; and (v) the total number of vehicles and each vehicle’s license number and/or types and numbers of articles. However, an application may be submitted two days prior to an assembly or a parade where there is any justifiable reason because of any natural disaster or any other unforeseeable

第六款：「申請不合第九條規定者。」集會遊行法第九條第一項係規定室外集會、遊行，應由負責人填具申請書，載明：一、負責人或其代理人、糾察員之姓名、住所等人別事項。二、集會、遊行之目的、方式及起訖期間。三、集會處所或遊行之路線及集合、解散地點。四、預定參加人數。五、車輛、物品之名稱、數量。於六日前向主管機關申請許可。但因天然災變或其他不可預見之重大事故而有正當理由者，得於二日前提出申請。同條第二項則規定代理人應提出代理同意書，集會處所之表明應檢具該處所之所有人或管理人之同意文件，遊行應檢具詳細路線圖。按室外集會、遊行對於他人之自由、社會秩序或公共利益難免產生影響。為避免集會、遊行活動侵害公益而對民眾之生活安寧與安全、交通秩序、居家品質或環境衛生產生影響或發生侵害情事，責令負責人於舉行集會、遊行前六日，向主管機關申請許可，列舉參與集會、遊行之負責人、集會、遊行之目的、方式及起訖時間、集會處所、遊行之路線及集合、解散地點、預定參加人數及車

major accident. Paragraph II of said article further provides that an agent shall present a letter of consent on behalf of his or her agency, that a document showing consent from the owner or manager of the place of the assembly shall be made available, and that a detailed route map shall be made available in the case of a parade. An outdoor assembly or parade will inevitably affect the freedoms of other people, social order or public interests. In order to prevent the infringement upon public interests and thus any influence on or breach of public peace and safety, traffic order, quality of residence, or environmental sanitation, the responsible person is directed to file an application with the competent authority for approval six days prior to the assembly or parade, specifying the person in charge of the assembly or parade, the purpose, methods, and the beginning and ending time of the assembly or parade, the place of the assembly, the route of the parade and the roundup and breakup points, the expected number of participants, the total number of vehicles and each vehicle's license number, and/or the number and types of articles,

輊、物品之數量等，不惟使申請人有充裕時間準備，亦可使主管機關瞭解事態，預為綢繆，妥善規劃交通管制，避免交通陷於停滯或混亂，造成過度妨礙他人使用道路之權益。從而本款規定關此部分，尚未逾越憲法第二十三條規定之必要程度。惟集會遊行法第九條第一項但書規定：「因天然災變或其他不可預見之重大事故而有正當理由者，得於二日前提出申請。」既云集會、遊行係因天然災變或其他不可預見之重大事故而舉行，豈有餘裕於二日前提出申請？所謂偶發性集會、遊行，既係群眾對不可預見之重大事故所為之立即反應而引起，即不可能期待負責人於二日前提出申請，亦不可能期待於重大事故發生後二日始舉辦集會、遊行。是許可制於偶發性集會、遊行殊無適用之餘地。憲法第十四條規定保障人民之集會自由，並未排除偶發性集會、遊行，若依集會遊行法第九條第一項規定之要件以觀，則凡事起倉卒者，因不及於法定期間內提出申請，其集會、遊行概屬違反第九條規定而應不予許可，依此規定而抑制人民之集會、遊行，於憲法保障之基本人權，未盡相符，亟待檢討改進。



etc., so that an applicant may have enough time to prepare and the competent authority will be ready for the situation and take timely precautions by making adequate traffic control plans, thus avoiding traffic standstills or chaos that will result in excessive interference with the rights and interests of other road users. Therefore, in that respect, the provision of this subparagraph does not go beyond the extent of necessity as provided in Article 23 of the Constitution. Nonetheless, the proviso of Article 9-I of the said Act reads, "An application may be submitted two days (prior to an assembly or a parade) where there is any justifiable reason because of any natural disaster or any other unforeseeable major accident." Since it is exactly because of a natural disaster or other unforeseeable major accident that an assembly or a parade will be held, how can one be expected to have time enough to submit an application two days earlier since the decision to hold an incidental assembly or parade is triggered by the instantaneous response of the crowd to an unforeseeable major accident, it is not likely that any responsible person will

submit the application two days earlier, nor is it likely that an assembly or a parade will be held two days after the occurrence of the major accident. As such, the system of approval simply should not apply in the case of an incidental assembly or parade. Article 14 of the Constitution guarantees the people's freedom of assembly, which does not prohibit an incidental assembly or parade. In view of the requirements listed in Article 9-I of the Assembly and Parade Act, any and all applications for assemblies or parades not filed within the statutorily prescribed period due to the suddenness of the events will be denied for violation of the provisions of said Article 9. Restraining the people's constitutionally guaranteed fundamental right to assemble and parade in accordance with said provisions is not consistent with the Constitution and thus requires prompt and speedy review and revision.

Article 29 of the Assembly and Parade Act provides, "Where an assembly or a parade is not dispersed after an order to disperse by the competent authority is

集會遊行法第二十九條規定：  
「集會、遊行經該管主管機關命令解散而不解散，仍繼續舉行經制止而不遵從，首謀者處二年以下有期徒刑或拘

given, and is still in progress in disobedience of an order to stop, the chief violator shall be subject to imprisonment for a term of not more than two years or for detention.” In respect of an assembly or a parade, if any of the situations described in Article 25-I of said Act exist, the competent authority may warn, restrain, or issue an order to disperse. The said situations are as follows: (i) In the case of an assembly or a parade requiring approval, it is held without approval, or with approval having been withdrawn; (ii) There is any violation of the conditions or restrictive items for approval in the case of an approved assembly or parade; (iii) Taking advantage of the right to hold any of the types of assemblies or parades described in Article 8-I thereof, there is any violation of laws and/or regulations; and (iv) There is any other behavior in violation of laws and/or regulations. Article 11 of said Act provides that, unless any of the situations listed in the same article exist, the application for an outdoor assembly or parade shall be approved. To the extent that those items in regard to time, place, and manner are irrelevant to

役。」按集會、遊行而有同法第二十五條所定情事之一者，該管主管機關得予警告、制止或命令解散。其所定情事為：一、應經許可之集會、遊行未經許可或其許可經撤銷而擅自舉行者。二、經許可之集會、遊行，而有違反許可事項、許可限制事項者。三、利用第八條第一項各款集會、遊行，而有違反法令之行為者。四、有其他違反法令之行為者。同法第十一條規定申請室外集會、遊行，除有同條所列情形之一者外，應予許可。其中有關時間、地點及方式等未涉及集會、遊行之目的或內容之事項，與憲法保障集會自由之意旨尚無牴觸，則集會、遊行而有同法第二十五條所定情事者，該管主管機關為警告、制止或命令解散，與憲法第二十三條之規定亦無違背。倘集會、遊行經該管主管機關命令解散而不解散者，依同法第二十八條規定，處集會、遊行負責人或其代理人或主持人新台幣三萬元以上十五萬元以下罰鍰。此係規範集會、遊行不遵從主管機關所為解散命令，對於負責人、代理人或主持人所為之行政秩序罰。相互參酌，「經該管主管機關命令解散而不解散，仍繼續舉行經制止而不遵從」，第二十九條始對首謀者科以刑罰。因此，後者為前者之後續行為，應

the purposes or contents of the assembly or parade, the constitutional intent of protecting the freedom of assembly is not violated. And if any of the situations enumerated in Article 25 of said Act exist in respect of an assembly or a parade, the competent authority, in warning, restraining, or issuing an order to disperse, does not violate Article 23 of the Constitution, either. If an assembly or parade is not dispersed in compliance with the competent authority's order to disperse, the person in charge of the assembly or parade, or his or her agent or host shall be subject to an administrative fine of not less than NT\$30,000 but not more than NT\$150,000 in accordance with Article 28 of said Act. The foregoing is a penalty for offense against the order of administration, which is imposed on the person in charge of an assembly or a parade, or his or her agent or host for disobeying the competent authority's order to disperse. By cross-referencing, no criminal penalty will be inflicted upon the chief violator in accordance with Article 29 thereof unless and until "(an assembly or a parade) is not dispersed after an order to disperse by the

受處罰之人，亦未必相同。後者對於首謀者科以二年以下有期徒刑或拘役，乃處罰其一再不遵從解散及制止之命令。如再放任而不予取締，對於他人或公共秩序若發生不可預見之危險，主管機關亦無從適用刑事訴訟法之規定為必要之處分。至於社會秩序維護法第六十四條第一款規定之妨害安寧秩序須「意圖滋事，於公園、車站、輪埠、航空站或其他公共場所，任意聚眾，有妨礙公共秩序之虞，已受該管公務員解散命令，而不解散」為要件，刑法第一百四十九條規定之公然聚眾不遵令解散罪則須「公然聚眾，意圖為強暴脅迫，已受該管公務員解散命令三次以上，而不解散者」為處刑之對象。不論主觀要件與客觀要件，均與集會遊行法第二十九條規定之內容，有輕重之分，即不得指其違反憲法第二十三條規定之必要原則。又主管機關如何命令解散集會、遊行，以及用何種方式制止其繼續進行，涉及此項解散命令之當否，為事實認定問題。刑事法院於論罪科刑時，就犯罪行為之構成要件是否符合，應為確切之認定，尤其對於行為須出於故意為處罰之要件，亦應注意及之，乃屬當然。

competent authority is given, and is still in progress in disobedience of an order to stop.” Therefore, the latter is an act subsequent to the former, and different persons may be subject to punishment for the respective acts. In respect of the latter act, the reason to subject the chief violator to a punishment of imprisonment for a term of not more than two years or for detention is to punish his or her repeated refusal to obey the disbursal and restraining order. If the competent authority does not enforce it, not only will it pose unforeseeable danger to other people or public order, but the competent authority will not be in a position to take necessary action pursuant to the applicable provisions of the Code of Criminal Procedure. The requisite elements for breach of peace and order as provided in Article 64-I of the Social Order Maintenance Act are to “assemble a crowd haphazardly at a park, station, seaport, airport or any other public place with the intent to cause trouble, which is likely to interfere with the public order, and to not disperse after an order to disperse is given by the public functionary in charge.” And, as to the offense of a fla-

grant assembly of a crowd without regard to an order to disperse provided by Article 149 of the Criminal Code, the criminal penalty will be inflicted upon a person who “flagrantly assembles a crowd with the intent to engage in violence or coercion, and does not disperse it after three or more orders to disperse are given by the public functionary in charge.” The aforesaid provisions and Article 29 of the Assembly and Parade Act vary in their levels of severity as far as both subjective and objective elements are concerned, and thus there is no violation of the principle of necessity as provided in Article 23 of the Constitution. Additionally, the issues as to how the competent authority orders the dispersal of an assembly or parade, and in what manner it stops the assembly or parade from continuing, touch upon the appropriateness of the orders at issue and thus are questions of the facts. A criminal court, in weighing the offense and imposing a penalty, should make a precise determination as to whether the requisite elements of the criminal act are met. Needless to say, attention should also be paid to the existence of intent, especially,

as a requisite element for the punishment of the act at issue.

Justice Hsiang-Fei Tung filed dissenting opinion in part.

Justice Chi-Nan Chen filed dissenting opinion in part.

Justice Young-Mou Lin filed dissenting opinion in part.

本號解釋董大法官翔飛、陳大法官計男與林大法官永謀分別提出部分不同意見書。