

J. Y. Interpretation No.251 (January 19, 1990) *

ISSUE: Does the Act Governing the Punishment of Police Offences permitting the police department to take measures restricting physical freedom contravene the Constitution?

RELEVANT LAWS:

Article 8 of the Constitution (憲法第八條) ; Article 28 of the Act Governing the Punishment of Police Offenses (違警罰法第二十八條) .

KEYWORDS:

individual's physical freedom (人民身體自由) , reformatory education (矯正) , learning living skills (學習生活技能) , unconstitutional (違憲) .**

HOLDING: The detention and forced labor (hard labor) ordered by the police department under the Act Governing the Punishment of Police Offences (hereinafter "the Act") are types of punishment relating to physical freedom. It would be desirable to revise the law expeditiously, whereby these punishments may be decided by the courts in accordance

解釋文：違警罰法規定由警察官署裁決之拘留、罰役，係關於人民身體自由所為之處罰，應迅改由法院依法定程序為之，以符憲法第八條第一項之本旨，業經本院於中華民國六十九年十一月七日作成釋字第一六六號解釋在案。

* Translated by Professor Tsung-fu Chen.

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

with legal procedure, so as to conform to Article 8, Paragraph 1, of the Constitution. This tenor has been addressed under this Yuan's Interpretation No. 166 on November 7, 1980.

Article 28 of the Act provides the punishment of "sending (criminals) to a specific place for recorrection or for learning living skills." This punishment imposes restrictions on physical freedom; therefore, it does not conform to the Constitution when it is subject to the jurisdiction of the police department. This has to be revised, thereby allowing the courts to render decisions under legal procedure. The existing procedure regarding the detention and forced labor indicated in the former interpretation and the punishments addressed in this interpretation will be null and void after July 1, 1991. All relevant laws also have to be revised by that date. The Interpretation No. 166 thus has to be complemented.

REASONING: Under Article 8 of the Constitution, physical freedom shall be protected, and except in the case of

依違警罰法第二十八條規定所為「送交相當處所，施以矯正或令其學習生活技能」之處分，同屬限制人民之身體自由，其裁決由警察官署為之，亦與憲法第八條第一項之本旨不符，應與拘留、罰役之裁決程序，一併改由法院依法定程序為之。前述解釋之拘留、罰役及本件解釋之處分裁決程序規定，至遲應於中華民國八十年七月一日起失其效力，並應於此期限前修訂相關法律。本院釋字第一六六號解釋應予補充。

解釋理由書：按人民身體之自由，應予保障，除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程

flagrante delicto as provided by law, no person shall be arrested or detained other than by a judicial or a police agency in accordance with procedures provided by law. Further, individuals shall not be tried or punished other than by a court of law in accordance with procedures prescribed by law. Among the punishments provided by the Act are detention and forced labor, which are decided by the police and concern the individual's physical freedom. It would be desirable to revise the law expeditiously, whereby these punishments will be decided by the courts in accordance with legal procedure, so as to conform to the rule of the Constitution. This tenor has been addressed under this Yuan's Interpretation No. 166 on November 7, 1980.

Article 28 of the Act provides that "those who are loitering with intent or lazy and habitually commit offenses punishable by the police will receive severer punishments than others. They may be sent to a reformatory or be required to learn living skills in a specific place after being released from a prison." The so-called correction or learning living skills

序不得逮捕拘禁，非由法院依法定程序不得審問處罰，憲法第八條第一項定有明文。違警罰法所定之違警罰中，由警察官署裁決之拘留、罰役，係關於人民身體自由所為之處罰，應迅改由法院依法定程序為之，以符上開憲法規定之本旨，前經本院於中華民國六十九年十一月七日作成釋字第一六六號解釋公布在案。

違警罰法第二十八條規定：「因遊蕩或懶惰而有違警行為之習慣者，得加重處罰。並得於執行完畢後，送交相當處所，施以矯正或令其學習生活技能」。其所謂送交相當處所，施以矯正或令其學習生活技能，係附隨於違警罰之一種處分，同屬限制人民之身體自由。此種處分由警察官署逕為裁決，依前述解釋之同一理由，亦不符憲法第八

in a specific place are kinds of punishment imposed by the police, which restrict physical freedom. Such punishment is decided by the police and thus is contradictory to Article 8, Paragraph 1, of the Constitution, similar to the situation of the former interpretation. Those procedures relating to correction and learning living skills in a specific place, as well as detention and forced labor, shall be decided in a court under legal procedure. The procedures under the existing law will be null and void after July 1, 1991, and the relevant laws have to be revised by that date. The Interpretation No. 166 has to be complemented.

條第一項之本旨，應與拘留、罰役之裁決程序，一併改由法院依法定程序為之。前述解釋之拘留、罰役及本件解釋之處分裁決程序規定，至遲應於中華民國八十年七月一日起失其效力，並應於此期限前修訂相關法律。本院釋字第一六六號解釋應予補充。