

J. Y. Interpretation No.390 (November 10, 1995) *

ISSUE: Is the Regulation Governing Factory Set-up Registration constitutional in stipulating that a factory which fails to apply for setup registration, operate the business for proscribed purposes, or violates other related laws and regulations shall be closed or shall suspend operation without specific authorization of law?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條); Article 5, Subparagraph 2, of the Standard Act for the Laws and Rules (中央法規標準法第五條第二款); Article 19, Paragraph 1, of the Regulation Governing Factory Set-up Registration (工廠設立登記規則第十九條第一項) .

KEYWORDS:

factory set-up (工廠設立), restriction on people's rights (對人民權利之限制), administrative sanction (行政罰) .**

HOLDING: A person who violated the obligation imposed by the administrative law while setting up a factory was ordered to suspend or close the business under Article 19, Paragraph 1, of the Regulation Governing Factory Set-up Registra-

解釋文：對於人民設立工廠而有違反行政法上義務之行為，予以停工或勒令歇業之處分，涉及人民權利之限制，依憲法第二十三條及中央法規標準法第五條第二款規定，應以法律定之；若法律授權以命令為補充規定者，授權

* Translated by Professor Chin-Chin Cheng.

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

tion. According to Article 23 of the Constitution and Article 5, Subparagraph 2, of the Standard Act for the Laws and Rules, imposing an administrative sanction on people is related to the restriction on the people's rights. Therefore, it should be regulated under legislative law. If it is authorized by legislative law to issue orders as supplemental regulations, the purpose, content, and scope of the authorization should be concrete and definite. Article 19, Paragraph 1, of the Regulation Governing Factory Set-up Registration provides: "A factory will be ordered to suspend or close business fully or partially by the Construction Bureau if it fails to make a setup application, operate the business for proscribed purposes, or violates other relevant laws and regulations." This regulation is related to the restriction on the people's rights. However, it lacks the necessary authorization made by the legislative law. Therefore, it is contrary to Article 23 of the Constitution, and should be null and void no later than one year after the date of this proclamation after the promulgation of this Interpretation.

之目的、內容及範圍，應具體明確，始得據以發布命令。工廠設立登記規則第十九條第一項規定：「工廠不依照本規則之規定申請設立登記，或不依照核定登記事項經營，或違反其他工廠法令者，得由省（市）建設廳（局）予以局部或全部停工或勒令歇業之處分」，涉及人民權利之限制，欠缺法律授權之依據，與前述意旨不符，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

REASONING: A person who violates the obligation imposed by the administrative law while setting up a factory is ordered to suspend or close the business under Article 19, Paragraph 1, of the Regulation Governing Factory Set-up Registration. According to Article 23 of the Constitution and Article 5, Subparagraph 2, of the Standard Act for the Laws and Rules, imposing an administrative sanction on people is related to the restriction on the people's rights. Therefore, it should be regulated under legislative law. If it is authorized by legislative law to issue orders as supplemental regulations, the purpose, content, and scope of the authorization should be concrete and definite. This Yuan has held the same in Interpretations Nos. 313, 360 and 367. In order to regulate the establishment of factories, the Ministry of the Economy issued the Regulation Governing Factory Set-up Registration on July 31, 1991. The administrative sanction imposed by the Regulation is related to the people's rights as protected by the Constitution. Therefore, the administrative sanction imposed by the Regulation should be authorized under

解釋理由書：對於人民設立工廠而有違反行政法上義務之行為，予以停工或勒令歇業之處分，涉及人民工作權及財產權之限制，依憲法第二十三條及中央法規標準法第五條第二款規定，其處分之構成要件，應以法律定之；若法律就其構成要件，授權以命令為補充規定者，授權之目的、內容及範圍，應具體明確，始得據以發布命令。迭經本院釋字第三一三號、第三六〇號及第三六七號等解釋釋示有案。經濟部為管理國內工廠之設立，於中華民國八十年七月三十一日修正發布之工廠設立登記規則，其規定涉及限制憲法所保障之人民權利事項，依上開說明，仍應有法律或法律授權之依據始得為之。工廠設立登記規則第十九條第一項規定：「工廠不依照本規則之規定申請設立登記，或不依照核定登記事項經營，或違反其他工廠法令者，得由省（市）建設廳（局）予以局部或全部停工或勒令歇業之處分」，其中關於人民違反該規則之行為，得予以局部或全部停工或勒令歇業之處分部分，已涉及人民工作權及財產權之限制，此項規定既無法律上之明文，復欠缺法律授權之依據，與首開意旨不符，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

legislative law. Article 19, Paragraph 1, of the Regulation Governing Factory Set-up Registration provides: “A factory will be ordered to suspend or close business fully or partially by the Construction Bureau if it fails to make a setup application, operate the business for proscribed purposes, or violates other relevant laws and regulations.” A factory could be ordered to suspend or close business for violating the Regulation. The administrative sanction is related to the people’s right to work and their property rights. However, the provision is neither regulated nor authorized under legislative law. Therefore, it is contrary to Article 23 of the Constitution, and should be null and void no later than one year after the promulgation of this Interpretation.