

J. Y. Interpretation No.112 (April 27, 1966) *

ISSUE: In the case of repeated imposition of fines against a person who violated the obligations to take or refrain from taking specific actions, may a compulsory measure be enforced there-upon?

RELEVANT LAWS:

Articles 4 and 11 of the Administrative Execution Act (行政執行法第四條及第十一條) .

KEYWORDS:

direct compulsory measure (直接強制處分) , indirect measure (間接處分) .**

HOLDING: If an administrative agency, in accordance with the Administrative Execution Act, repeatedly imposes administrative fines against someone who violated the obligations to take or refrain from taking specific actions under Article 4 of the Act, but that person still refuses to perform his obligations, this still does not constitute the situation of not being able to enforce an indirect compulsory measure

解釋文：行政官署對於違反行政執行法第四條所定行為或不行為義務者，經依該法規定，反覆科處罰鍰，而仍不履行其義務時，尚非該法第十一條所稱不能行間接強制處分。自難據以逕行直接強制處分。

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described in Article 11 of the Act, and therefore does not justify a direct compulsory measure.

REASONING: In this case, the letter described a situation where administrative fines were repeatedly imposed. This therefore does not constitute a situation of not being able to enforce an indirect measure as described in Article 11 of the Administrative Execution Act. If the person who has the obligations still refuses to perform his obligations, the administrative agency shall explain to this person and admonish him that administrative fines will be continuously imposed, so as to encourage him to perform. It is not permissible to apply the direct compulsory measures immediately.

Justice Shi-Ding Chin filed dissenting opinion.

解釋理由書：本案據來文所述情形，既經依法反覆科處罰鍰，即非行政執行法第十一條所稱之不能行間接處分。如義務人仍不履行其行為或不行為之義務時，應由行政官署曉諭、告誡繼續科罰，以促其履行義務，不能遽行施以直接強制處分。

本號解釋金大法官世鼎提出不同意見書。