

J. Y. Interpretation No.166 (November 7, 1980) *

ISSUE: The Act Governing the Punishment of Police Offences permits the police to impose sanctions of administrative detention and forced labor upon offenders. Does the said Act constitute an infringement of physical freedom guaranteed by the Constitution?

RELEVANT LAWS:

Article 8, Paragraph 1 of the Constitution (憲法第八條第一項) ; Act Governing Offences Punished by the Police Offences (違警罰法) .

KEYWORDS:

personal freedom (個人自由) .**

HOLDING: The police sanctions of administrative detention and forced labor stipulated by the Act Governing the Punishment of Police Offences are sanctions on physical freedom. In order to comply with the requirements of Article 8, Paragraph 1, of the Constitution, these sanctions shall be promptly administered by courts based on legal process.

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。

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REASONING: Article 8, Paragraph 1, of the Constitution provides the guarantee of physical freedom. Except in the case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police department in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a court in accordance with the procedure prescribed by law. Although the police have the authority to arrest or detain people, any sanctions restricting physical freedom are within the court's exclusive jurisdiction. Since administrative detention and forced labor are sanctions on physical freedom, they shall be imposed by courts according to legal process. In other words, despite the fact that relevant provisions predated the Constitution and had not been amended for the public interest (social safety and danger prevention), reprehensible conduct still had to be subject to due punishment. According to the rule of changed circumstances, the more than thirty years since the passage of the abovementioned provisions had made it abundantly clear that, for the guarantee

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明文。是警察機關對於人民僅得依法定程序逮捕或拘禁，至有關人民身體自由之處罰，則屬於司法權，違警罰法所定由警察官署裁決之拘留、罰役，既係關於人民身體自由之處罰，即屬法院職權之範圍，自應由法院依法定程序為之，惟違警行為原非不應處罰，而違警罰法係行憲前公布施行，行憲後為維護社會安全及防止危害，主管機關乃未即修改，迄今行憲三十餘年，情勢已有變更，為加強人民身體自由之保障，違警罰法有關拘留、罰役由警察官署裁決之規定，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。

of physical freedom, the administrative detention and compulsory labor imposed by the police had to be transferred to the court as soon as possible to meet the requirements of Article 8, Paragraph 1, of the Constitution.