

J. Y. Interpretation No.233 (December 9, 1988) *

ISSUE: Does Article 108, Paragraph 1, of the Code of Criminal Procedure regarding the court's decree for extending detention contradict Article 8 of the Constitution?

RELEVANT LAWS:

Article 8 of the Constitution (憲法第八條); Article 108, Paragraph 1, of the Code of Criminal Procedure (刑事訴訟法第一百零八條第一項).

KEYWORDS:

personal freedom (身體自由), arrest (逮捕), detention (拘禁).**

HOLDING: Article 108, Paragraph 1, of the Code of Criminal Procedure regarding the court's decree for extending detention does not contradict Article 8 of the Constitution.

REASONING: The first sentence part of Article 8, Paragraph 1, of the Constitution clearly states that personal freedom shall be guaranteed to the people.

解釋文：刑事訴訟法第一百零八條第一項關於法院裁定延長羈押之規定，與憲法第八條並無牴觸。

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，憲法第八條第一項

* Translated by Ching P. Shih.

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Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. In respect of the person detained by the court under suspicion of having committed a crime, to compel the persons executing detention under the law to deal carefully with the matter, Article 108, Paragraph 1, of the Code of Criminal Procedure describes a restriction on the duration of detention. For the thorough fulfillment of the intention of the article of the Constitution mentioned above, this provision allows the court to extend a detention through a decree before the expiration of the duration of detention where it is necessary to further detain the suspect. Article 8, Paragraph 2, of the Constitution regards only the case of arrest and detention executed by the authorities other than the courts, but excludes the situation where the court extends a detention through a decree. Therefore, the detention executed by the courts will not incur the question of written notice and wherefore petition for a trial. However, to protect the personal

前段定有明文。人民因犯罪嫌疑經法院羈押者，為促使依法執行羈押人員審慎將事，刑事訴訟法第一百零八條第一項就羈押期間設有限制，其有繼續羈押必要者，許法院於期間未滿前，以裁定延長之，即為貫徹前開憲法條文之意旨。至憲法第八條第二項之規定，係指人民受法院以外機關之逮捕拘禁而言，不包括刑事訴訟法第一百零八條第一項之法院裁定延長羈押在內，故法院所為之羈押，不發生另書面告知並據以聲請提審之問題。惟為確切保障人民身體自由，法院所為延長羈押之裁定，應依照刑事訴訟法有關規定，及時使被告知悉，併予說明。

freedom completely, the decree for extending detention issued by the courts shall, according to the related provisions of the Code of Criminal Procedure, render the accused informed in due time.

Justice Chien-Tsai Cheng filed dissenting opinion.

本號解釋鄭大法官健才提出不同意見書。

