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**J.Y. Interpretation No. 535 (December 4, 2001)\***

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**Spot Checks Case**

**Issue**

Are the provisions in the Police Service Act concerning spot checks unconstitutional?

**Holding**

[1] The Police Service Act, provisions of which include police services and the division of functions and specification of methods by which police services are to be provided, is not merely an organic act, but also an act of regulatory nature. According to Article 11, Subparagraph 3 of the said Act, spot checks are authorized as a method of law enforcement to be used by the police. However, spot checks, including inspections, street checks or interrogations may have substantial effects upon personal freedom, property rights, and the right to privacy, and hence, such checks must be exercised in accordance with specific legal principles guiding police functions and law enforcement. In order to fully ensure constitutional protections of people's fundamental rights and freedoms, the requirements and procedures of spot checks as well as legal remedies for unlawful checks must be specifically prescribed in the law.

[2] The relevant provisions concerning spot checks in the aforementioned Act never delegate unlimited authority to the police to exercise any check, law enforcement or interrogation without due consideration of time, place, manner or subjects. Unless otherwise prescribed in the law, the police shall limit checking

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\* Translation and Note by Wen-Chen CHANG

authority to public transportation, public places, or other places where danger exists or may exist according to reasonable and objective judgment. Among these places, some places may be private residences that must be protected to the same extent as a home. The police shall not exercise checking authority over any persons unless there is a reasonable belief that actions taken by such persons have caused or may cause danger; and in so doing, police must abide by the principle of proportionality and not go beyond the necessity. Before conducting any checks, police must inform the persons immediately of the reasons for exercising such checks and identify themselves clearly as law enforcement officers. Any spot check must be conducted on the spot. Unless the consent of persons to be checked is given, or if there is no alternative to identify persons to be checked, or if conducting on-the-spot checks may have harmful effects or jeopardize traffic flow or public tranquility, police are not permitted to request checked persons to go to a police station for further interrogation. After the identification of such persons is confirmed, police should permit them to leave without delay unless they are suspected of having committed a crime, in which case criminal law procedures should apply. To the extent that Article 11, Subparagraph 3, of the aforementioned Act is construed and applied, it is constitutional and not inconsistent with the constitutional protection of human rights. Nevertheless, the current laws concerning law enforcement are not sufficient; therefore, the competent authorities should review relevant provisions, taking into consideration this Interpretation as well as social circumstances, and enact new laws within two years after the date of announcement of this Interpretation to allow the police to deal with unexpected occurrences in law enforcement while sufficiently ensuring the people's freedom and the police's own safety.

## **Reasoning**

[1] Pursuant to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional

Court Procedure Act, a person whose constitutional rights are illegally infringed upon and who has lodged a suit according to legal procedures may apply for constitutional interpretation on the grounds that the law or regulation applied in the final judgment is in violation of the Constitution. The issue of whether “the law or regulation applied in the final judgment” is in violation of the Constitution must be examined in substantial relation to the judgment. Taking criminal judgments as an example, the purpose of constitutional interpretation is not limited to substantive laws or procedures applied to determine crimes and prison terms in the judgment, but also includes the laws or regulations applied to decide on the illegality of concerned behaviors. With regard to the criminal judgment involved in this interpretation, the question of whether the applicant, the defendant in the criminal judgment, would be found guilty of insulting government officials legally carrying out their duties is premised upon whether the insulted government officials were legally carrying out their duties at that time. The judgment grounded the findings of legal duty enforcement in the stipulated provisions of the Police Service Act, which should then be deemed as substantially related to the judgment and considered here as the object of interpretation.

[2] Article 2 of the Police Act provides that the duties of police are to maintain public order according to law, protect social security, prevent harms, and promote people’s welfare. Article 3 gives the power to establish the police and police services to the national legislature. Furthermore, Articles 3 to 10 of the Police Service Act are concerned with police services, organizations, division of duty, and the command system. Article 11 enumerates the methods by which police services are to be implemented. Hence, the Police Service Act is an organic act as well as an act of a regulatory nature. To comply with the rule of law principle, administrative agencies—when performing their duties—not only consider relevant provisions in the organic act, but also delegations by the acts of a

regulatory nature. Since the Police Service Act can also be deemed as an act of a regulatory nature, it can serve as a general rule for the police and the carrying out of their functions. According to Article 11, Subparagraph 3 of the said Act, in stop and check, police officers conduct inspections or street checks at public or other designated places or roads to question suspicious individuals, enforce laws, or perform other functions delegated by relevant laws or regulations. Thus, spot checks are an authorized method of legal enforcement. However, spot checks, including inspections, street checks or interrogations may have substantial effects upon personal freedom, property rights and the right to privacy. According to the law (Articles 128 and 128a of the Code of Criminal Procedure), before searching those suspected of having committed crimes, the police must obtain warrants from the court for maintaining public order or preventing danger from happening. It is not in accordance with any legislative intention to authorize spot checks at will. Hence, in performing spot checks, police officers must comply with specific legal principles guiding police functions and law enforcement. In order to fully ensure the constitutional protection of people's fundamental rights and freedoms, the requirements and procedures of spot checks, as well as legal remedies for unlawful checks, must be specifically prescribed by the law.

[3] The relevant provisions concerning spot checks in the aforementioned Act never delegate unlimited power to the police to exercise any check, law enforcement action or interrogation without due consideration of time, place, manner and subjects. Unless otherwise prescribed in other laws (such as the Code of Criminal Procedure, the Administrative Execution Act, or the Social Order Maintenance Law), the police—in exercising checks—must limit their checking authority to public transportation, public places, or other places where there has been a danger or may be a danger according to reasonable and objective judgments. Among these places, some may be private residences that must be protected to the same extent as a home. The police shall not exercise checking

authority over persons unless there is a reasonable belief that actions taken by such persons have caused or may cause harm; and in so doing, police officers must abide by the principle of proportionality and not go beyond necessity in order to avoid causing property damage or interfering with business or people's daily lives. To prevent possible harms, the police should employ proper methods, such as setting up warning signs, partitioning off designated areas, establishing alerting measures, and reinforcing protections of objects which would probably be damaged, instead of executing spot checks or interrogating persons directly. Before exercising any checks, the police must immediately inform the persons—including those who will be checked, owners of public places, vehicles or places, and users—of the reasons for exercising such checks and identify themselves clearly as law enforcement officers. Any spot check must be conducted on the spot. Unless the consent of persons to be checked is given, or if there is no alternative to identify persons to be checked, or if conducting such on-the-spot checks may have harmful effects or jeopardize traffic flow or public tranquility, the police are not permitted to request checked persons to go to a police station for further interrogation. After the identification of checked persons is confirmed, they must be permitted to leave without delay unless they are suspected of having violated the law and can be detained under specific procedural laws. Only when Article 11, Subparagraph 3 of the Police Service Act is applied within the scope of the above interpretation is the Act deemed as not contravening the Constitution and human rights thus guaranteed. As for illegal, unauthorized or abusive spot checks, legal remedies, including monetary compensation, should be provided under the current legal mechanism. Before there is a proper legal mechanism, when people encounter spot checks, they must have access to file complaints against the order, methods, processes or other potentially harmful effects of spot checks to the police. If a complaint is deemed reasonable, the highest-ranking police officer in place must suspend the spot check immediately. If the complaint

is deemed unreasonable, the check may continue, but a written document specifying checking procedures should be issued upon the request to those who are being checked. The aforementioned written document is to be considered as an administrative action that can be appealed further to the court. The current laws for the police to execute their duties are not sufficient, and hence, within two years after the date of announcement of this Interpretation, the competent authorities should review relevant provisions, taking into consideration this Interpretation as well as social circumstances, and enact new laws to allow the police to deal with unexpected occurrences in law enforcement while sufficiently protecting people's freedom and the police's own safety.

### **Background Note** by the Translator

In 1998, the petitioner Mr. LEE passed by a street spot check at night. He was requested to present his identification card, but he refused. The police officers then conducted a body search on Mr. LEE, causing him to insult the officers. The police sued Mr. LEE for violating Article 140, Paragraph 1 of the Criminal Code, which punishes a person insulting a public officer discharging his or her legal duties. The Shihlin District Court held that under Article 11, Subparagraph 3 of the Police Service Act, the police officers had the power and legal duty to check individual identity, and sentenced Mr. LEE to a short term of imprisonment. The petitioner appealed to the Taiwan High Court, but his appeal was dismissed. On August 25, 1999, the petitioner brought the case before the Constitutional Court, arguing that Article 11, Subparagraph 3 of the Police Service Act infringed upon personal freedom and violated Article 8 of the Constitution.

J.Y. Interpretation No. 535 is considered as a landmark decision in regard to the protection of personal freedom and the right to privacy. Prior to this decision, the Constitutional Court had made two interpretations on the protection

of privacy rights without much elaboration of its protected scopes and contents. In J.Y. Interpretation No. 293, the issue was concerned with the extent to which commercial banks could disclose personal information of consumers. In J.Y. Interpretation No. 509, the right to privacy was mentioned as one of the values with which freedom of speech must be balanced in a criminal conviction of defamation. J.Y. Interpretation No. 535 is the first case in which the Constitutional Court expressly recognizes the right to privacy as a constitutional shield against government interventions.

