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## J.Y. Interpretation No. 603 (September 28, 2005)\*

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### Mandatory Fingerprinting for Identity Cards Case

#### Issue

Do Article 8, Paragraphs 2 and 3 of the Household Registration Act, which require applicants for new national identity cards to be fingerprinted, violate the Constitution?

#### Holding

[1] The core values of a free and constitutional democracy are to protect human dignity and respect the free development of personality. Although the right to privacy is not among those rights enumerated in the Constitution, it should nonetheless be protected under Article 22 of the Constitution in order to protect human dignity, individuality, and the integrity of personality, as well as to protect the private sphere of personal life from intrusion and self-determination of personal information (*see* J.Y. Interpretation No. 585). Self-determination of personal information, one aspect of information privacy, guarantees that individuals have a right to determine whether or not, to what extent, at what time, in what manner, and to whom to disclose their personal information. It also affords people a right to know and have control over the use of their personal information, as well as a right to rectify any errors contained therein. The constitutional right to information privacy, however, is not absolute. The State may, while complying with Article 23 of the Constitution, impose appropriate restrictions by clear and unambiguous statutes.

[2] Fingerprints are important personal information; a person's self-

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\* Translation and Note by Ting-Chi LIU

determination of his or her fingerprint information is, therefore, protected by the right to information privacy. Furthermore, whether to issue national identity cards or not will directly affect the exercise of people's basic rights. Article 8, Paragraph 2 of the Household Registration Act (hereinafter "Act") states that when applying for a national identity card pursuant to the preceding Paragraph, an applicant shall be fingerprinted for record keeping, provided that no applicant shall be fingerprinted until he or she reaches the age of fourteen. Paragraph 3 of the same Article further states that no national identity card will be issued unless the applicant is fingerprinted in accordance with the preceding Paragraph. Anyone who fails to be fingerprinted accordingly will be denied the national identity card; these provisions obviously mandate fingerprinting for record keeping as a condition of the issuance of national identity cards. However, the Act fails to articulate the purpose of such a requirement, which, in itself, is inconsistent with the constitutional protection of the right to information privacy. Even assuming that the mandate may serve the purposes of anti-counterfeiting, preventing false application or fraudulent use of identity cards, and making an identification of unconscious patients on the road, persons with dementia who get lost and unidentified human remains, the benefits are clearly outweighed by the costs, and the means goes beyond what is necessary, which does not conform to the principle of proportionality. Therefore, Article 8, Paragraphs 2 and 3 of the Act, which require the applicants to be fingerprinted for record keeping as a condition of the issuance of national identity cards are repugnant to Articles 22 and 23 of the Constitution. These provisions shall no longer be applicable from the date of announcement of this Interpretation. The replacement of national identity cards can proceed on the basis of the remaining provisions of the Act.

[3] Where there is a specific and important public interest and it is necessary for the State to engage in large-scale collection and storage of individuals' fingerprints in a database, the statute should explicitly specify the purpose of the

collection, and the collection should be substantially related to the important public interest. The use of fingerprint information other than for the specified purpose shall be explicitly prohibited by law. The competent authorities shall, in keeping with developments in contemporary technology, employ measures that ensure the accuracy and safety of fingerprint information, as well as take necessary organizational and procedural safeguards so as to conform with the right to information privacy protected by the Constitution.

## **Reasoning**

[1] The petitioners, Legislator Ching-Te LAI and eighty-four other Members of the Legislative Yuan, in exercising their powers, considered that Article 8 of the Household Registration Act (hereinafter “Act”), promulgated in 1997, violated Articles 22 and 23 of the Constitution. They petitioned this Court for constitutional interpretation pursuant to Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act and also sought an injunction to enjoin the implementation of the said provisions pending the interpretation of this Court.

[2] In regard to the petition for temporary injunction, this Court rendered J.Y. Interpretation No. 599, which temporarily enjoined the application of Article 8, Paragraphs 2 and 3 of the Act and denied the petition with regard to Paragraph 1 of the same Article. In regard to the petition for constitutional interpretation, this Court, in accordance with Article 13, Paragraph 1 of the Constitutional Court Procedure Act, invited representatives of the petitioners, authority concerned, scholars and civic organizations to present briefs in the Judicial Yuan on June 30 and July 1, 2005. This Court then held oral arguments on July 27 and 28 in the same year. The representatives of, and counsels for, the petitioners as well as the authority concerned, the Executive Yuan, were notified to present their cases. In addition, expert witnesses were invited to give their opinions. It should be noted first that the petitioners narrowed the scope of the constitutional review to Article

8, Paragraphs 2 and 3 of the Act.

[3] The petitioners' arguments are summarized as follows. (1) The petition conforms to Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act and should be admissible for review. (2) Article 8, Paragraph 2 of the Act, which mandates that applicants for national identity cards who are above the age of fourteen shall be fingerprinted, is repugnant to the Constitution on the grounds that it infringes upon human dignity, liberty and security of person, the right to privacy, the right to personality, and self-determination of personal information; in addition, it does not comport with the proportionality principle, the *Gesetzesvorbehalt* principle, the void-for-vagueness doctrine, and due process of law: (a) Fingerprint information is part of an individual's abstract personality within the scope of the right to personality. Moreover, because this information can be used to verify a person's identity, its disclosure and use should be determined by that person him or herself, and should be protected by the constitutional right to privacy and self-determination of personal information. The compulsory fingerprinting and the creation of a fingerprint database specified in Article 8, Paragraph 2 of the Act not only intrude on the private sphere where an individual autonomously develops his or her personality, but also infringe upon the right to personality by restricting the individual's right to self-determination of personal information and right to privacy. (b) Article 8, Paragraph 2 of the Act requires every national above the age of fourteen to be fingerprinted, but it does not specify the purpose of collection of this information, which is against the principle that a law restricting basic rights should explicitly state its purpose. The purpose claimed *post hoc*, to improve individual identification for household registration, is neither substantial nor important and is overbroad. Further, mandatory collection and storage of fingerprint information cannot effectively achieve the purpose of "individual identification," "prevention of identity theft," or other purposes claimed by the Ministry of the Interior. Even assuming it can

achieve those purposes, it is not the least restrictive means, and the costs are not proportionate to the benefits, which is a violation of the principle of proportionality. (c) Mandatory collection and storage of fingerprint information is a state action which substantially affects individuals' rights, and therefore, it should be specifically prescribed by statute. The purpose of the current Article 8 of the Act mandating collection and storage of fingerprint information is vague. In addition, Paragraph 2 of the Article is only applicable to first-time applicants, who reach fourteen years of age, for national identity cards. If Article 8 of the Act is applied to all applicants for new identification cards above fourteen years of age, it would lack legal authorization. (d) Mandatory collection of fingerprint information is in essence a compulsory measure which should conform to Article 8 of the Constitution as well as relevant criminal procedure statutes. However, the current provision, which allows administration to collect individuals' fingerprints without a court order, violates due process of law. (e) In cases where other countries have examples of integrating fingerprints with certificates, the certificates are for specific and limited purposes, such as identity or qualification verifications. Even those countries that collect and use their nationals' biometric information usually take a position against the creation of a centralized biometric database. Therefore, currently, the use of a biometric database is at most a practice under development, not a universal or inevitable trend in the international community. (3) Article 8, Paragraph 3 of the Act violates the principle of prohibition on inappropriate connection, the proportionality principle, as well as equal protection, and therefore is unconstitutional: (a) Article 8, Paragraph 3 of the Act makes fingerprinting a condition of issuance of national identity cards. However, there is no substantial relationship between national identity cards and fingerprinting. Therefore, denying national identity cards to those who refuse to be fingerprinted is repugnant to the principle of prohibition on inappropriate connection. (b) Other than refusal to issue national identity cards, there are other less restrictive means to achieve mandatory collection of individuals' fingerprints.

The public interests pursued by the current “no fingerprinting, no national identity card” scheme are not proportionate to the costs suffered by affected individuals.

(c) This practice of denying the issuance of identification documents to certain citizens for unconstitutional reasons also violates the constitutional principle of equal protection.

[4] The arguments of the authority concerned, the Executive Yuan, are summarized as follows. (1) When the Legislative Yuan, in exercising its powers, has doubts about the meaning of a constitutional provision at issue, or has doubts about the constitutionality of a statute at issue, it may petition the Constitutional Court for interpretation. This petition, however, falls into neither of the above scenarios. The petition fails to meet the requirements for constitutional interpretation and therefore shall be dismissed. The Act was promulgated in 1997. Its implementation is the duty of the executive branch, not that of individual Members of the Legislative Yuan, nor is it a statute that is applied by Members of the Legislative Yuan. The petition is therefore invalid. (2) Article 8, Paragraph 2 of the Act does not run afoul of the principles of proportionality or *Gesetzesvorbehalt* or the void-for-vagueness doctrine: (a) Although fingerprint information is personal information protected by the rights to personality, privacy, and self-determination of personal information, the State may collect and use this information if it is authorized by a statute which serves an important public interest and is consistent with the principle of proportionality. (b) The legislative purpose of Article 8 of the Act is to create fingerprint information for every national, which may be used to “confirm an individual’s identity,” “make an identification of unconscious patients on the road, elderly persons with dementia who get lost, and unidentified human remains,” and “prevent fraudulent use of the national identity card.” These are explicit and important public interests. (c) Fingerprints are unique to an individual and remain unchanged during his or her lifetime. Therefore, fingerprint identification is an effective way to identify a

person, which is an appropriate means to ensure the accuracy of national identity cards. Moreover, fingerprint identification is an economical, reliable, and safe method of identification, and in comparison with other biometric identification methods, it is less intrusive. The statute at issue serves the important public interests of protecting vulnerable persons and maintaining social order, which makes its impact proportionate to the damage that it may cause. (d) Article 8 of the Act explicitly mandates fingerprinting as a condition of applying for national identity cards; this requirement is therefore not inconsistent with the *Gesetzesvorbehalt* principle. The meaning of this provision is comprehensible. Mandatory fingerprinting is also foreseeable for those who are subject to the regulation. Such meaning of this provision can also be ascertained, *post hoc*, by the judiciary. The dissemination, use, and management of fingerprint information are also subject to the regulation of the Protection of Computer-Processed Personal Information Act, and thus, it is not vague or ambiguous. (e) Public opinion is in favor of collecting fingerprints. According to public-opinion polls conducted by the Research, Development, and Evaluation Commission of the Executive Yuan, Opinion Poll Center of TVBS, and the Ministry of the Interior in 2001, 2002, and 2003 respectively, about 80 percent of citizens approved of being fingerprinted when applying for national identity cards. Thus, the requirement is supported by the majority of people. In the international community, some countries have mandatory fingerprinting for all persons, and others only for foreign nationals. Regardless of the differences in laws, a common trend is to collect and store individuals' biometric information in order to ascertain their identity and enhance the accuracy of identity verification. By the end of 2006, more than forty member states of the International Civil Aviation Organization will have passports embedded with electronic chips, which can store an individual's biometric information, such as fingerprints, palm prints, facial characteristics, or iris information for identification purposes. More and more countries and their people are willing to accept the collection and storage of

biometric information for identification, which is obviously an international trend. (3) Article 8, Paragraph 3 of the Act is not repugnant to the Constitution: (a) Fingerprinting is a prerequisite for national identification. Fingerprint information in conjunction with other information shown on the identification card form the basis for identifying a person. If an individual meets all the requirements prescribed by law, the State should issue him/her a national identity card. However, if the basis of identification is lacking and the requirement prescribed by law is not met, the State should not issue the national identity card as an appropriate means to enforce the mandatory fingerprinting requirement. It is the consequential effect of not abiding by the procedural requirement, not a form of punishment. The accompanying inconvenience that may be caused to a person's daily life or exercising his/her rights is the result of a person's choice not to fulfill the legal obligation, which should not be regarded as an infringement on individual rights by the competent authorities. Moreover, fingerprint information is one type of personal information governed by the Protection of Computer-Processed Personal Information Act, and its processing and use are regulated by relevant statutes, which do not run afoul of the principle of proportionality. (b) The national identity card is an important proof of personal identity. When issuing the national identity card, the State should confirm that the identity of the applicant is indeed the person identified on that particular card. Because fingerprints cannot be altered, they can assist in identifying a person and ensure the accuracy of identification. Therefore, mandatory fingerprinting is rationally related to the national identity card.

[5] Having considered the arguments and opinions made by the petitioners, the authorities concerned, and expert witnesses, this Court rendered this Interpretation. The reasons are as follows:

[6] Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act states that one-third or more of the incumbent Legislators may

petition this Court for constitutional interpretation, if they, in exercising their powers, have doubts about the meaning of a constitutional provision at issue or have doubts about the constitutionality of a statute at issue. Therefore, a petition filed [by Legislators] under Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act is considered as satisfying the requirement thereof in either of the following conditions: right after exercising their power to enact a new law, one-third or more of the Legislators consider unconstitutional this new statute passed by the majority of their fellow Legislators and promulgated by the President; or one-third or more of the Legislators consider unconstitutional an existing statute which remains unchanged after a failed attempt to amend it.

[7] Paragraphs 2 and 3 were added to Article 8 of Act and promulgated on May 21, 1997. In 2002 and 2005, the Executive Yuan had twice submitted bills to amend this Article to the Legislative Yuan, suggesting deletion of Paragraphs 2 and 3, on the grounds that these Paragraphs might infringe on an individual's basic rights. At the First Session of the Sixth Legislative Yuan, the Procedure Committee proposed to the floor that the bill should be sent to both the Committee on the Interior Affairs and Ethnic Groups as well as the Finance Committee for review. Accepting the proposal from the Procedure Committee, a resolution was passed at the First Session, the Ninth Meeting of the Sixth Legislative Yuan on April 22, 2005, and the bill was sent to the two committees for review. However, at the Tenth Meeting (May 3, 2005), the Legislative Yuan Caucus of the Kuomintang (the Chinese Nationalist Party) contended that the bill to amend Article 8 was already reviewed by the Fifth Legislative Yuan, and at that time, the Legislators unanimously resolved that this provision should not be amended. In addition, no consensus was reached at the caucus negotiations. In order to avoid further dispute and prevent the delay of the implementation of issuing new identity cards on July 1, for the sake of not squandering public funds and

jeopardizing social order, the Legislative Yuan Caucus of the Kuomintang submitted a motion for reconsideration in accordance with the Rules of Procedures for the Legislative Yuan. The floor voted on the motion and passed a resolution that it should be “considered at a later time.” At the Fourteenth Meeting [of the same Session] (May 31, 2005), the Legislative Yuan Caucus of the Kuomintang again submitted a motion for reconsideration, and the outcome was the same as on the previous occasion, to consider it later. Ching-Te LAI and eighty-four other Members of the Legislative Yuan, who, in exercising their powers, had doubts about the constitutionality of Article 8, Paragraphs 2 and 3 of the Act thus petitioned for constitutional interpretation. This Court noted that the bill to amend Article 8, Paragraphs 2 and 3 of the Act had been referred to the floor by the Procedure Committee. The floor had once made a resolution to send the bill to the Committee on the Interior Affairs and Ethnic Groups as well as the Finance Committee for review, and regarding the motions for reconsideration, had twice decided to “consider it at a later time.” This is a case in which some Legislators, finding the effective statute passed by the Legislative Yuan unconstitutional, exercised their power to amend the statute but failed and then petitioned this Court to review the constitutionality of said statute. We considered this petition compatible with Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Interpretation Procedure Act and granted review.

[8] The core values of a free and constitutional democracy are to protect human dignity and respect the free development of personality. Although the right to privacy is not among those rights enumerated in the Constitution, it should nonetheless be protected under Article 22 of the Constitution in order to protect human dignity, individuality, and the integrity of personality, as well as to protect the private sphere of personal life from intrusion and self-determination of personal information (*see* J.Y. Interpretation No. 585). Self-determination of personal information, one aspect of information privacy, guarantees that

individuals have a right to determine whether or not, to what extent, at what time, in what manner, and to whom to disclose their personal information. It also affords people a right to know and have control over the use of their personal information, as well as a right to rectify any errors contained therein.

[9] Although the right to privacy has evolved to protect human dignity and respect the free development of personality, restrictions on it do not necessarily intrude on human dignity. The constitutional protection of an individual's information privacy is also not absolute. The State may mandatorily collect necessary personal information if it is explicitly authorized by a statute when it serves an important public interest and is consistent with the Article 23 of the Constitution. In considering whether the statute conforms to Article 23 of the Constitution, the public interest in the collection, use, and disclosure of personal information by the State should be balanced against the intrusion on information privacy suffered by an individual. In addition, different levels of scrutiny should be adopted in individual cases depending on whether the collected personal information is related to private and sensitive matters, or, although not related to private and sensitive matters, may be easily combined with other information to form a detailed personal dossier. In order to ensure an individual's subjectivity and integrity of personality as well as to protect an individual's right to information privacy, the State should ensure that the information legitimately obtained is properly used for the purposes of its collection and that informational security is maintained. Therefore, it is imperative for a statute to clearly specify the purpose for collection of information. This is the only way that individuals can know, *ex ante*, the purpose for the collection of their personal information and how the State plans to use it, in order to ascertain whether the competent authorities have indeed properly used their information in a way that is consistent with the purpose specified by law.

[10] Article 7, Paragraph 1, First Sentence of the Act states that in areas where

household registration is implemented, national identity cards and household certificates shall be printed and issued. Article 20, Paragraph 3, First Sentence of the Enforcement Rules of the Household Registration Act further states that an individual must carry his/her national identity card at all times. Based on these provisions, the issuance of the national identity card does not establish an individual's status as a citizen. The national identity card is merely one of several valid identification documents. However, many existing statutes and regulations require that the national identity card or a copy be presented when exercising one's rights or conducting various administrative procedures. Some examples are as follows: a voter must present his/her national identity card to receive a ballot (*see* Article 21 of Act of Election and Recall of Public Officials and Article 14 of the Act of Election and Recall of President and Vice President); a person must submit a copy of his/her national identity card to take part in the initiation of a referendum (*see* Article 10 of the Enforcement Rules of the Referendum Act); an applicant for a passport must present his/her national identity card and a copy (*see* Article 8 of the Enforcement Rules of the Passport Statute); a person who applies for labor retirement pension in accordance with the Labor Pension Act must submit a copy of his/her national identity card (*see* Article 37 of the Enforcement Rules of the Labor Pension Act); examinees for various state-administered examinations must present their national identity cards and admission passes in order to be admitted to the examination sites (*see* Article 3 of the Regulations on Examination Sites); an applicant for taxi driver registration should submit his/her national identity card (*see* Article 5 of the Measures Governing Taxi Driver Registration). In addition, it is also very common for the national identity card to be required as proof of one's identity in ordinary private activities, for example opening a bank account or being hired by a business. Therefore, the national identity card is an important identity document which helps our citizens conduct their personal and group activities. Whether they are issued identity cards directly affects the exercise of their basic rights. Article 8, Paragraph 2 states that when

applying for a national identity card pursuant to the preceding Paragraph, an applicant shall be fingerprinted for record keeping, provided that no applicant shall be fingerprinted until he or she reaches the age of fourteen. Paragraph 3 of the same Article further states that no national identity card will be issued unless the applicant is fingerprinted in accordance with the preceding Paragraph. Anyone who fails to be fingerprinted accordingly will be denied the national identity card; these provisions obviously mandate fingerprinting for record keeping as a condition of the issuance of national identity cards.

[11] Fingerprints are personal biometric data. Because they are unique to each individual and remain unchanged during a lifetime, once they are linked to an individual, they become one type of personal information which can verify a person's identity with a high degree of accuracy. In addition, traces of fingerprints are left when a person touches an object, and if they are compared with files stored in a database, fingerprints could become the key to open an individual's complete dossier. Because fingerprints have these characteristics, if the State, while verifying individuals' identities, collects their fingerprints for record keeping, this turns fingerprints into sensitive information which could be used for individual surveillance. Therefore, when the State engages in large-scale mandatory collection of individuals' fingerprint information, in order to conform to Articles 22 and 23 of the Constitution, this information collection should be explicitly prescribed by statute and use less intrusive means which are substantially related to an important public interest.

[12] The failure of the Act to explicitly specify the purpose of mandatory collection and storage of fingerprint information in itself violates the constitutional protection of an individual's information privacy. It is argued that, based on the legislative motivation and process of the amendment adding Paragraphs 2 and 3 to Article 8 of the Act, the purpose of mandatory collection of the fingerprint information of all citizens and storing it in a database is to help

prevent crime. Nevertheless, after the termination of the Period of National Mobilization for Suppression of the Communist Rebellion as well as the restoration of the separation of household administration and police administration (*see* J.Y. Interpretation No. 575), the purpose of the Act does not include the prevention of crime. Moreover, in oral arguments, the authority concerned, the Executive Yuan, denied that the purpose of obtaining the fingerprints of all citizens was to prevent crime, and therefore it cannot be the legislative purpose behind the statutory provisions at issue. Accepting, *arguendo*, the Executive Yuan's argument in oral arguments that the purposes of mandating the collection and storage of individuals' fingerprint information as provided in Article 8 of the Act are to enhance the anti-counterfeiting functions of the new identity cards, prevent false application or fraudulent use of identity cards, and to make an identification of unconscious patients on the road, persons with dementia who get lost, persons with mental disabilities, as well as unidentified human remains, the conditions for the issuance of the national identity card with respect to the mandatory collection and storage of all citizens' fingerprints still do not comport with the principle of proportionality under Article 23 of the Constitution, even though these are important public interests. Firstly, regarding the purposes of "enhancing the anti-counterfeiting functions of the identity cards" and "preventing fraudulent use of identity cards," in addition to storing fingerprints on the face of the identity cards or embedding them therein, verification equipment must be widely available or other corresponding measures must be employed in order to enable the real-time verification function and to prevent counterfeiting or fraudulent use. However, achieving this function involves substantial financial costs, and if it lacks proper safeguards, this process could generate high informational security risks. Moreover, according to the Executive Yuan, the new identity card does not have a designated space to store fingerprint information, and there is no plan to make the fingerprint database available for daily real-time verification. Most importantly, the competent authorities have

designed several anti-counterfeiting measures for the new identity card. If these measures function as expected, in conjunction with using existing information on the face of the identity card, such as photos, for verification, the purposes listed can be achieved without the need to mandatorily collect and store the fingerprints of all citizens. Secondly, with regard to the purpose of “preventing false applications for identity cards,” the competent authorities have not yet offered any statistics regarding false applications; thus, there is no way to evaluate its potential benefits and effects. Furthermore, because this is the first instance collecting individuals’ fingerprint information, the household registration authorities need to cross-reference other household registration records and rely on other reliable data in order to ascertain the identity of the person being fingerprinted. For the reason that existing information, other than fingerprints, can accurately verify a person’s identity, the collection of fingerprints is not substantially related to the purpose of preventing false applications for identity cards. Finally, regarding the purposes of “making an identification of unconscious patients on the road, persons with dementia who get lost, persons with mental disabilities, as well as unidentified human remains,” as the authority concerned, the Executive Yuan, pointed out, 2,796 elderly persons with dementia who have gotten lost are placed in social welfare institutions and about 200 unidentified human remains are found each year. Although these cases regarding special needs for identity verification are rare, the interest of ascertaining these people’s identities is still an important public interest. Nevertheless, for those citizens whose identities are already unknown or are hard to ascertain, mandatory collection and storage of their fingerprint information when they apply for a new identity card does not help to verify their identities. Thus, the competent authorities must focus on future identification needs. But even assuming that this need may exist in the future, and this means can help to achieve the purposes listed, mandatory collection and storage of fingerprint information for all citizens above the age of fourteen, *ex ante*, and requiring all citizens to bear the risks of an ambiguous statutory

authorization as well as potential breaches of information go beyond what is necessary. The benefits are clearly outweighed by the costs, which does not conform to the principle of proportionality and infringes on an individual's information privacy protected by Article 22 of the Constitution.

[13] In light of the foregoing, Article 8, Paragraphs 2 and 3 of the Act, which amount to mandating the collection and storage of individuals' fingerprints as a condition of the issuance of national identity cards, infringe upon an individual's right to information privacy protected by the Constitution. In addition, the alleged purposes of enhancing the anti-counterfeiting functions of the new national identity cards, preventing false application or fraudulent use of identity cards, and making an identification of unconscious patients on the road, persons with dementia who get lost, persons with mental disabilities, and unidentified human remains do not comport with the principle of proportionality and are repugnant to Articles 22 and 23 of the Constitution. These provisions shall no longer be applicable from the date of announcement of this Interpretation. The replacement of national identity cards can proceed on the basis of the remaining provisions of the Act.

[14] Where there is a specific and important public interest and it is necessary for the State to engage in large-scale collection and storage of individuals' fingerprints in a database, the statute should explicitly specify the purpose of the collection, and the scope as well as the manner thereof should be substantially related to the important public interest. The use of fingerprint information other than for the specified purpose shall be explicitly prohibited by law. The competent authorities shall, in keeping with developments in contemporary technology, employ measures that ensure the accuracy and safety of fingerprint information, as well as take necessary organizational and procedural safeguards so as to conform with the right to information privacy protected by the Constitution.

[15] Despite the fact that similar legislation in foreign nations as well as

domestic public opinion polls may serve as factual references when interpreting the Constitution, they cannot be the sole basis when determining the meaning of the Constitution. Furthermore, it is not yet settled whether the collection of individuals' fingerprint information and creating digital files for it is a legislative trend in the international community. Without careful comparison between our household registration system and its foreign counterparts as well as detailed considerations regarding why and how foreign countries collect individuals' fingerprints, foreign legislation should not be hastily transplanted. In addition, public opinion polls only reflect individuals' understanding or preferences about a particular issue. Their reliability is affected by many factors, such as the content of the poll, polling method, polling agency, and the purpose of the poll. Although the authority concerned alleged that the majority of our citizens are in favor of being fingerprinted as a condition of the issuance of the national identity cards, it failed to offer any supporting polling materials. As a result, we do not accept this claim in this Interpretation. It is also explained here.

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

The petitioners, Legislator Ching-Te LAI and eighty-four other Members of the Legislative Yuan, in exercising their powers, considered that Article 8 of the Household Registration Act (hereinafter "Act"), promulgated in 1997, violated Articles 22 and 23 of the Constitution. They petitioned the Constitutional Court for constitutional interpretation pursuant to Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act and sought an injunction to enjoin the implementation of this provision pending the interpretation of the Constitutional Court.

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petition with regard to Paragraph 1 of the same Article.

With regard to the petition for constitutional interpretation, the Constitutional Court, in accordance with Article 13, Paragraph 1 of the Constitutional Court Procedure Act, invited representatives of the petitioners, the authority concerned, scholars, and civic organizations to present briefs on June 30 and July 1, 2005. The Constitutional Court then held oral arguments on July 27 and 28 in the same year.