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**J.Y. Interpretation No. 599 (June 10, 2005)\***

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**Injunction against Mandatory Fingerprinting for Identity Cards  
Case**

**Issue**

Is it necessary to enjoin the application of Article 8 of the Household Registration Act by granting an injunction?

**Holding**

[1] The Justices of the Judicial Yuan (the Constitutional Court) are empowered by the Constitution to independently interpret the Constitution and exercise jurisdiction over constitutional disputes. The provisional remedy [injunctive relief] system is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or adjudications, or concerns civil, criminal or administrative adjudications. To ensure the effectiveness of the interpretations or judgments rendered by the Constitutional Court, the Court should be able to exercise this function. In the event of any continuance of doubt or dispute regarding constitutional provisions, the application of a law or regulation in dispute, or the enforcement of a judgment from which a constitutional dispute originated, which may cause irreparable harm to any fundamental right of the people, fundamental constitutional principle, or any other major public interest, the Constitutional Court may, on the motion of the petitioner, grant provisional remedies to provide injunctive relief prior to the delivery of an interpretation if it is imminent and necessary and no other means is available to prevent the harm, and the interests in granting the provisional

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\* Translation by Ting-Chi LIU, based upon the previous translation by Chung-Hsi Vincent KUAN

remedies clearly outweigh those in not granting the remedies. Accordingly, the motion for an injunction against Article 8, Paragraphs 2 and 3 of the Household Registration Act should be granted. The application of said provisions and relevant regulations, stipulating that the new national identity card will not be issued or replaced without the applicant being fingerprinted, should be enjoined pending the interpretation of this Court. This injunction shall cease to be in effect either upon the delivery of the interpretation for the case at issue or, at the latest, upon the expiry of six months as of the date of the delivery of this injunction.

[2] Furthermore, it should be noted that as of July 1, 2005, with regard to those people who, by law, shall or may apply for national identity cards, or who, for a legitimate reason, apply for the reissue or replacement of the same, the authorities concerned shall still produce and issue the national identity card in its present format or promptly devise other expedient measures so as to enable such applicants to obtain a document proving their identity while the application of Article 8, Paragraphs 2 and 3 of the Household Registration Act is enjoined.

[3] The motion by the Petitioner for an injunction in respect to Article 8, Paragraph 1 of the Household Registration Act shall be overruled.

## **Reasoning**

[1] The Justices of the Judicial Yuan (the Constitutional Court) are empowered by the Constitution to independently interpret the Constitution and exercise jurisdiction over constitutional disputes. The provisional remedy [injunctive relief] system is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or adjudications, or concerns civil, criminal or administrative adjudications. To ensure the effectiveness of the interpretations or judgments rendered by the Constitutional Court, the Court should be able to exercise this function. In the event of any continuance of doubt

or dispute regarding constitutional provisions, the application of a law or regulation in dispute, or the enforcement of the judgment that a constitutional dispute originated from, which may cause irreparable harm to any fundamental right of the people, fundamental constitutional principle or any other major public interest, the Constitutional Court may, on the motion of the petitioner, grant provisional remedies to provide injunctive relief prior to the delivery of an interpretation if it is imminent and necessary and no other means is available to prevent the harm, and the interests in granting the provisional remedies clearly outweigh those in not granting the remedies. The same rationale has been made clear by this Court in *J. Y. Interpretation No. 582*. The current case has been brought by more than one-third of the members of the Legislative Yuan, who consider that Article 8 of the Household Registration Act runs afoul of the Constitution [have doubts about the constitutionality of Article 8 of the Household Registration Act], and who have petitioned this Court for a constitutional interpretation based on Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act. The Petitioner also sought to temporarily enjoin the application of Article 8 of the Household Registration Act, pending the interpretation of this Court.

[2] Fingerprints are important personal biometric features, and fingerprint verification is a method to verify a person's identity. Article 8 of the Household Registration Act as amended and promulgated on May 21, 1997, states, "Any national who reaches fourteen years of age shall apply for a national identity card; any national who is under fourteen years of age may apply for the same (Paragraph 1). When applying for a national identity card pursuant to the preceding section, 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 2). No national identity card will be issued unless the applicant is fingerprinted in accordance with the preceding section (Paragraph

3).” Whether the foregoing provisions may be the basis for periodic and nationwide replacement of national identity cards by the government, whether the aforesaid Paragraphs 2 and 3 still apply when there is a nation-wide replacement of the identity cards, whether fingerprinting can be a condition of the issuance of national identity cards, and whether mandatory collection and storage of fingerprint information infringes upon individuals’ fundamental rights guaranteed by the Constitution, all of these questions may cause major disputes in constitutional interpretation. The Ministry of the Interior issued an Implementation Plan for the Processing of the Nation-wide Replacement of National Identity Cards in 2005 based on its Letter No. Tai-Nei-Hu-0940072472 of March 4, 2005, whereby the replacement of identity cards is to begin as of July 1, 2005. Consequently, starting from July 1, 2005, people must be fingerprinted in order to receive the new national identity cards. Therefore, the harm that may result therefrom is widespread and imminent, and it cannot be prevented by any other means. The government contended that in light of the long period for the replacement of new national identity cards, those who are reluctant to subject themselves to fingerprinting may await the result of the constitutional interpretation of the current case. However, since people have a right as well as the practical need to apply for a new national identity card or apply for the replacement of the same as of July 1, 2005, the government’s argument that the harm that may result from the fingerprinting requirement is not imminent should be rejected. In light of the fact that the legislature has yet to establish a provisional remedy system in respect of the constitutional interpretation procedure, this Court, in exercising its authority to interpret the Constitution, shall consider whether the petition for an injunction should be granted in accordance with J.Y. Interpretation No. 585. Assuming that Article 8, Paragraphs 2 and 3 of the Household Registration Act are later found to be unconstitutional by this Court, the substantial harm to individuals’ fundamental

rights that may result from the collection and storage of their fingerprints by the authorities concerned should be regarded as irreparable. In addition, implementing the collection and storage of fingerprint files by the government will necessarily incur administrative costs such as costs of human and material resources, and if the fingerprint files are to be destroyed subsequently due to the fact that the underlying law is found unconstitutional, the considerable amount of administrative resources so wasted will negatively affect the public interest to a great extent.

[3] On the other hand, the result of the temporary enjoinder of Article 8, Paragraphs 2 and 3 of the Household Registration Act pending the interpretation of the current case, is merely the extension of the status quo for the household registration administration system. Even if this Court later considers the substantive disputes of the case and concludes that the statutory provisions at issue are constitutional, no major interruption or harm will be caused to the household registration system. As for the people who already hold national identity cards, their daily activities will not be adversely affected either. Moreover, even though the authorities concerned must devise certain expedient measures and thus incur administrative costs, the potential harm remains relatively insignificant when compared with the harm [that may be caused by the disputed provisions] to the fundamental rights of the people. Lastly, during the period of the injunction, people can only apply for the issuance or replacement of the national identity cards in the present format based on this Interpretation. In the event that the disputed provisions are found to be constitutional by this Court, the authorities concerned should proceed to issue the new national identity cards, and there would be no problem in collecting the fingerprints of people who received the cards in the present format at that time. Given the above, the motion by the Petitioner for an injunction against Article 8, Paragraphs 2 and 3 of the Household Registration Act should be granted. The application of said provisions

and relevant regulations, stipulating that the new national identity card will not be issued or replaced without the applicant being fingerprinted, should be enjoined pending the interpretation of this Court. This injunction shall cease to be in effect either upon the delivery of the interpretation for the case at issue or, at the latest, upon the expiry of six months as of the date of the delivery of this injunction.

[4] Furthermore, it should be noted that as of July 1, 2005, with regard to those people who, by law, shall or may apply for national identity cards or who, for a legitimate reason, apply for the reissuance or replacement of the same, the authorities concerned shall still produce and issue the national identity card in the present format or promptly devise other expedient measures so as to enable such people to obtain a document proving their identity while the application of Article 8, Paragraphs 2 and 3 of the Household Registration Act is enjoined.

[5] The national identity card is an important means to verify the identity of citizens. For those people who have not yet received national identity cards or who lose possession of their cards, the inability to obtain identity cards will cause them immediate and significant inconveniences in their social life. In addition, Article 8, Paragraph 1 of the Household Registration Act is merely a general provision, which prescribes the age for the right and obligation to obtain a national identity card, and the Petitioner has failed to elaborate on how Article 8, Paragraph 1 of the Household Registration Act infringes upon the fundamental rights guaranteed by the Constitution. Accordingly, the motion by the Petitioner for an injunction in respect to Article 8, Paragraph 1 of the Household Registration Act shall be overruled.

### **Background Note** by Ting-Chi LIU

Article 8, Paragraphs 2 and 3 of the Household Registration Act were

amended and promulgated on May 21, 1997, stipulating that when applying for a national identity card, an applicant shall be fingerprinted for record keeping, and no national identity card will be issued unless the applicant is fingerprinted in accordance with the sections. The Executive Yuan believed that the above-mentioned provisions intruded upon the basic rights of the people and thus submitted a bill to amend Article 8 of the Household Registration Act to the Legislative Yuan in accordance with the Resolution of its Conference No. 2934, dated April 6, 2005. However, the legislative process was stalled, and the Bill was not referred to the committee for consideration before the end of the First Session of the Sixth Legislative Yuan. As a result, it was not possible for the Bill to finish the legislative process before the scheduled date (July 1, 2005) for the Ministry of the Interior to issue the new national identity cards in accordance with the then-existing Article 8 of the Household Registration Act.

Mr. Ching-Te LAI and eighty-four other members of the Legislative Yuan petitioned the Constitutional Court for a constitutional interpretation based on Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act and sought to temporarily enjoin the application of Article 8 of the Household Registration Act, pending the interpretation of the Court. However, J.Y. Interpretation No. 599 only addressed the issue on whether said provision should be enjoined.

J.Y. Interpretation No. 599 is a landmark decision in which the Constitutional Court for the first time temporarily enjoined the application of a law under review, pending the announcement of its interpretation. It is also the only case, so yet, in which the Court has granted such a petition. It should be noted that the provisional remedy system for constitutional interpretation was recognized earlier by the Court in J.Y. Interpretation No. 585, and the petition for an injunction was denied in that case even though the Constitutional Court Procedure Act was silent on such authority. It was not until the promulgation of

the Constitutional Court Procedure Act of 2019 did the legislature explicitly stipulate the Court's authority and relevant legal elements to make a ruling.

For an extended period of time, whether the Justices of the Constitutional Court enjoyed the status of judges prescribed and protected by the Constitution was highly contested. This was because the Justices serve a fixed term rather than life tenure, exercise their authority primarily in a conference setting, not in an open court, and their binding rulings are called interpretations instead of judgments. J.Y. Interpretation No. 599 affirms that the Constitutional Court is a judicial institution and exercises judicial power, including that of provisional remedies, just as civil, criminal and administrative courts do. Together with J.Y. Interpretation No. 585, these interpretations paved the way to an even more significant decision. Only two interpretations later, in J.Y. Interpretation No. 601, the Constitutional Court settled the dispute by explicitly affirming that Justices of the Constitutional Court are judges in the constitutional sense and should enjoy similar constitutional protection afforded to ordinary judges, such as Article 81 of the Constitution, which states that "...No judge shall be removed from office unless he/she has been found guilty of a criminal offense or subjected to disciplinary measures, or declared to be under interdiction. No judge shall, except in accordance with the law, be suspended or transferred or have his/her salary reduced."