
J.Y. Interpretation No. 755 (December 1, 2017)*

Judicial Remedies for Inmates Case

Issue

According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, inmates are not allowed to seek remedies in court. Does the foregoing contradict Article 16 of the Constitution, which protects the people's right to judicial remedy?

Holding

[1] According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, when inmates contest disciplinary actions or other management measures taken by the prison, they are not allowed to seek remedies in court. However, if the aforementioned actions or measures exceed the extent necessary for achieving the purposes of enforcing prison sentences, and if they unlawfully infringe upon inmates' constitutional rights—especially when such infringement is not obviously minor—denying inmates the right to seek remedies in court exceeds the scope of necessity under Article 23 of the Constitution and is not in conformity with Article 16 of the Constitution, which protects the people's right to judicial remedy. Authorities concerned shall review and revise the Prison Act and relevant regulations within two years from the date of announcement of this Interpretation and enact appropriate regulations to allow inmates timely and effective judicial remedies.

[2] Prior to the revision of the aforementioned laws, if inmates believe that the disciplinary actions or other management measures taken by the prison exceed

* Translation by Chen-Hung CHANG

the extent necessary for achieving the purposes of enforcing prison sentences—thus unlawfully infringing upon their constitutional rights, especially when such infringement is not obviously minor—they shall first file a grievance to the supervisory authority. If they want to challenge the decisions made by the supervisory authority subsequently, they can directly litigate in local district administrative courts in accordance with the location of the prison to seek a remedy. Such litigation shall be filed within a peremptory period of thirty days from the date they receive the decision from the supervisory authority. Regulations related to summary proceedings in the Administrative Court Procedure Act shall apply *mutatis mutandis* to these cases, which may be tried without oral arguments.

Reasoning

[1] While serving his sentence of imprisonment, Petitioner Ching-Yen HSIEH (hereinafter Petitioner A) resented not being allowed to use the word “jailer” and criticized the prison in his correspondence. He was, therefore, disciplined by the Taoyuan Prison, Agency of Corrections, Ministry of Justice (hereinafter Taoyuan Prison) for this violation. Petitioner A objected and filed a grievance according to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules. Subsequently, he filed a petition to the Taiwan Shilin District Court for revocation of the aforementioned disciplinary measure. The Taiwan Shilin District Court dismissed the case via Criminal Order 104-Sheng-884 (2015) (hereinafter Final Decision 1), holding that “if inmates contest disciplinary actions taken by the prison, they shall seek remedy following Article 6 of the Prison Act and Article 5, Paragraph 1 of its Enforcement Rules.” The ruling was final and binding. Moreover, Petitioner A complained that the warden of the Taipei Detention Center, Agency of Corrections, Ministry of Justice (hereinafter Taipei Detention Center) took his ballpoint pen away from him and restricted him

from sending greeting cards. Therefore, he filed a petition to the Taiwan Taipei District Court for revocation of these restrictions. The Taiwan Taipei District Court dismissed the case via Criminal Order 104-Sheng-1968 (2015) (hereinafter Final Decision 2), holding that “if the inmate in this case disagrees with actions taken by the Taipei Detention Center, he shall seek remedy following the aforementioned procedures¹ enacted by legislators.” In addition, Petitioner A claimed that the warden of Taoyuan Prison had threatened to punish him for violation and so deleted his grievance. He filed an objection to the Taiwan Taoyuan District Criminal Court, and later appealed to the Taiwan High Court. The Taiwan High Court pointed out that the supervisory authority of prisons mentioned in Article 6 of the Prison Act was the Agency of Corrections, Ministry of Justice, not the court. “...Once a final and binding judgment is made and the prosecutor issues the command instructions for execution, the enforcement of the sentences, including how prisons manage and discipline inmates, is out of the jurisdiction of the criminal court. Since the criminal court is not the supervisory authority of prisons, it naturally cannot review the actions taken by prisons or the agency-in-charge.” The Taiwan High Court therefore dismissed the case via Criminal Order 104-Kang-972 (2015) (hereinafter Final Decision 3).

[2] Petitioner Yu-Hua LIU (hereinafter Petitioner B) complained that the Taoyuan Prison had canceled edifying activities on short notice, changed lunch and dinner menus and asked inmates to pay for washing-up liquid. After filing a grievance according to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, he filed a petition to the Taiwan Yilan District Court and later appealed to the Taiwan High Court. The Taiwan High Court dismissed the case via Criminal Order 104-Kang-757 (2015) (hereinafter Final Decision 4), holding that “as an inmate, if the appellant contests actions

¹ Translator’s note: The procedures prescribed in Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules.

taken by the prison, he should file a grievance according to the Prison Act through the warden to the supervisory authority or inspectoral officials.”

[3] Petitioner Ching-Hsiang HSU (hereinafter Petitioner C) refused to accept that the Pingtung Prison, Agency of Corrections, Ministry of Justice had denied his application for prison camp. He filed an administrative appeal but was denied by the agencies with jurisdiction. He then instituted administrative litigation, but the case was dismissed by the Supreme Administrative Court via Order 105-Tsai-1249 (2016) (hereinafter Final Decision 5). The Supreme Administrative Court affirmed the ruling made by the previous court, which stated that “according to Article 6 of the Prison Act and Article 5 of its Enforcement Rules, when inmates disagree with actions taken by the prison, they can only file a grievance to the warden or inspectoral officials. In addition, the supervisory authorities of sentence enforcement institutions shall have the final decision on inmates’ grievances. It is within the discretion of the Legislature to enact these provisions, which constitute a grievance system designed by the Legislature and the agency-in-charge to cope with grievances filed by inmates who disagree with actions taken by the prison. Therefore, when the actions taken by the prison are in conformity with the nature of sentence enforcement and implementation, though these provisions do not allow inmates to institute administrative litigation, they do not violate Article 16 of the Constitution, which protects the people’s right to judicial remedy, and should still be applied.” The case was dismissed; the order was final and binding.

[4] Petitioner Ho-Shun CHIU (hereinafter Petitioner D) complained that the Taipei Detention Center denied his application to send letters, so he filed an administrative appeal but was denied by the agencies with jurisdiction. He then initiated administrative litigation, but the case was dismissed by the Supreme Administrative Court via Judgment 102-P-514 (2013) (hereinafter Final Decision 6). In the ruling, the Supreme Administrative Court stated, “...While enforcing imprisonment or death penalties, if a prison restrains inmates’ freedom of

correspondence and speech according to the Prison Act, it is actually enforcing a concomitant restraint to the deprivation of liberty and security of person or the right to life. This is part of sentence enforcement just as much as the deprivation of liberty of person before carrying out the death penalty and is based on the State's power to punish crime. The purpose is to implement sentences given by final and binding rulings. Since these restraints do not create new regulatory effects, they are not administrative dispositions regulated by the Administrative Procedure Act. Hence, the inmates cannot file an administrative appeal or institute administrative litigation following the usual administrative remedial procedures. According to Article 6 of the Prison Act and Article 5 of its Enforcement Rules, when inmates disagree with actions taken by the prison, they can only file a grievance to the warden or inspectoral officials. In addition, the supervisory authorities of sentence enforcement institutions have the final decision on inmates' grievances (the highest supervisory authority is the Ministry of Justice). Since inmates cannot institute administrative litigation when the actions taken by the prison are in conformity with the nature of sentence enforcement and implementation, Article 6 of the Prison Act and Article 5 of its Enforcement Rules do not violate Article 16 of the Constitution, which protects the people's right to judicial remedy, and should still be applied." The case was dismissed; the judgment was final and binding.

[5] Petitioners A through D all alleged that Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, which the aforementioned final decisions had applied, were unconstitutional and filed petitions for constitutional interpretation. Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules were applied in Final Decisions 1, 2, 4, 5 and 6. Article 6 of the Prison Act was cited and discussed in Final Decision 3, and hence should be considered as applied in the decision. The petitions by petitioners A to D are in accordance with Article 5, Paragraph 1,

Subparagraph 2 of the Constitutional Court Procedure Act, and hence shall be heard.

[6] Petitioner E is a judge from the Taiwan Taipei District Criminal Court. While judging a case (104-Sheng-Geng-1--19 (2015) of the Taiwan Taipei District Criminal Court), Petitioner E felt Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, which were applicable in the case, may have contravened Article 16 of the Constitution. Consequently, Petitioner E filed a petition for constitutional interpretation providing concrete reasons for objectively believing the statute to be unconstitutional. This petition has fulfilled the requirements, which are explained in J.Y. Interpretation No. 371, 572 and 590, for judges filing a petition for constitutional interpretation, and hence shall be heard.

[7] All the aforementioned petitions concern whether the remedial procedures for inmates who disagree with disciplinary actions or other management measures taken by prisons, are inconsistent with the Constitution. Considering the commonality of these petitions, the Constitutional Court decided to consolidate them for review and made this Interpretation. The reasoning is as follows:

[8] Article 16 of the Constitution protects the people's right to judicial remedy, meaning that individuals shall have the right to seek judicial remedies when their rights or legal interests are infringed. Based on the constitutional principle of "where there is a right, there is a remedy," when a person's rights or legal interests are infringed upon, the State should provide such person an opportunity to litigate in court, to request a fair trial in accordance with due process of law and to obtain timely and effective remedy, which shall not be denied simply because of the person's status (*see* J.Y. Interpretation No. 736).

[9] The purpose of a sentence of imprisonment is to encourage inmates to reform and adapt to social life (*see* Article 1 of the Prison Act). During

imprisonment, inmates are deprived of liberty of person. Their other rights and freedoms (such as freedom of residence and movement) may also be restrained concomitantly. Considering that prisons are highly purposeful correctional institutions, for them to achieve the purpose of enforcing prison sentences (including maintaining order and security in prison, providing appropriate correctional treatment for inmates, preventing inmates from becoming involved in other illegal behavior, etc.), they should be able to take measures necessary for inmate management, to which the judiciary should show a high degree of deference. Therefore, if their constitutional rights are not infringed upon, or if the infringement is obviously minor, inmates can only follow the grievance procedures in prisons and their supervisory authorities, urging internal review and resolution. However, if the disciplinary actions or other management measures taken by the prison exceed the extent necessary for achieving the purpose of enforcing prison sentences and unlawfully infringe upon inmates' constitutional rights, especially when such infringement is not obviously minor, due to the principle "where there is a right, there is a remedy" under Article 16 of the Constitution, inmates shall be allowed to litigate in court for judicial remedies.

[10] Article 6 of the Prison Act prescribes: "1. If inmates contest actions taken by the prison, they can file grievances through the warden to the supervisory authority or inspectoral officials. Actions taken by the prison remain effective until the related authority decides otherwise. 2. A warden shall report inmates' grievances to the supervisory authority at once. 3. When inspectoral officials visit a prison, inmates who contest actions taken by the prison can file grievances to them directly." Article 5, Paragraph 1 of the Enforcement Rules of the Prison Act prescribes: "Grievances filed by inmates, who contest actions taken by the prison, shall be processed pursuant to the regulations stipulated below: ... 7. The supervisory authority shall have the final decision on inmates' grievances." These provisions constitute a grievance system designed by the Legislature and the

agency-in-charge to cope with grievances filed by inmates who disagree with actions taken by the prison. This grievance system allows imprisonment enforcement institutions an opportunity to reflect on, review and correct their decisions, in addition to providing inmates timely and effective remedies. It is within the discretion of the Legislature to design such grievance systems. However, it should not be grounds for depriving inmates of the right to litigate in court for judicial remedies.

[11] Article 6 of the Prison Act was enacted on December 29, 1945, promulgated on January 19, 1946, and came into force on December 14, 1947. Subsequent amendments only revised the names of authorities handling grievances. The Enforcement Rules of the Prison Act were enacted and promulgated on March 5, 1975. Article 5, Paragraph 1, Subparagraph 7 has not been revised by subsequent amendment to the Rules. Given the time, place and circumstances wherein the aforementioned provisions were enacted, it was believed that inmates and prisons were in a special relationship of subordination. Accordingly, if inmates disagreed with disciplinary actions or other management measures taken by the prison, they could only seek remedies through grievance procedures and did not have the right to litigate in court for judicial remedies. However, grievance procedures only provide a method of internal review and correction. They are not equivalent to judicial proceedings for seeking remedies. Hence, they cannot replace judicial procedures for seeking remedies in court. The Agency of Corrections, Ministry of Justice issued Letter Tzong-10101609910 of April 5, 2012, to its subordinate institutions, stating that prior to the revision of the Prison Act, inmates' grievances and remedies "shall be handled in accordance with the procedure for transferring cases to the criminal court, and not to be bound by Article 5, Paragraph 1, Subparagraph 7 of the Enforcement Rules of the Prison Act." On November 7, 2012, Letter Tzong-10101194401 was issued to repeat the same instruction. However, the aforementioned Letters are not binding on courts.

Moreover, Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules have not yet been revised. Hence, it is necessary to make this Interpretation.

[12] According to Article 6 of the Prison Act and Article 5, Paragraph 1, Subparagraph 7 of its Enforcement Rules, when inmates contest disciplinary actions or other management measures taken by the prison, they are not allowed to seek remedies in court. However, if the aforementioned actions or measures exceed the extent necessary for achieving the purpose of enforcing prison sentences and if they unlawfully infringe upon inmates' constitutional rights—especially when such infringement is not obviously minor—denying inmates the right to seek remedies in court exceeds the scope of necessity under Article 23 of the Constitution and is not in conformity with Article 16 of the Constitution, which protects the people's right to judicial remedy. Authorities concerned shall review and revise the Prison Act and relevant regulations within two years from the date of announcement of this Interpretation and enact appropriate regulations to allow inmates timely and effective judicial remedies.

[13] Prior to the revision of the aforementioned laws, if inmates believe that the disciplinary actions or other management measures taken by the prison exceed the extent necessary for achieving the purpose of enforcing prison sentences, thus unlawfully infringing upon their constitutional rights—especially when such infringement is not obviously minor—they shall first file a grievance to the supervisory authority. If, subsequently, they want to challenge the decision made by the supervisory authority, they can directly litigate in local district administrative courts in accordance with the location of the prison to seek remedy. Such litigation shall be filed within a peremptory period of thirty days from the date they receive the decision from the supervisory authority. Regulations relating to summary proceedings in the Administrative Court Procedure Act shall apply *mutatis mutandis* to these cases, which may be tried without oral arguments.

When oral arguments are needed, remote hearings using video technology in accordance with Article 130-1 of the Administrative Court Procedure Act can be held.

[14] In addition, Article 5 of the Enforcement Rules of the Prison Act has yet to require the supervisory authorities of prisons to establish a committee composed of external, impartial and professional members to review and handle grievances. This shall be reviewed and revised by authorities concerned as well.

[15] Petitioner A also filed a petition to supplement J.Y. Interpretations No. 639, 663 and 667. Considering the aforementioned Interpretations are not flawed by ambiguity or incompleteness, supplementary Interpretations are not necessary. Hence that petition does not meet the requirements stipulated in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and should be dismissed in accordance with Paragraph 3 of the same Article. Furthermore, Petitioner D filed a petition for constitutional interpretation of several provisions, including Article 66 of the Prison Act, and Articles 82 and 81, Paragraph 3 of the Enforcement Rules of the Prison Act. Since that petition does not share the same subject matter with petitions filed by Petitioners A, B, C and E, it is to be reviewed separately.

Background Notes by Szu-Chen KUO

There are several petitioners in this case. One of the petitioners, Ho-Shun CHIU, in his petition, challenged both the restriction on inmates' right to seek judicial remedy and several provisions authorizing the prison to inspect and review inmates' mail in the Prison Act and its Enforcement Rules. The Constitutional Court consolidated CHIU's petition on the right to judicial remedy with other petitions and rendered J.Y. Interpretation No. 755 on the first day of December 2017. On the same day, the Constitutional Court also announced J.Y. Interpretation 756, responding to CHIU's challenge to the provisions which

permit the prison to inspect and review inmates' mail. These two Interpretations are milestones in the Constitutional Court's history both in terms of the protection of inmates' human rights and breakthroughs in the doctrine of the special relationship of subordination.

Inmates and the State were believed to be in a special relationship of subordination. According to the doctrine, inmates did not enjoy the same full rights as other citizens and were prohibited from filing a suit against the State. J.Y. Interpretations No. 755 and 756 are the first two cases in which the Constitutional Court has ever confirmed that inmates, except for the restriction of liberty of person and other incidentally restricted liberties, enjoy constitutional rights guaranteed to other people, including the right to judicial remedy. The Constitutional Court emphasized in J.Y. Interpretation No. 755, as it did in other Interpretations that loosened the doctrine of special relationship of subordination, such as J.Y. Interpretations Nos. 653, 684, and 736:

[W]hen a person's rights or legal interests are infringed upon, the State should provide such person an opportunity to litigate in court, to request a fair trial in accordance with due process of law and to obtain timely and effective remedy, which shall not be denied simply because of the person's status.

Apart from the significance of the conclusion, the reasoning and measure the Constitutional Court took in J.Y. Interpretation No. 755, compared with its counterpart, J.Y. Interpretation No. 653, are also noteworthy. J.Y. Interpretation No. 653 recognized detainees' right to judicial remedy when they disagree with the disciplinary action taken by the detention center. In the detainee case, the Constitutional Court used two constitutional rights, the right to judicial remedy and the right to liberty of person, to develop its reasoning. In the inmate case,

however, the Constitutional Court mentioned only the right to judicial remedy. Secondly, in the detainee case, the Constitutional Court only requested authorities concerned to revise laws as appropriate to allow detainees to litigate against the State without saying anything in regard to the proper proceedings before the laws are revised. In contrast, the Constitutional Court in J.Y. Interpretation No. 755 instructed what proceedings shall be taken before the revision of the laws.