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## **J.Y. Interpretation No. 749 (June 2, 2017)\***

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### **Temporary Disqualification of Taxi Drivers Case**

#### **Issue**

Are Article 37, Paragraph 3 and other provisions of the Statute for Road Traffic Management and Punishment constitutional in revoking, for three years, the taxi driver registrations and driver's licenses of registered taxi drivers with certain criminal records?

#### **Holding**

[1] Article 37, Paragraph 3 of the Statute for Road Traffic Management and Punishment (hereinafter "Statute") provides:

If a registered taxi driver commits an offense of larceny, fraud, possession of stolen property, or coercion, or any of the offenses under Articles 230 to 236 of the Criminal Code and is then convicted and sentenced to imprisonment for no less than sixty days by a court of the first instance, he/she shall have his/her taxi driver registration suspended. If the conviction with imprisonment for no less than sixty days is affirmed and final, he/she shall have his/her taxi driver registration and driver's license revoked.

The provision has gone beyond what is necessary in restricting the taxi drivers' right to work to the extent that it suspends and revokes a taxi driver's registration simply because he/she commits a disqualifying offense and is sentenced to

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\* Translation and Note by Ren-Chuan KAO

imprisonment for no less than sixty days, regardless of whether the committed crime poses any substantial risk to passengers' safety. The authorities concerned shall amend the provision as appropriate in accordance with the ruling of this Interpretation within two years from the date of announcement of this Interpretation. If the authorities concerned fail to complete the amendment within the said two years, the clauses of suspension and revocation of taxi driver registrations of this provision shall become null and void. In the light of the purpose of temporary disqualification, those taxi drivers whose taxi registrations were already revoked are not allowed to re-apply for registration within three years [from the date of revocation] before the competent authorities amend the laws as appropriate.

[2] Revocation of driver's licenses as provided in Article 37, Paragraph 3 of the Statute obviously goes beyond what is necessary to achieve the purpose of temporary disqualification. As such, it is not compatible with the proportionality principle as required by Article 23 of the Constitution and violates the people's right to work as guaranteed by Article 15 and the people's general freedom of action as guaranteed by Article 22 of the Constitution. It shall be null and void from the date of announcement of this Interpretation. It follows that the authorities concerned shall no longer apply Article 68, Paragraph 1 (originally Article 68 before the amendment on May 5, 2000) of the Statute to revoke all the other driver's licenses of a taxi driver on the grounds that he/she breached Article 37, Paragraph 3 of the Statute.

[3] Article 67, Paragraph 2 of the Statute, which provides, "A person ... whose driver's license has been revoked under ... Article 37, Paragraph 3 ... shall be prohibited from re-applying for a new driver's license within three years after revocation," shall become null and void accordingly, since we have declared the driver's license revocation clause of Article 37, Paragraph 3 of the Statute to be null and void.

## **Reasoning**

[1] The petitioners, Wan-Chin WANG, Yao-Hua LI, Jung-Yao LI, Chih-Chieh CHEN (whose original name was Te-Hao CHEN), Ching-Yu YEH, and Hua-Tsung HSU, are all taxi drivers. The competent authorities revoked both their taxi driver registrations and driver's licenses because they had each been convicted of the offenses listed in Article 37, Paragraph 3 of the Statute for Road Traffic Management and Punishment (hereinafter "Statute") and sentenced to imprisonment for no less than sixty days by final court decisions. The petitioners filed suits against the revocations respectively. After exhaustion of ordinary judicial remedies, the petitioners petitioned this Court for interpretation, claiming that Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of the Statute applied in their respective final judgments were in violation of Article 7, Article 15, Article 22, and Article 23 of the Constitution. (*See Appendix for the final judgment and the challenged provisions of each petitioner.*) We considered their petitions as having validly satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and accordingly granted review.

[2] The petitioners, Judge of the Ching-Unit of the Administrative Division of the Taiwan Taipei District Court, in adjudicating the Taiwan Taipei District Court Cases 102-Chiao-202 and 103-Chiao-11 on traffic disputes, and Judge of Jou-Unit of the Administrative Division of the Taiwan Taoyuan District Court, in adjudicating the Taoyuan District Court Case 104-Chiao-349 on a traffic dispute, regarded as unconstitutional the applicable Article 37, Paragraph 3 of the Statute. Therefore, they halted the proceedings and petitioned this Court for constitutional interpretation. We considered the petitions as having validly satisfied the requirements elaborated in J.Y. Interpretations Nos. 371, 572, and 590 and accordingly granted review as well.

[3] As all the above petitions were concerned with the constitutionality of

Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of Statute, we decided to consolidate the petitions and made this Interpretation on the basis of the following grounds:

[4] I. The constitutionality of the suspension and revocation of taxi driver registrations as provided for in Article 37, Paragraph 3 of the Statute

[5] Article 37, Paragraph 3 of the Statute [as amended and promulgated on December 28, 2005] (hereinafter “Disputed Provision A”) provides:

If a registered taxi driver commits an offense of larceny, fraud, possession of stolen property, or coercion, or any of the offenses under Articles 230 to 236 of the Criminal Code and is then convicted and sentenced to imprisonment for no less than sixty days by a court of the first instance, he/she shall have his/her taxi driver registration suspended. If the conviction with imprisonment for no less than sixty days is affirmed and final, he/she shall have his/her taxi driver registration and driver’s license revoked.

Suspension or revocation of the taxi driver registration is a restriction on taxi drivers’ freedom to choose an occupation.

[6] Article 15 of the Constitution guarantees the people’s right to work, which includes the people’s freedom to choose an occupation. Where people’s occupations are closely related to the public interest, the State may set forth the qualifications or other requirements for engaging in certain occupations by statutes or regulations specifically authorized by a statute, provided that the limitations are in compliance with Article 23 of the Constitution (*see* J.Y. Interpretations Nos. 404, 510, and 584). In considering the constitutionality of a limitation on the freedom of occupation, the standard of review varies with the content of the limitation. Where the legislature intends to regulate the subjective

qualifications necessary for choosing an occupation, such as knowledge and competency, physical condition, or criminal record, the regulation must further an important public interest by means that are substantially related to that interest, in order to be in compliance with the proportionality principle.

[7] Taxis are an important form of public transportation. The work of taxi drivers is characterized as being closely connected with passengers' safety and the social order. Crimes involving taxis recur with great frequency. Surveys show that among taxi drivers with criminal records, a majority have committed offenses involving larceny, fraud, possession of stolen property, or coercion, with some of the cases turning into the focus of public criticism. Taxi drivers with criminal records thus constitute a significant threat to passengers' safety and the social order. In addition, as taxis travel around to pick up and drop off passengers, taxi drivers have numerous chances to ferry female passengers who travel alone or passengers carrying property and have the clear ability to control the movements of passengers. For the purposes of preventing one with malicious intent from utilizing a taxi to commit crimes and safeguarding passengers' safety, Disputed Provision A was amended on July 29, 1981, for the first time to provide that if a registered taxi driver commits any of the listed offenses, he/she shall have his/her taxi driver registration and driver's license revoked (later amended as having his/her taxi driver registration suspended upon conviction and having his/her registration and driver's license revoked when the conviction is final). (*See The Legislative Yuan Gazette*, 70 (55): 43 & 44.)

[8] Taxis in our country predominantly run as "street-hailed" taxis. Passengers hail taxis randomly, usually unable to select the driver or know the service quality before getting into a taxi. Moreover, as passengers sit in a narrow and small space with the driver, they are subjected to the driver. The protection of passengers' safety and maintenance of the social order are certainly important public interests.

[9] Disqualifying the taxi drivers who have committed certain offenses and

received certain sentences from holding taxi driver registrations serves to assist in achieving the end stated above. Nevertheless, the restrictive means is considered as substantially related to the end stated above if and only if it disqualifies those who pose substantial risks to the safety of passengers.

[10] Considering that among taxi drivers with criminal records, a majority have committed offenses involving larceny, fraud, receiving of stolen property, or coercion, the authorities concerned added Article 37-1, Paragraph 3 to the Statute as amended and promulgated on July 29, 1981, listing the offenses of larceny, fraud, receiving of stolen property, or coercion as temporary disqualifying offenses. (*See The Legislative Yuan Gazette*, 70 (55): 43 & 44. This provision was later listed as Article 37 [, Paragraph 3] of the Statute as amended and promulgated on May 21, 1986.) In addition, in order to strengthen the protection of female passengers' safety, the disqualifying offenses listed in Article 37, Paragraph 3 as amended and promulgated on January 22, 1997, and implemented on March 1 of the same year were expanded to include the offenses against morality under Articles 230 to 236 of the Criminal Code. (*See The Legislative Yuan Gazette*, 86 (2): 142-144. The provision was later amended and promulgated on December 28, 2005, as Disputed Provision A, while the listed offenses remained unchanged). [We noted] that the legislature listed the respective disqualifying offenses in each amendment based on the specific concerns at that time. The disqualifying offenses in Disputed Provision A are listed as categories in accordance with the chapters in the Criminal Code, including offenses against property (larceny, fraud, receiving of stolen property), offenses regarding coercion (Articles 296 to 308 of the Criminal Code), and offenses against morality (Articles 230 to 236 of the Criminal Code). The level of hazard and extent of harm of various offenses, though listed in the same chapter of the Criminal Code, are different. Some offenses even have no direct correlation with the safety of taxi passengers (such as the offense of unlawful occupation of

another's real property under Article 320, Paragraph 2, stealing from a payment machine under Article 339-1, and illegal searching under Article 307 of the Criminal Code). Moreover, the legislative records as well as the statistics and research the authorities concerned have submitted so far are insufficient to infer that all the people with criminal records of the offenses listed in Disputed Provision A, within a specific period of time after committing the offenses, will take advantage of business opportunity to commit said offenses again and therefore constitute substantial risk to passengers' safety.

[11] Furthermore, even if a taxi driver commits any of the said offenses and is sentenced to imprisonment for sixty days or more, the court would possibly declare short-term imprisonment only for a short term or probation after taking into account the offender's intent and post-crime attitude as well as circumstances of the crime. It is questionable whether the taxi drivers sentenced to imprisonment for a short term or granted probation all pose a substantial risk to passengers' safety and should all be disqualified. Disputed Provision A has gone beyond what is necessary in restricting the taxi drivers' right to work to the extent that it suspends and revokes a taxi driver's registration simply because he/she commits a disqualifying offense and is sentenced to imprisonment for no less than sixty days, regardless of whether the committed crime poses any substantial risk to passengers' safety.

[12] In sum, the clauses of suspension and revocation of taxi driver registration of Disputed Provision A are inconsistent with the proportionality principle under Article 23 of the Constitution and incompatible with the spirit of the right to property as guaranteed under Article 15 of the Constitution. The authorities concerned shall amend Disputed Provision A as appropriate in accordance with the ruling of this Interpretation within two years from the date of announcement of this Interpretation. If the authorities concerned fail to complete the amendment within the said two years, the clauses of suspension and revocation of taxi driver

registration of Disputed Provision A shall become null and void.

[13] II. The constitutionality of revoking driver's licenses under Disputed Provision A, applied in conjunction with Article 67, Paragraph 2 and Article 68 of the Statute

[14] According to Article 2 of the Measures Governing Taxi Driver Registration, a person who holds the occupation of taxi driver should apply to the police office of the city or county government where he/she is going to run the business for taxi driver registration. He/she is not allowed to run the business until he/she receives the registration certificate and its copy. Hence, revoking [an offender's] taxi driver registration and prohibiting him/her from holding the occupation of taxi driver is sufficient in achieving the legislative purpose of protecting passengers' safety. The clause of revoking the driver's license in Disputed Provision A not only restricts the right to work, but further deprives the people's freedom of driving cars in general. Such restriction obviously goes beyond what is necessary to achieve the purpose. As such, it is not compatible with the proportionality principle as required by Article 23 of the Constitution and violates the people's right to work as guaranteed by Article 15 and the people's general freedom of action as guaranteed by Article 22 of the Constitution. It shall be null and void from the date of announcement of this Interpretation. It follows that the authorities concerned shall no longer apply Article 68, Paragraph 1 (originally Article 68 before the amendment on May 5, 2000) of the Statute, which provides, "A person's driver licenses shall all be revoked for his/her violation of any provision of the Statute or the Regulations for Road Traffic Management," to revoke all the other driver's licenses of a taxi driver on the grounds that he/she breached Disputed Provision A.

[15] Moreover, Article 67, Paragraph 2 of the Statute, which provides, "A person ... whose driver's license has been revoked under ... Article 37, Paragraph 3 ... shall be prohibited from re-applying for a new driver's license within three

years after revocation,” (hereinafter “Disputed Provision B”) shall become null and void accordingly, since we have declared the driver’s license revocation clause of Disputed Provision A to be null and void.

[16] Those taxi drivers whose registrations were revoked pursuant to Disputed Provision A before the date of announcement of this Interpretation may still keep their professional driver’s licenses even before the authorities concerned amend Disputed Provision A in accordance with the ruling of this Interpretation. For those whose driver’s licenses were revoked pursuant to Disputed Provision A before the date of announcement of this Interpretation, they are allowed to re-apply for professional driver’s licenses immediately. According to Article 3 of the Measures Governing Taxi Driver Registration, which states, “A person with a professional driver’s license may apply for taxi driver registration, provided that he/she is not prohibited from doing so according to Article 36, Paragraph 4 or Article 37, Paragraph 1 of the Statute,” the above-mentioned two groups of drivers would be allowed to re-apply for taxi driver registration with their original or newly-issued professional driver's licenses. Nevertheless, [allowing them to re-apply immediately] would be in conflict with the three-year disqualification period as provided for in Disputed Provision B. Therefore, in the light of the purpose of the disqualification provision, those taxi drivers whose registrations were already revoked are not allowed to re-apply for registration within three years [from the date of revocation] before the competent authorities amend the laws as appropriate.

[17] III. Denied petitions

[18] As to the petitioner Jung-Yao LI’s petition for uniform interpretation, this part of petition does not involve any difference in the application of the same statute or regulation by different judicial bodies (such as the Supreme Court and the Supreme Administrative Court). We find this part of the petition not compatible with Article 7, Paragraph 1, Subparagraph 2 of the Constitutional

Procedure Act and dismiss it in accordance with Paragraph 3 of the same Article.

[19] The petitioner Hua-Tsung HSU also challenges the constitutionality of the Guidelines for Processing Residence or Business Office Addresses of Vehicle Registration and Driver's Licenses on the Computer System of Road Inspection, which were applied by the Taiwan Taipei High Administrative Court Orders 103-Jou-Kang-3 (2014) and 103-Jou-Kang-Tsai-3 (2015). He claims that a person, though punished by an administrative disposition, has no way to know the content of the administrative disposition and argue against it because the related documents were sent to his registered household address rather than his domicile address. [He claims that] this is an infringement on his constitutional right to judicial remedy. This part of the petition fails to elaborate how the said Guidelines contradict the Constitution and is therefore not compatible with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. We also dismiss this part of the petition in accordance with Paragraph 3 of the same Article.

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

This is the second case in which the Constitutional Court ruled on the constitutionality of disqualifying taxi drivers with criminal records, the first being J.Y. Interpretation No. 584 made in 2004. This Interpretation is about temporary disqualification while J.Y. Interpretation No. 584 concerns permanent disqualification. Becoming a taxi driver in Taiwan requires one to hold a professional driver's license and taxi driver registration. According to the Statute for Road Traffic Management and Punishment (hereinafter "Statute"), if a taxi driver is convicted of a disqualifying offense with a certain accompanying sentence, his/her taxi driver registration shall be revoked. In addition, his/her professional driver's license will also be revoked. It follows that all of his/her other driver's licenses will be revoked, including the ones to drive a non-commercial passenger car and to drive a scooter. Several petitioners petitioned

the Constitutional Court to review the relevant provisions of the Statute regarding temporary disqualification and revocation of driver's licenses. The Constitutional Court consolidated the petitions and rendered this Interpretation.

The Constitutional Court upheld the constitutionality of the permanent disqualification in *J.Y. Interpretation No. 584*. Applying the same standard of review (intermediate scrutiny) in this Interpretation, the Constitutional Court confirmed that the temporary disqualification provision served the important public interest of protecting passengers' safety, but held that the restrictive means were not substantially related to the said interest because not all the disqualifying offenses and offenders posed the same substantial risks to passengers' safety. This new Interpretation may invite future petitioners to challenge *J.Y. Interpretation No. 584*.