
J.Y. Interpretation No. 584 (September 17, 2004)*

Permanent Disqualification of Taxi Drivers Case

Issue

Is Article 37, Paragraph 1 of the Statute for Road Traffic Management and Punishment constitutional in disqualifying for life a person with certain felony records from holding a taxi driver registration?

Holding

Article 15 of the Constitution guarantees the people's right to work, which includes the people's freedom to choose an occupation. As 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. Article 37, Paragraph 1 of the Statute for Road Traffic Management and Punishment (hereinafter "Statute") as amended on April 21, 1999, provides:

A person who has been convicted of an offense of murder, taking by force, abrupt taking, robbery, extortion, or kidnapping for ransom or any of the sexual offenses under Articles 221 to 229 of the Criminal Code and whose conviction is final is prohibited from applying for taxi driver registration.

Given the characteristics of the taxi business and taxi drivers' work, the provision

* Translation and Note by Szu-Chen KUO

sets forth the subjective qualifications for the occupation of taxi driver, which constitutes a restriction on the people's freedom to choose an occupation. The restriction is aimed at safeguarding passengers' lives, personal security, and property as well as the social order and increasing people's trust in the taxi business. Therefore, Article 37, Paragraph 1 of the Statute is consistent with the spirit of the Constitution as described in the very beginning [of the holding of this Interpretation] and not in conflict with Article 23 of the Constitution. In addition, the management of the taxi business varies across countries, depending on the national conditions and social order in each country. Because of the higher recidivism rate of the persons who have been convicted of the listed offenses, they are considered as potentially posing a greater threat to the personal safety of taxi passengers. Taking into account the necessity of safeguarding major public interests such as the safety of life and personal security of passengers and [the impact] of restricting the subjective qualifications necessary for choosing an occupation, the authorities impose different restrictions on the choice of occupation. The different treatment is made on a rational basis and not in violation of the equality principle under Article 7 of the Constitution. Nonetheless, it is noted that setting forth disqualifications for taxi drivers, a measure taken without better alternatives for safeguarding passengers' security under the current system of taxi administration, is in its nature a limitation on the people's freedom to choose an occupation. The authorities concerned, with betterment of taxi administration, development of crime prevention systems, or other systems, ought to keep reviewing the availability of alternative measures which are less restrictive and thereby make revisions accordingly. Furthermore, if the authorities concerned are able to prove that an offender who has been convicted of the disqualifying crimes poses no special danger to passengers, the lifetime ban on his/her choice of occupation as taxi driver should be lifted at that proper time. This is in order that in maintaining the public interest, protection of the people's right to work and the equality principle as guaranteed in the Constitution may be

better fulfilled.

Reasoning

[1] Article 15 of the Constitution guarantees the people's right to work, which includes the people's freedom to choose an occupation. As 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 and 510). In considering the constitutionality of a limitation on the freedom of occupation, the standard of review varies with the content of the limitation. The legislature is allowed to set forth proper restrictions on the practice of an occupation such as its manner, time, place, target customers, or content if such restrictions are necessary for the public interest. Where the legislature intends to regulate the subjective qualifications necessary for choosing an occupation, such as knowledge and competency, age, physical condition, or moral standards, there must be a more important public interest than what is required for restrictions on the practice of an occupation, and the restrictions must be necessary for the achievement of such public interest. Furthermore, the State, in exercising its power over the people, must treat all people equally as required under Article 7 of the Constitution. Different treatment without a rational basis cannot be justified. The equality principle under Article 7 of the Constitution, nevertheless, does not mean formal equality, namely absolute and mechanical equality. Rather, it is a guarantee of substantive equality before the law. The legislative branch, in light of the value system in the Constitution and the purpose of the law, may treat things differently based on the nature of the things being regulated (*see* J.Y. Interpretation No. 485).

[2] Taxis are an important public transportation means for people in urban areas.

As the taxi business differs from that of other motor vehicles, taxi drivers' work is characterized as being closely connected with the safety of passengers and the social order. The authorities concerned set forth certain restrictions on the subjective qualifications for taxi drivers so that the persons with particularly dangerous inclinations are unable to utilize taxis to commit crimes. Such restrictions are aimed at safeguarding passengers' lives, personal security, and property as well as the social order, creating a healthy and safe business environment for taxis, and increasing people's trust in the taxi business. Therefore, such restrictions are truly necessary for preventing infringement on other people's freedoms, for maintaining social order, or for advancing the public interest. Article 37, Paragraph 1 of the Statute for Road Traffic Management and Punishment (hereinafter "Statute") as amended on April 21, 1999, provides:

A person who has been convicted of an offense of murder, taking by force, abrupt taking, robbery, extortion, or kidnapping for ransom or any of the sexual offenses under Articles 221 to 229 of the Criminal Code and whose conviction is final is prohibited from applying for taxi driver registration.

Given the characteristics of the taxi business and taxi drivers' work as well as the importance of safeguarding the safety of person and property, it prohibits persons who have been convicted of the offenses listed in the provision (hereinafter "listed offenses") from applying for taxi driver registration. It is a restriction on the subjective qualifications for the occupation of taxi driver. We believe that such restriction is an effective means to achieving the legitimate purpose stated above. [The relevant statistics on the recidivism rate before and after the 1997 amendment of Article 37, Paragraph 1 of the Statute support the effectiveness and necessity of such restriction.] Article 37, Paragraph 1 of the Statute was amended in January 1997 for the first time to prohibit the persons who have been convicted

of the listed offenses from driving a taxi for life. According to the statistics of the National Police Agency, the Ministry of the Interior, the recidivism rate of the registered taxi drivers who had been convicted of the listed offenses in 1997 was 4.24 percent for the same offense and 22.22 percent with other offenses being included, with the latter being quite high. (According to the statistics of the Ministry of Justice, the recidivism rate of those convicted on the enforcement lists of all prosecutors offices at the district court level in 1997 was 22.3 percent for the same offense and forty-three percent with other offenses being included.) After the amendment, the number of taxi drivers who have been convicted of the listed offenses has been decreasing. Furthermore, it is within the professional discretion of the authorities concerned to decide what the least restrictive means on the people's freedom of occupation, in order to achieve the purposes stated above, should be. The authorities concerned shall take all the following factors into consideration: the present social conditions, the importance of safeguarding passengers' security, whether the means is effective to the purpose, whether we can distinguish the criminal recidivism rate in general from the odds of criminal recidivism of a former inmate, the social costs of various regulatory measures, whether it will impact former inmates to the extent that their way of making a living with the skills they had before imprisonment will be fundamentally changed, or whether the means impedes former inmates from being resocialized. (The Ministry of Justice already conducts an assessment on the risk of reoffending in the parole-granting procedure; however, the ratio of the number of former inmates who had their parole revoked to the number of former inmates released on parole in that year was 27.2 percent in 1993 and thirty percent in 1997. The figures are still rather high. Moreover, the reoffending prediction is made based on quantitative methods in criminology, but the prediction method and the reliability of such prediction are still in doubt. *See* the report submitted by the Ministry of Justice to the investigation meeting held by this Court on February 10, 2004.) In the investigation meeting, the authorities concerned and the business

operators reported that, objectively speaking, other effective but less restrictive measures to ensure the security of the taxi [passengers], such as monitoring the route of taxis with a satellite positioning system, only permitting pre-booking taxis via calling [a dispatch center] and strengthening the tracking and administration system, or modifying the cars to make a separation between the driver and passenger seats and reinforcing drivers' pre-job training, are impractical. A lifetime ban from driving a taxi for the persons who have been convicted of the listed offenses is indeed a rather severe restriction on their freedom to choose an occupation. Nevertheless, taking into consideration the importance and imminence of the public interest of protecting the lives, personal security, and property of an unspecified number of people who ride in taxis and the opinions provided by the authorities and business operators concerned, we believe that, at the present, the measure of lifetime prohibition that the authorities concerned adopted to protect passengers' safety of person and property is reasonable and a relatively moderate restriction on the people's freedom to choose an occupation. In sum, Article 37, Paragraph 1 of the Statute is consistent with the spirit of the Constitution as described in the very beginning [of the reasoning of this Interpretation] and not in conflict with Article 23 of the Constitution. In addition, the management of the taxi business varies across countries, depending on the national conditions and social order in each country. Because of the higher recidivism rate of the persons who have been convicted of the listed offenses, they are considered as potentially posing a greater threat to the personal safety of taxi passengers than those who have never committed any offense or have been convicted of other offenses. Taking into account the necessity of safeguarding major public interests such as the safety of life and personal security of passengers and the social order, as well as [the impact] of restricting the subjective qualifications necessary for choosing an occupation, the authorities impose different restrictions on the choice of occupation [of the two groups of people, those who have been convicted of the listed offenses and those

who have never committed any offense or have been convicted of other offenses]. The different treatment is made on a rational basis and not in violation of the equality principle under Article 7 of the Constitution. Nonetheless, it is noted that the said lifetime disqualifications for taxi drivers, a measure taken without better alternatives for safeguarding passengers' security under the current system of taxi administration, is in its nature a limitation on the people's freedom to choose an occupation. With betterment of the social order, development of crime prevention systems, improvement in the quality of drivers, and betterment of taxi administration or other business systems, the authorities concerned ought to keep reviewing: whether the listed offenses are directly connected to the safeguarding of passenger safety, the extent of the limitations on qualifications, and the availability of alternative measures which are less restrictive on the freedom of occupation, and thereby make revisions accordingly. Furthermore, if the authorities concerned, via individual-based assessment or other mechanisms, are able to ascertain that an offender who has been convicted of the listed crimes after a certain period of years poses no special danger to passengers, the lifetime ban on his/her choice of occupation as taxi driver should be lifted at that proper time. (According to the Ministry of Justice report on the recidivism rate of all former inmates in the period from 1992 through 2002, the average rate was reduced to 1.5 percent in the seventh year after release and less than 1 percent in the tenth year after release.) This is in order that in maintaining the public interest, protection of the people's right to work and the equality principle as guaranteed in the Constitution may be better fulfilled.

Background Note by the Translator

In Taiwan, holding the occupation of taxi driver requires a professional driver's license and taxi driver registration. The petitioner in this case was convicted of attempted murder in 1971 and completed his prison sentence after

the conviction. He filed his application for taxi driver registration in 1982. According to the then-effective Article 37, Paragraph 1 of the Statute for Road Traffic Management and Punishment (hereinafter “the Statute”), a person with certain felony records could still apply for taxi driver registration after two years had passed since he/she finished serving the prison sentence. His application was approved, as it had been more than two years since he completed serving his prison sentence. In 1997, the petitioner’s registration was cancelled because he failed to have the required inspection according to the law.

The petitioner re-applied for taxi driver registration in 2000. His application was rejected at that time because Article 37, Paragraph 1 of the Statute had been amended, banning the persons who had been convicted of certain offenses, including the offense of which the petitioner had been convicted, from applying for taxi driver registration for life. The petitioner, after exhaustion of ordinary judicial remedies, brought the case to the Constitutional Court, challenging the constitutionality of the lifetime ban as provided in Article 37, Paragraph 1 of the Statute.