

Interpretations

J.Y. Interpretation	NO. 690
Date	2011/9/30
Issue	Is the “necessary dispositions” provision of Article 37, Paragraph 1 of the Communicable Disease Control Act, including compulsory quarantine, unconstitutional?
Holding	<p>Article 37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2002, provides: “Any person who had physical contacts with patients of contagious diseases, or suspected of being infected, shall be detained and checked by the competent authority, and if necessary, shall be ordered to move into designated places for further examinations, or to take other necessary dispositions, including immunization, etc.” As far as the provision of necessary dispositions is read to include compulsory quarantine, hence deprivation of personal freedom, said provision neither violates the principle of legal clarity, nor the principle of proportionality implicit in Article 23 of the Constitution. It also does not violate the due process requirement of Article 8 of the Constitution.</p> <p>Any person who had physical contacts with patients of contagious diseases, or suspected of being infected, while compulsorily quarantined, is deprived of his or her personal freedom. In order to keep the length of quarantine period reasonable and not excessive, the law should prescribe a reasonable maximum time for compulsory quarantine, as well as organizational, procedural and other regulations for carrying out said compulsory quarantine. Moreover, prompt remedies and an adequate compensation system should be established for persons and their families disputing the compulsory quarantine. The authorities concerned should promptly review the Communicable Disease Control Act.</p>
Reasoning	<p>Article 8 of the Constitution stipulates that personal freedom shall be safeguarded. However, if the government in accordance with the principle of legal clarity restricts personal freedom, does not violate the principle of proportionality implicit in Article 23 of the Constitution, and follows requisite judicial procedures or other due process of law, then it cannot be said that Article 8 of the Constitution is violated (see J. Y. Interpretations No. 602 & No. 677). Where the restriction of personal freedom has reached a degree of deprivation, in light of the manner of actual deprivation, purpose and resulting effects, adequate standards shall be defined for review (see J.Y. Interpretations No. 392, No. 588, No. 636 and No. 664).</p> <p>Because the occurrence and spread of contagious diseases endanger the life and health of people, the government should take appropriate preventive measures to counter it. To prevent the infection and spread of contagious diseases, Article 37, Paragraph 1 of the Communicable Disease Control Act, revised January 30, 2001 (hereinafter “former Communicable Disease Control Act), provides: “Any person who had contacts with patients of contagious diseases, or suspected of being infected, shall be detained for examination by the competent authority, and if necessary, shall be ordered to move into designated places for inspection, or to receive immunization or other necessary dispositions (hereinafter “the provision at issue”).</p> <p>The term “necessary dispositions” refers to various statutes regulating the implementation of necessary measures to prevent the infection and spread of contagious diseases and is not limited to the examples of detention for examination, order to move into designated places for inspection, and immunization mentioned in the provision at issue. Article 5, Paragraph 1 of the Provisional Regulations Governing Prevention and Relief of SARS, promulgated on May 2, 2003, retroactively effective March 1, 2003 (repealed December 31, 2004), provides: “When implementing promptly effective epidemic prevention measures, government authorities at all levels shall designate specified areas for epidemic prevention or disease control; and if necessary, may compel quarantines, relocation of residents, or any other disease control measures.”</p>

It can be said that the legislators intended to retroactively strengthen the Communicable Disease Control Act by this legislative measure, expressly recognizing that compulsory quarantine is a necessary disposition in the sense of the provision at issue. Furthermore, Regulation No. 0921700022, promulgated by the Department of Public Health, Executive Yuan, on May 8, 2003, "serving as the legal basis for government measures adopted to control Severe Acute Respiratory Syndrome (SARS)," clearly shows that the so called necessary dispositions for disease control measures mentioned in the provision at issue includes concentrated quarantine. Compulsory quarantine obliges people to stay at a specified place for a specified period, not to contact other persons, or else suffer mandatory punishment. This is a deprivation of personal freedom.

Since the requirement of legal certainty not only refers to a detailed legal style, but also means that legislators when drafting legislation may balance the complex nature of real life with the need of application to each case, uncertain legal concepts become appropriate provisions. If the meaning of a statute is not too difficult to ascertain from legislative intent and the entire context of the legal system, and whether the facts of case fall within the statute's normative objective or not is foreseeable by people subject to the regulation, as well as determinable by the judiciary, then the principle of legal clarity is not violated (see also J.Y. Interpretations No. 432, No. 521, No. 594 and No. 602). According to Article 8 of the Constitution, the government's right to restrict personal freedom, if it involves severe restriction of personal freedom tantamount to criminal punishment, shall be subject to strict scrutiny to determine whether its statutory elements conform to the principle of legal clarity (see J.Y. Interpretation No. 636). Although compulsory quarantine restricts personal freedom to a specified location, yet its purpose is to protect people's life, safety and health. It differs from criminal punishment in nature. It also involves medical treatment and public health professions. Therefore, a general rationality test shall be adopted for judicial review in lieu of a strict scrutiny test used for reviewing criminal sanctions restraining personal freedom. Although the provision at issue does not explicitly mention compulsory quarantine in its illustrations, it does provide for ordering people to move into designated places, so that persons who have had contacts with patients of contagious disease, or suspected of being infected, cannot keep in touch with the outside world. This kind of compulsory quarantine is a necessary disposition for the provision at issue. Judging from literal interpretation and legislative intent of the statute, it is not unforeseeable by people subject to the regulation. Its meaning can also be determined by common sense in society, and must furthermore obtain affirmation by way of judicial review. Hence it does not violate the principle of legal clarity.

The purpose of compulsory quarantine contained in the controversial necessary dispositions provision is to authorize the competent authority to detain persons who had contacts with patients of contagious diseases or suspected of being infected in designated places, to isolate them from the outside world, to undertake further investigations, medical treatments or other measures, so as to prevent the spread of contagious diseases and to safeguard the life and health of citizens. This legislative purpose is legitimate. Although compulsory quarantine deprives the personal freedom of a quarantined person, whether or not this violates the principle of proportionality should still be subject to a strict scrutiny test. The purpose of compulsory quarantine prescribed by the provision at issue is not directly aimed at restraining the personal freedom of quarantined persons, but rather to deal with the abrupt outbreak of a new type of contagious disease, various statutes regulating the quick spread of contagious diseases inflicting (or will inflict) multiple deaths or serious injuries nationwide (e.g. the Severe Acute Respiratory Syndrome outbreak in March 2003, hereinafter SARS), to prevent the spread of disease, to obtain quick control of the epidemic situation, for important public interests to mitigate fear, anxiety etc. in society, ordering persons who had contacts with patients of contagious disease, or suspected of being infected, to move into designated places for a reasonable period of mandatory quarantine, for further observation, examination, immunization, and medical treatment. Apart from protecting the quarantined person's life and health and because there is no other less restrictive alternative, it is a necessary and effective method for disease control. Although the provision at issue did not prescribe in detail the length of period for compulsory quarantine, the length for necessary disposition is related to pathogeny, pathway, incubation period, and seriousness of the contagious disease. Hence it should be determined by the competent authority, weighing the surrounding circumstances and opinions of World Health Organization

(WHO), in accordance with the principle of proportionality (taking the abovementioned SARS as an example, Taipei City Government, the competent authority, had determined that the quarantine period shall be 14 days, weighing factors such as lack of international experience, no conclusive medical method in handling this new disease, the fact that the epidemic has already caused many serious injuries and deaths etc. domestically and abroad, as well as WHO's opinions; see Public Health Disease Regulation Letter No. 09945686400, published January 18, 2011 by the Public Health Bureau, Taipei City Government). Moreover, from the viewpoint of personal freedom violation, although compulsory quarantine contained in the necessary disposition provision at issue deprives the personal freedom of quarantined persons, yet apart from protecting their life and health, it does not have the same severe impact on human dignity of quarantined persons as the sanction of detention. In sum, compulsory quarantine is a reasonable and necessary method for protecting important public interests. It does not constitute an excessive burden for quarantined persons and does not violate the principle of proportionality implicit in Article 23 of the Constitution.

Personal freedom is an important fundamental human right. It shall receive adequate protection. Any deprivation or limitation of personal freedom shall abide by due process of law. In determining whether respective procedural standards are adequate and reasonable, besides considering specific provisions in the Constitution and types of fundamental rights involved, also the facts of a specific case, the extent and scope of the fundamental rights invaded, public interests pursued, possible alternative procedures, related costs and other factors must be comprehensively evaluated (see J.Y. Interpretation No. 639). As indicated above, the purpose of compulsory quarantine is to protect people's life and health, unlike the nature of criminal punishment. Therefore, the due process of law that must be followed is not necessarily the same as in a criminal proceeding restricting the personal freedom of a defendant. Compulsory quarantine and other disease control decisions must be made by the specialized competent authority, based on knowledge of medical treatment and public health, follow stringent organizational procedures, balance seriousness of epidemic and surrounding circumstances, in order to form an objective decision and to ensure correctness. It differs from the case where an independent, impartial court determines whether or not to detain a person for trial and interrogation. The key to epidemic control lies in the swift adoption of adequate measures to achieve the goal. The central competent authority in charge of controlling contagious diseases shall lay down policies and plans for disease control, including immunization, disease prevention, monitoring, reporting, and investigation of epidemic situations, inspections, treatments, training and other measures. The local competent authority shall develop implementation plans based on the policies and plans of the central competent authority, taking into account the particular requirements for epidemic prevention in its locality, and carry out the plan (see former Communicable Disease Control Act, Article 4, Paragraph 1, Subparagraph 1, Item 1; Subparagraph 2, Item 1). Therefore, relevant measures for controlling contagious diseases shall resort to the expertise of the competent authority. A decision made by the competent authority to impose necessary dispositions for compulsory quarantine, balancing seriousness of epidemic and surrounding circumstances, will be better than a decision made by the court for prompt disease control. As for the legality aspect, the competent authority, when making the abovementioned disposition, shall follow the Administrative Procedure Act and relevant procedures prescribed by other laws. Persons ordered to move into designated places for compulsory quarantine, if they refuse to accept the disposition of the competent authority, may still resort to administrative procedures for remedy. Therefore, compulsory quarantine for the provision at issue, although not ordered by courts, does not violate Article 8 of the Constitution guaranteeing due process to protect personal freedom.

The provision at issue did not prescribe the period of compulsory quarantine, nor did it leave the decision with the courts to impose compulsory quarantine. Although these do not affect its constitutionality, yet a person having contacts with patients of contagious disease, or suspected of being infected, while in compulsory quarantine, is deprived of his or her personal freedom. In order to keep his or her quarantine time within a reasonable length, it is better to stipulate in statute the maximum length of compulsory quarantine, the organs and procedures for implementing compulsory quarantine, the court remedies for quarantined persons or their families who refuse compulsory quarantine, and the mechanism for compensating the quarantined persons.

The relevant organs shall thoroughly review the Contagious Disease Control Act for revision.

As for the allegations that Article 11, Article 24, Paragraph 1, Subparagraph 2, and Article 34, Paragraph 1 of the previous Contagious Disease Control Act violated Article 8 and Article 23 of the Constitution, petitioner merely disputed by subjective opinion the appropriateness of the court in applying the law to the fact, and did not allege concretely how the provision at issue contradicts the Constitution in an objective sense. Because these allegations do not conform to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act, they shall be dismissed according Subparagraph 3 of the same article. It is hereby explained.

Translated by Huai-Ching R. Tsai.

Editor's Note

Summary of Facts : Petitioner Jou, Jing Kai was a medical doctor and the director of Gastroenterology Department in Taipei Municipal Ho-Ping Hospital (hereinafter "Ho-Ping Hospital"). In April 2003, Ho-Ping Hospital experienced an outbreak of SARS group infections. Based on the provision at issue authorizing the government agency in charge of executing law to make "necessary dispositions" to "persons having contacts with patients of contagious disease, or suspected of being infected," Taipei Municipal Government promulgated "Emergency Measures of Taipei Municipal Government to Handle SARS" on April 24, ordered all Ho-Ping Hospital's employees to go back to the hospital for concentrated quarantine. Petitioner did not go back to the hospital before the deadline, and delayed until May 1 afternoon to report to the hospital. He was punished by 2 major demerits with immediate suspension of his hospital duty. Later, he was fined N.T. \$240,000, and suspended from the practice of medicine for 3 months.

Petitioner refused to accept the punishment and instituted administrative proceedings. The cases were dismissed by the Supreme Administrative Court Judgment No. 01651, 2006 (for demerits), Judgment No. 00043, 2007 (for fines), and Judgment No. 02054, 2006 (for suspension of practice). He also applied for National Damage Compensation, and the case was dismissed by Taiwan High Court in Re-Appeals for National Damage Compensation, Civil Judgment No.9, 2006. He contended that the hospital's ordering its employees back to the hospital for concentrated quarantine is a deprivation of his personal freedom guaranteed by the Constitution, and that the relevant provisions of law violated the principle of legal clarity, principle of proportionality, and due process of law. Therefore, he petitioned for a constitutional interpretation.

Interpretation