

## Summary of J.Y. Interpretation No. 750

Note: This summary constitutes no part of the Interpretation but is prepared by the Clerk's Office of the Constitutional Court, only for the readers' reference.

---

Case No.: Huei-Tai-11226 filed by LIU Li-Jie

Decided and Announced July 7, 2017

### Background Note

In October 2009, the Petitioner applied to participate in the first senior professional and technical personnel examination in the category of dentists in 2010, listing the degree he acquired from an overseas university to satisfy the eligibility requirement thereof. The Ministry of Examination, taking the view that the Petitioner failed to submit the required certificate proving the successful completion of a full internship accompanied by the records showing the grades therein, both issued by an accredited medical institution in Taiwan, notified the Petitioner that he should apply to participate in the examination-in-stages at the preliminary stage level for the category of dentists instead. It further notified him that, after passing the said examination at the preliminary stage, he should satisfy the requirement of clinical practice in accordance with the Enforcement Rules of the Physicians Act, -- more specifically, clinical practice carried out under the supervision of a physician at an accredited medical institution in providing training in such clinical practice and in fulfilment of the required number of weeks/hours in the required specialization as provided in Article 1-4 of the Enforcement Rules of the Physicians Act. Still further, by the Original Disposition the Examination Ministry notified the Petitioner that only after the successful completion of the required clinical practice would he be eligible to participate in the second stage of the said examination-in-stages, for which he should submit the certificate acquired upon the completion of internship, accompanied by the records showing the grades attained. The Petitioner, after exhausting the available judicial remedies, filed a petition to this Court in October 2012, claiming that Article 1-1 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Executive Yuan) and Subparagraph 1 of the Dentists' Category in "Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist" annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan)

are not consistent with Articles 7, 15, 18, and 23 of the Constitution.

### **Holding**

Article 1-1 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Executive Yuan (subsequently restructured and renamed the Ministry of Health and Welfare)) and Subparagraph 1 of the Dentists' Category in "Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist" annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan), concerning eligibility of a graduate from an overseas department of dentistry, do not violate *Gesetzesvorbehaltprinzip* (the principle of legislative reserve) or the principle of proportionality enshrined in Article 23 of the Constitution, and are in conformity with the intent of the protection of the right to work and the right to take examinations respectively provided in Articles 15 and 18 of the Constitution, nor do they violate the right to equal protection enshrined in Article 7 of the Constitution.

### **Reasoning**

1. The Petitioner filed a petition to this Court, this Court considered that the petition in question satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act and accordingly granted review. Further, on June 5, 2017 the Petitioner applied to the Court for his original petition to be withdrawn, on ground that he himself did no longer intend to apply to participate in a dentist examination, hence his petition for constitutional interpretation losing its purpose. Considering that the Court had already granted review to the petition in question, that a petition for constitutional interpretation concerns not only the protection of individual rights under the Constitution but also the constitutionality of the disputed provisions, hence having a bearing on the maintenance of the constitutional order and thus a matter of public interest, and that passing an Interpretation on the subject-matter in this case has constitutional significance, the Court did not allow the petition in question to be withdrawn.
2. Article 86, Subparagraph 2 of the Constitution stipulates that the qualification for practicing in a specialized profession shall be determined and registered through examination by the Examination Yuan in accordance with the law. In

this light, in relation to a specialized profession, people's freedom to pursue the occupation of their own choosing has its inherent limits. Further, in accordance with Article 18 of the Constitution, the people shall have the right of taking public examinations. This, in addition to protecting the right to acquire eligibility to serve as a public functionary through participating in examinations, protects the right to acquire eligibility to practice as a professional or a technologist through participating in examinations. Statutory provisions on the eligibility to take an examination or on the manner to participate in an examination, if by their nature might constitute a limit on the right to take examinations and the right to work, must be in consistence with constitutional principles such as Gesetzesvorbehaltprinzip (the principle of legislative reserve) and the principle of proportionality enshrined in Article 23 of the Constitution

3. Physicians (dentists included; in the same meaning hereinafter) are professionals. The qualification for professional practice as a physician shall be granted through passing examinations in accordance with the provisions of the Professional and Technical Personnel Examinations Act. Articles 1 and 4 of the Physicians Act have laid down rules governing matters of significance such as eligibility to participate in the examinations concerned. In relation to remaining matters in the detailed or technical aspects of implementation of the law which are considered to be of secondary significance, the competent authorities may lay down ordinances so as to exercise necessary regulation.
4. Article 1-1 of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the then Department of Health, Executive Yuan provides: "(Paragraph 1) [S]uccessful completion of a full internship' referred to in Articles 2 to 4 of this Act means the completion of clinical practice that is carried out under the supervision of a physician at an accredited medical institution in providing training in such clinical practice and in fulfilment of the required number of weeks/hours in the required specialization as provided in Articles 1-2 to 1-4 of this Act in which the trainee, through passing examinations and assessments in all specialized subjects, acquires a certificate issued by the said accredited medical institution.", "(Paragraph 2) As regard to the internship referred to in the foregoing paragraph, the competent authorities in the Central Government may conduct selection, conferment, and distribution among the medical institutions which apply to be accredited, as well as among persons who apply to serve as a supervisor therein, and may delegate the carrying out of the internship to

professional institutions or associations in the private sector.”(hereinafter “Disputed Provision 1”). Those provisions are rules made by the competent authority for public health in the Central Government in accordance with the authorization under Article 42 of the Physicians Act in relation to ‘successful completion of a full internship’ referred to in Articles 2 to 4 of the same Act, which can cover matters relating to the accredited medical institution, the specialized subjects, the required number of weeks/hours, and the handling of examination and assessment results, etc. These matters can be considered to be detailed or technical aspects of implementation of the law which are of secondary significance. The making of necessary regulation by ordinances by the competent authority for public health in the Central Government does not violate the requirement of Gesetzesvorbehaltprinzip (the principle of legislative reserve) enshrined in Article 23 of the Constitution.

5. According to Subparagraph 1 of the Dentists’ Category in “Table 1: Qualifications Required for the Eligibility for Taking Examination-in-Stages in Senior Professional and Technical Personnel Examinations: Category of Dentist” annexed to the Regulations Governing Senior Professional and Technical Personnel Examination-in-Stages: Category of Dentists (as amended and promulgated on October 14, 2009 by the Examination Yuan) (hereinafter “Disputed Provision 2”), the qualification required for taking the examination-in-stages in senior professional and technical personnel examinations is: “a graduate from the department or division of dentistry in a public or registered private university or an independent college, or from the department or division of dentistry in an overseas university or independent college that conforms to the accreditation rules promulgated by the Ministry of Education, who holds a graduate diploma to prove the successful completion of a full internship; for a graduate from the department or division of dentistry in an overseas university or independent college, the standard for certifying the successful completion of a full internship concerned shall be determined in accordance with the relevant provisions of the Enforcement Rules of the Physicians Act (as amended and promulgated on September 16, 2009 by the Department of Health, Executive Yuan)” (hereinafter “Disputed Provision 2”). The above qualification requirement in Disputed Provision 2 was prescribed by the Examination Yuan in accordance with legislative authorization: in large part it was essentially identical with the relevant provision of Article 4 of the Physicians Act, and the part relating to the certification of the successful completion of a full internship on the part of the graduates from an overseas institution was done in accordance with Disputed Provision 1. It does not

exceed the scope of authorization provided in the law, nor does it impose an additional restriction that does not exist under the authorizing legislation. As such, it does not violate the requirement of *Gesetzesvorbehaltprinzip* (the principle of legislative reserve).

6. As far as the professional personnel examination is concerned, rules prescribed by the Examination Yuan in relation to the examination methods and eligibility for taking examinations bear a close relationship to the professional judgment that is integral to the process of making selection through examination. As such, those rules should be duly respected. Further, as an eligibility requirement for participating in the professional examination, “the successful completion of a full internship”, together with the standard of its certification, is intimately related to the professional capability of the physicians to be selected, as well as to the quality of medical care they provide. In these matters, decisions of the competent authority for public health in the Central Government should be respected, so that the constitutional spirit of “separation and coordination of five powers” may be observed.
7. Disputed Provisions 1 and 2, in requiring the successful completion of a full internship, set out to ensure the professional capability of the physicians and the quality of medical care they provide, so as to safeguard patients’ rights and interests and to promote the health of the people. The objectives those provisions set out to pursue should be considered legitimate. The substance of Disputed Provisions 1 and 2, in regulating matters such as the accredited medical institution where the training in clinical practice may be provided, the specialization and the number of weeks/hours that is required of in the clinical practice, and the handling of examination and assessment results, etc. are all conducive to the achievement of the above objectives, as well as are all reasonable means to be used. As such, Disputed Provisions 1 and 2 do not violate the principle of proportionality enshrined in Article 23 of the Constitution so as to infringe the right to work in Article 15 of the Constitution and the right of taking examinations in Article 18 of the Constitution.
8. Disputed Provision 1, for its being applied to a graduate from a domestic department of dentistry as well as to a graduate from an overseas department of dentistry, does not make any differential treatment in form. However, the requirement of the successful completion of a full internship, one that is carried out in compliance with Disputed Provision 1 – i.e. “at an accredited medical institution in providing training in such clinical practice in which the trainee, through passing examinations and assessments in all specialized

subjects, acquires a certificate issued by the said accredited medical institution” – has been incorporated in the qualification requirement for acquiring a graduate diploma for a graduate from a domestic department of dentistry. For a graduate from an overseas department of dentistry, clinical practice to the same standard is not necessarily part of the qualification requirement in getting the degree, so an overseas graduate is often not in a position to submit the certificate required. In this sense, Disputed Provision 1 makes a differential treatment in substance. The above differential treatment concerns dentists’ level of technical skill and capability and the quality of medical care they provide. As such, the decision is more suitably left for an authority that has professional capability in matters of medical care and examinations to make. As long as the decision sets out to pursue a legitimate objective, and the means employed are reasonably related to the objective, it does not violate the intent of the right to equal protection enshrined in Article 7 of the Constitution.

9. A graduate from an overseas department of dentistry is not necessarily equipped with the training in clinical practice at an adequate level. Even if he/she has received training in clinical practice, for reasons that there are differences in terms of language, medical culture, and diseases a physician encounters between where the training was carried out and in the domestic setting, the experience in clinical practice an overseas graduate has accumulated can still be considered inadequate. Disputed Provisions 1 and 2, by requiring a graduate from an overseas department of dentistry to complete a certain level of clinical practice at a medical institution that is accredited by the competent authority, serve to address and remedy the above inadequacy. As such, Disputed Provisions 1 and 2 are conducive to the achievement of the objective they set out to pursue, and the means employed therein are not manifestly unreasonable. For these reasons, the differential treatment made in the Disputed Provisions, being reasonably related to the achievement of the objective it sets out to pursue, does not violate the intent of the right to equal protection enshrined in Article 7 of the Constitution.

---

Justice Dennis Te-Chung TANG recused himself and took no part in the deliberation or decision of this case.

Justice Horng-Shya HUANG filed an opinion concurring in part.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion.