

Summary of J.Y. Interpretation No. 751

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 Nos.: Huei-Tai-10895 filed by Judge of the KUAI Unit, Taiwan Miaoli District Court, Huei-Tai-11436 filed by Judge of the HSIEN Unit, Court of Administrative Litigation, Taiwan Miaoli District Court, Huei-Tai-11626 filed by Judge of the JOU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court, Huei-Tai-11713 filed by Judge of the CHAO Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court, Huei-Tai-13154, 13160, 13177 filed by Judge of the YU Unit, Court of Administrative Litigation, Taiwan Taoyuan District Court, Huei-Tai-11089 filed by Yu-Zhen He, Huei-Tai-13502 filed by Chieh-Chiang Lo, Yu-Hua Pang and Shao-Yeh Huang, Huei-Tai-9913 filed by Li-Er Huang, Huei-Tai-11778 filed by Yu-Feng Huang, Huei-Tai-10790, 10791, 10789, 10792, 11521, 11542 filed by Shi-Wei Lin, Huei-Tai-10693, 10787, 10786, 10788, 11120, 11588, 11299, 11589, 11437, 11453 filed by Wan-Hsing Hsu

Decided and Announced: July 21, 2017

Background Note

1. The Petitioners of Appendixes 1 to 7 were hearing cases of contestation for violations of the Road Traffic Management and Penalty Act (hereafter the "Road Traffic Act"), of traffic adjudication, and of violations of the Employment Service Act in their respective courts (Please refer to the attached chart for the details regarding the provisions at issue and the final decisions of the initial cases from which the petitioners filed petitions to this Court for a constitutional interpretation and/or a uniform interpretation of law; The same applies to the other Petitioners hereafter). As after the actors in the respective cases all were granted by the prosecutors a disposition of deferred prosecution in which the prosecutors also required the defendants to perform the burden specified in Subparagraph 4 or 5, Paragraph 1, Article 253-2 of the Code of Criminal Procedure (hereafter the "Burden to be Performed"), they were respectively demanded by the competent authorities to pay the penalties after the Burden to be Performed being deducted therefrom, according to the part regarding a disposition of deferred prosecution in which the prosecutor

also requires the defendant (or the criminal suspect; omitted hereafter) to perform the Burden to be Performed in Article 26, Paragraph 2 of the Administrative Penalty Act (hereafter the “First Provision at Issue”) and the part regarding the application of Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act in Article 45, Paragraph 3 of the same act (hereafter the “Second Provision at Issue”). The aforesaid Petitioners considered the First and Second Provisions at Issue violations of the *non bis in idem* principle (“the right not to be punished twice for the same conduct”) and the doctrine of legitimate expectation. Opining in good conscience that the Provisions at Issue before is in conflict with the Constitution, after adjourning the proceedings *sua sponte*, the petitioners petitioned this Court to interpret the Constitution. (the Petitioner of Appendix 1: March, June and August 2012, the Petitioner of Appendix 2: February and July 2013, the Petitioner of Appendix 3: June 2013, January 2014 and May 2015, the Petitioner of Appendix 4: August 2013, February 2014, May and December 2015, the Petitioner of Appendix 5: September 2016, the Petitioner of Appendix 6: September 2016, the Petitioner of Appendix 7: September 2016)

2. The Petitioner Yu-Zhen He of Appendix 8 for her case of contestation for violations of the Road Traffic Act and the Petitioners Chieh-Chiang Lo, Yu-Hua Pang and Shao-Yeh Huang of Appendix 9 for their case regarding the Private School Law, after being granted by the prosecutor a disposition of conditional deferred prosecution with the Burden to be Performed, each was further ordered by the competent authorities to pay the penalties after the Burden to be Performed being deducted therefrom. The Petitioners brought administrative complaints and lawsuits to challenge said orders, and all failed. They claimed the laws applied by the court of last resort in the final decisions violated the Constitution, and petitioned for constitutional interpretation. (the Petitioner of Appendix 8: July 2012, the Petitioner of Appendix 9: June 2017)
3. The Petitioner Li-Er Huang of Appendix 10 and the Petitioner Yu-Feng Huang of Appendix 11 for their respective cases of individual income tax, and the Petitioner Shi-Wei Lin of Appendix 12 and the Petitioner Wan-Hsing Hsu of Appendix 13 for their respective cases regarding the Income Tax Act, after being granted by the prosecutor a disposition of conditional deferred prosecution ordering them to pay the Burden to be Performed, each was further punished by the competent authorities, which applied Paragraph 2, Article 26 of the Administrative Penalty Act of February 5, 2006 to their cases according to the Ministry of Finance Letter Tai-Tsai-Shui-09600090440 of

March 6, 2007 (hereafter the “First Letter at Issue”). The Petitioners brought administrative complaints and lawsuits to challenge said orders, and all failed. They claimed the laws applied by the court of last resort in the final decisions violated the Constitution, and petitioned for constitutional interpretation. (the Petitioner of Appendix 10: June 2010, the Petitioner of Appendix 11: October 2013, the Petitioner of Appendix 12: January 2012 and April 2013, the Petitioner of Appendix 13: January 2012, February and May 2013)

4. The Petitioner Shi-Wei Lin of Appendix 12 and the Petitioner Wan-Xing Xu of Appendix 13 for their respective cases regarding the Income Tax Act, claimed that the opinions of the final court judgment of last resort, on whether Article 26, Paragraph 2 of the Administrative Penalty Act (taking effect on February 5, 2006) shall be applied to a final deferred prosecution, were different from those of the Taiwan High Court in its 2008 Chiao-Kang-607 Ruling (hereafter the “First Ruling at Issue”) on a traffic case, and in its 2009 Chiao-Kang-2209 (hereafter the “Second Ruling at Issue”) on a criminal case. Both rulings applied the same Act in the said final judgment. They therefore petitioned for a uniform interpretation. (the Petitioner of Appendix 12: January 2012 and April 2013, the Petitioner of Appendix 13: December 2011, January and November 2012, June 2013)
5. Considering the above Petitions all involve the same issue whether the competent authorities may impose penalties on a breach of duty under the administrative law after the defendant has been granted by a prosecutor a disposition of conditional deferred prosecution with the Burden to be Performed and thus share a commonality, we therefore consolidate all of them.

Holding

1. Article 26, Paragraph 2 of the Administrative Penalty Act prescribes that “If a final disposition of deferred prosecution is imposed on an offense listed in the preceding paragraph, such offense may be still punished for breach of administrative law obligations”. The Ministry of Finance Letter Tai-Tsai-Shui 09600090440 of March 6, 2007 also provides that an offense subject to a final deferred prosecution may still be punished for breach of administrative law obligations. The part regarding the disposition of deferred prosecution where a prosecutor orders a defendant to perform the duties specified in Article 253-2, Paragraph 1, Subparagraphs 4 and 5 of the Code of Criminal Procedure does not violate Article 23 of the Constitution. Nor does it contradict the spirit of people’s right to property, as protected by Article 15 of the Constitution.

2. Article 45, Paragraph 3 of the same Act prescribes “the provisions of Article 26, Paragraphs 3 to 5 of this Act, as amended on November 8, 2011, also apply to an action taking place before the amendment which violated the administrative law obligations and was subject to an administrative penalty, but yet to be punished, even if such an action also violated the criminal law and was granted a final disposition of deferred prosecution....” The part concerning the application of Article 26, Paragraphs 3 and 4 does not violate the Ex Post Facto principle or the doctrine of legitimate expectation under the *Rechtsstaat* (rule of law). Nor does it contradict the spirit of people’s right to property as protected by Article 15 of the Constitution.
3. On the petition for uniform interpretation of law: Although Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, does not explicitly include “a final disposition of deferred prosecution” therein, a disposition of deferred prosecution is in fact an expedient disposition of conditional non-prosecution. Therefore, Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, may apply to an offense for which a final disposition of deferred prosecution is granted. By interpretation, such an offense is still punishable for its breach of the administrative law obligations.

Reasoning

1. A disposition of deferred prosecution, in nature, is for a prosecutor, authorized by statutes, to conclude an investigation. It does not function to reaffirm the existence of the power to punish. Instead, it is a procedural measure to prevent the exercise of the power to punish. In this regard, it is in fact an expedient disposition of conditional non-prosecution.
2. According to Article 253-2, Paragraph 1, Subparagraphs 4 [and] 5 of the Code of Criminal Procedure, the burden to be performed is not a type of criminal punishments specified in the criminal law. It is a duty to be performed by a defendant, as required by a prosecutor with the defendant’s consent and within the prosecutor’s capacity to conclude an investigation, after balancing the facts of individual cases and the safeguarding of public interests. It serves the purposes such as functioning as a mechanism of specific deterrence and encouraging the self-correction and social rehabilitation of the defendant. After all, by nature, it is not a criminal punishment imposed by an adjudicating authority in compliance with the criminal procedures. However, by the Burden to be Performed, a defendant is subject to an obligation to make a certain

monetary payment or provide labor service. Therefore, his or her property right or personal freedom is restricted. On such people, this Burden constitutes a restriction on their basic rights with unfavorable effects similar to punishments. Therefore, the state, when imposing a penalty under the administrative law on the same action of the people, after imposing a Burden to be Performed, the entirety of the unfavorable effects on the basic rights of the people may not be excessive and must comply with the principle of proportionality.

3. Article 26, Paragraph 2 of the Administrative Penalty Act prescribes that “If a final disposition of deferred prosecution is imposed on an offense listed in the preceding paragraph, such offense may be still punished for breach of administrative law obligations”. The part regarding the disposition of deferred prosecution where a prosecutor orders a defendant to perform the duties specified in Article 253-2, Paragraph 1, Subparagraphs 4 and 5 of the Code of Criminal Procedure (the “First Provision at Issue”) authorizes [a competent authority] to impose a penalty for breach of administrative law obligations, even after a defendant is granted a disposition of conditional deferred prosecution with a Burden to be Performed. Such authorization is based on the legislature’s considerations that the purpose and nature of a Burden to be Performed are different from those of a criminal punishment. Therefore, without the imposition of an administrative penalty, the level of culpability on a wrongdoing subject to the administrative penalty would be insufficient. In order to restore the legal order and to promote public interests, the further imposition of administrative penalty is warranted with such legitimate purposes. Since the entirety of its unfavorable effects on the people is not obviously out-of-proportion and not excessive. So it does not violate the principle of proportionality or trigger the question of *bis in idem*.
4. Article 45, Paragraph 3 of the Administrative Penalty Act prescribes: “the stipulations of Article 26, Paragraphs 3 to 5 of this Act, as amended on November 8, 2011, also apply to an action which took place before the amendment, was not only in breach of an administrative law obligation but also concurrently violated the criminal law, for which violation a disposition of deferred prosecution has been rendered but an administrative penalty is yet to be imposed....” The part regarding the application of Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act in Article 45, Paragraph 3 of the same Act (the “Second Provision at Issue”), requires a retroactive application of Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act, as

amended on November 8, 2011. Therefore, the amendment applies also to an offense that took place before the 2011 Amendment of the Act but is yet to be punished. This is a statutory provision specifically requiring a retroactive application. Further, the stipulations in Article 26, Paragraphs 3 and 4 of the Administrative Penalty Act that allows a burden to be performed to be deducted from a penalty is to lessen the disadvantage on people's property and thus is hereby regarded as a new rule beneficial to the actor. There is surely no violation of the *Ex Post Facto* principle or the doctrine of legitimate expectation.

5. The Ministry of Finance Letter Tai-Tsai-Shui 09600090440 of March 6, 2007(the "First Letter at issue") is an explanation given by the taxation authority, based on its statutory authority and after consulting the Ministry of Justice, on the application guideline of Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006. Such explanation is compatible with the general doctrines of statutory construction, and does not create restrictions or burdens beyond the statutory scheme. It does not violate the Principle of *Gesetzesvorbehalt* (Statutory Reservation).
6. This Court finds that, although Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, did not explicitly include a "final disposition of deferred prosecution" in its provision, a burden to be performed only carries some unfavorable effects similar to punishments. It, in itself, is not a criminal punishment. Hence, it is in fact an expedient disposition of conditional non-prosecution. Therefore, Article 26, Paragraph 2 of the Administrative Penalty Act, which took effect on February 5, 2006, by interpretation, may be applied to an action being granted a final disposition of deferred prosecution and punish such action for breach of the administrative law obligations.

Justice Chong-Wen CHANG filed an opinion concurring in part.

Justice His-Chun HUANG filed a concurring opinion.

Justice Ming-Cheng TSAI filed a concurring opinion.

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

Justice Beyue SU CHEN filed an opinion dissenting in part.

Justice Chang-Fa LO filed a dissenting opinion.

Justice Dennis Te-Chung TANG filed a dissenting opinion.

Justice Jui-Ming HUANG filed a dissenting opinion.

Justice Sheng-Lin JAN filed a dissenting opinion.