

Summary of J.Y. Interpretation No. 749

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

Case Nos.: Huei-Tai-8767 filed by Wan-Jin WANG, Huei-Tai-9876 filed by Yao-Hua LI , Huei-Tai-10166 and Huei-Tai-10186 filed by Rong-Yao LI , Huei-Tai- 10352 filed by Chih-Chien CHEN (original name: Te-Hao CHEN), Huei-Tai-12001 filed by Ching-You YEH, Huei-Tai-12617 filed by Hua-Tsung HSU, Huei-Tai-12071 filed by judges in Administrative Litigation Division, Taiwan Taipei District Court, Huei-Tai-13437 filed by judges in Administrative Litigation Division, Taiwan Taoyuan District Court

Decided and Announced: June 2, 2017

Background Note

1. Petitioners Wan-Jin WANG, Yao-Hua LI, Rong-Yao LI, Chih-Chien CHEN (original name: Te-Hao CHEN), Ching-You YEH, and Hua-Tsung HSU are all taxi drivers who have been respectively sentenced by final court judgments to punishment of imprisonment or a more severe punishment for committing crimes specified in Article 37, Paragraph 3 of the Road Traffic Management and Penalty Act (hereinafter "the Act"), and subsequently have had their respective professional practice registration nullified and their respective driver's licenses revoked by the competent authorities. After exhausting all remedies at all the levels of courts, the Petitioners filed petitions to this Court, claiming that Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of the Act as variously applied in their respective Final Judgments (whose judgment numbers, subject matter, as well as target provisions of the petitions for constitutional interpretation are seen in the Table annexed to this Interpretation) are not consistent with Articles 7, 15, 22, and 23 of the Constitution.
2. Other Petitioners in this case include judge in Subdivision Ching, Administrative Litigation Division, Taiwan Taipei District Court while reviewing Traffic Case No. 202 (2013) and Traffic Case No. 11 (2014) therein, and judge in Subdivision Jou, Administrative Litigation Division, Taiwan Taoyuan District Court while reviewing Traffic Case No. 349

(2015) therein, who came to the conviction that Article 37, Paragraph 3 of the Act applicable in the cases before them may contravene the Constitution, thus suspended the proceedings by ruling and petitioned this Court for a constitutional interpretation in April 2014 and April 2017 respectively.

3. Whereas the above petitions raised common issues on the constitutionality of Article 37, Paragraph 3, Article 67, Paragraph 2, and Article 68 of the Act, the Court joined the above petitions.

Holding

1. The Road Traffic Management and Penalty Act (hereinafter “the Act”) in Article 37, Paragraph 3 provides: “Where a taxi driver, during the time period for professional practice, is sentenced by the judgment of a court of first instance to punishment of imprisonment or a more severe punishment for committing a crime involving larceny, fraud, receiving stolen property, offenses against freedoms, or any of the crimes specified in Articles 230 to 236 of the Criminal Code, his/her professional practice registration certificate shall be suspended. Where the said sentencing judgment of punishment of imprisonment or a more severe punishment is finalized, the said professional practice registration of the taxi driver in question shall be nullified and his/her driver’s license shall be revoked.” This provision imposes consequences of suspension of a taxi driver’s professional practice registration certificate or nullification of his/her professional practice registration by citing the conviction for certain crimes and a court-imposed sentence of punishment more severe than imprisonment as the sole criteria for disqualification, without taking into account whether the committal of crimes by the taxi driver is such as to sufficiently indicate that the continuation of his/her professional practice constitutes a substantial risk to the safety of the passengers. For the above reason, the said provision’s restriction on a taxi driver’s right to work exceeds the extent of necessity, and thus is not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and is also in violation of the right to work protected by Article 15 of the Constitution. The authorities concerned shall amend the said provision as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation. Where the authorities concerned fail to amend the provision within the said two years, the parts of the provision in relation to the suspension of professional practice registration

certificate and to the nullification of professional practice registration shall become null and void. Before the amendment of the said provision is made, a taxi driver whose professional practice registration is nullified may not re-apply for such registration within three years from the day of the nullification, so that the legislative purpose to deprive offending taxi drivers of their professional practice for a fixed period of time may be maintained.

2. That part of Article 37, Paragraph 3 of the Act in relation to the revocation of the driver's license, which clearly exceeds extent that is necessary for achieving the purpose to deprive offending taxi drivers of their professional practice for a fixed period of time, is not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and is also in violation of the right to work protected by Article 15 and the general freedoms protected by Article 22 of the Constitution, and thus shall become null and void from the day of the announcement of this Interpretation. As a result, that part of Article 37, Paragraph 3 of the Act in question shall not be applied as a ground in support of the application of Article 68, Paragraph 1 of the Act (prior to amendment of May 5, 2000, Article 68 of the Act) in revoking the various classes of driver's licenses held by a taxi driver.
3. Article 67, Paragraph 2 of the Act, which reads in relevant parts: "A driver whose ... driver's license has been revoked in accordance with ... Article 37, Paragraph 3 of the Act ... may not apply to attend tests for acquiring a driver's license" shall become null and void along with Article 37, Paragraph 3, for reasons that that part of Article 37, Paragraph 3 of the Act in relation to the revocation of the driver's license is declared null and void by this Interpretation, as seen above.

Reasoning

- I. Issues relating to suspension of professional practice registration certificate and nullification of professional practice registration in Article 37, Paragraph 3 of the Act (hereinafter "Disputed Provision 1")
 1. The legal consequences of suspension of professional practice registration certificate and nullification of professional practice registration so provided in Disputed Provision 1 may constitute a restriction on a taxi driver's freedom in selecting his/her occupation.

2. Article 15 of the Constitution protects the right to work, which incorporates the freedom in selecting one's occupation. As a matter of constitutional law, the restrictions on occupational freedom may well be of a variety of degrees of stringency, depending on the nature of the subject-matter concerned. When it comes to the subjective conditions required of a person in choosing his/her occupation, such as those relating to one's intellect, physical capacity, or record of previous convictions, the legislative restrictions, if imposed, must aim at furthering an important public interest by means that are substantially related to that interest, in order for them to meet the requirements of the principle of proportionality.
3. Taxis are an important means of transport for the general public. As such, the occupation of taxi-driving bears a close relation to passengers' safety and the maintenance of good order. The operating pattern of taxis in Taiwan is primarily "roaming and picking", in which a passenger hails a taxi randomly on the roadside and often does not have the chance to screen the driver or acquire information about the standard of service each driver provides beforehand. Further, once in the taxi, the passenger will find himself/herself in a confined and small space, in which the driver has a relatively dominant place. Based on the above considerations, Disputed Provision 1 imposes certain restrictions as to the subjective qualifications of a person who intends to serve as a taxi driver, in order to protect the safety of passengers and to maintain good order, which are important public interest and thus legitimate purposes the protection of which is constitutional.
4. Notwithstanding the above finding that Disputed Provision 1, by imposing restrictions on the subjective qualifications of a taxi driver which deprives him/her of the qualification from exercising his/her profession based on a court conviction for a certain category of crimes and sentencing according to a certain category of punishment, may be considered conducive to the achievement of the above-mentioned purposes, the said qualification restriction shall be limited to an extent excluding only those drivers whose continuing exercise of profession constitutes a substantial risk to the safety of passengers. Only when limited to that extent can such a restriction be said to have chosen a means that is substantially related to the achievement of the said purposes.
5. However, while the grounds of disqualification listed in Disputed Provision 1 are criminal offenses clustered in chapters of the Criminal Code, offenses in the same chapter differ in the nature of danger they impose and in the degree

of their infringement of legal interest. Further, some of the offenses listed as grounds of disqualification cannot be said to bear a direct relation to the safety of passengers. Still further, according to statistics or research, both in the preparatory work before the Legislative Yuan at the time of the relevant amendments and supplied by the competent authorities up to the present time, there are not sufficient grounds to conclude that persons who were convicted of crimes listed in Disputed Provision 1 are highly likely to commit those crimes again relying on the convenience offered by practicing taxi-driving, thus imposing substantial risks to the safety of passengers.

6. Disputed Provision 1 imposes consequences of suspension of a taxi driver's professional practice registration certificate or nullification of his/her professional practice registration by listing the conviction for certain crimes and a court-imposed sentence being more severe than imprisonment as the sole criteria for disqualification, without taking into account whether the committal of crimes by the taxi driver is such as to sufficiently indicate that the continuation of his/her professional practice constitutes a substantial risk to the safety of passengers. For the above reason, the restriction in Disputed Provision 1 of a taxi driver's right to work exceeds the extent of necessity.

7. In sum, the parts of Disputed Provision 1 concerning the suspension of a taxi driver's professional practice registration certificate and the nullification of his/her professional practice registration are not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and are also in violation of the right to work protected by Article 15 of the Constitution. The authorities concerned shall amend the said provision as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation. Where the authorities concerned fail to amend the provision within the said two years, the parts of Disputed Provision 1 in relation to the suspension of professional practice registration certificate and to the nullification of professional practice registration shall become null and void.

II. Issues relating to revocation of driver's license in Disputed Provision 1 and in Article 67, Paragraph 2 and Article 68 of the Act in Disputed Provision 1

1. Nullification of professional practice registration, which will deprive a taxi driver of his/her professional practice, is thus sufficient for fulfilling the legislative purpose of protecting the safety of passengers. The parts in Disputed Provision 1 in relation to revocation of driver's license, apart from

depriving a driver of his/her right to work, further deprive a person of the freedom to drive a car, and as such, manifestly exceed the extent necessary for achieving the legislative purposes, and thus are not consistent with the principle of proportionality enshrined in Article 23 of the Constitution, and are also in violation of the right to work protected by Article 15 and the general freedoms protected by Article 22 of the Constitution, and thus shall become null and void from the day of the announcement of this Interpretation. As a result, the relevant part in Disputed Provision 1 shall not be applied as a ground in support of the application of Article 68, Paragraph 1 of the Act in revoking the various classes of driver's licenses held by a taxi driver.

2. Article 67, Paragraph 2 of the Act, (hereinafter "Disputed Provision 2"), for reasons that the part in Disputed Provision 1 in relation to the revocation of driver's license is declared null and void by this Interpretation as seen above, and shall become null and void along with Disputed Provision 1.
3. In accordance with this Interpretation, a taxi driver whose professional practice registration has been nullified in accordance with Disputed Provision 1, may, from the day of the announcement of this Interpretation until the authorities concerned amend Disputed Provision 1 in accordance with the ruling of this Interpretation, continue to hold his/her professional driver's license. A taxi driver whose driver's license has been revoked in accordance with Disputed Provision 1 even prior to the announcement of this Interpretation, may immediately apply to attend tests for acquiring a driver's license. However, according to Article 3 of the Regulations Governing the Management of the Professional Practice Registration of Taxi Drivers, if the aforesaid taxi driver may hold his/her professional driver's license, either already held or newly issued, and be allowed to apply for professional practice registration, the purpose of Disputed Provision 2 which is to prevent the taxi driver from conducting his/her professional practice for a fixed period of three years will be defeated. In this light, to uphold the intent of depriving a taxi driver from conducting his/her professional practice for a fixed period, a taxi driver whose professional practice registration has been nullified prior to the amendment to the relevant law and regulations may not apply for practice registration within three years from the day of the said nullification.

Justice Chang-Fa LO filed a concurring opinion.

Justice Horng-Shya HUANG filed a concurring opinion, in which Justice Ming-Cheng TSIA, joined.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Sheng-Lin JAN filed an opinion dissenting in part and concurring in part.