

Habeas Corpus Act

Translated into English by Raymond Chen-En Sung

DPhil Candidate, St. Catherine's College, Oxford

Reviewer: Li-Chin Lin., Esq. Associate Professor, Soo Chow  
University School of Law J.D., Loyola University School  
of Law (Chicago)

Promulgated by the Presidential Order No Hwa-Zong-I-Yi-10300000651 on January 8, 2014

## Article 1

Where a person is arrested or detained by an organ other than by a decision of the court, the said person, or any other person, may petition the district court that has jurisdiction *ratione loci* for the place of the arrest or detention for *habeas corpus*. The forgoing shall be without prejudice to the application of other provisions in the statutory law in accordance with which a person so arrested or detained may petition for a prompt court review.

Litigation expenses for a petition made in accordance with the preceding paragraph or for an interlocutory appeal made in accordance with Article 10 are waived.

## Article 2

Where a person is arrested or detained, the organ that made the arrest or detention shall, within twenty-four hours at the latest, in writing notify the said person, and the relatives or friends designated by such a person, of the following: the grounds for the arrest or detention; the time and place of the arrest or detention; and that the persons so notified may apply for *habeas corpus* in accordance with the provisions of this Act.

Notwithstanding the foregoing, the person under arrest or detention, or his/her relatives or friends, may apply to be so notified as in accordance with the preceding paragraph.

Where the person under arrest or detention, or his/her relatives or friends, do not understand Chinese, the written notice made in accordance with Paragraph 1 of this Article shall be supplemented by passages written in the language used by those who are to be so notified; where there are reasons so as that such a supplement cannot be made in the written notice, the organ that made the arrest or detention shall find an equivalent way to inform the persons concerned in a language comprehensible to them.

## Article 3

The petition for *habeas corpus* shall be made in writing or orally stating the following:

1. The name, gender, date of birth, number of identity document, and domicile or habitual residence of the petitioner; where the petition is made by persons other than the person under arrest or detention, in addition to the above, the name, gender, or any other details for identification of the person under arrest or detention;
2. The grounds for the arrest or detention, and the time and place of the arrest or detention known to the petitioner;
3. The organ that made the arrest or detention, or the name of the person who made the arrest or detention;
4. The court to which the petition is filed;
5. The date of the petition.

Where a petition provided in the preceding paragraph is filed orally, such a petition shall be filed before a court clerk, who shall make a transcript thereof in the court records.

Where the format set out in Paragraph 1 of this Article is found lacking, the court shall investigate the lacking elements on its own initiative.

#### Article 4

Upon receiving the petition for *habeas corpus*, the district court shall, in accordance with the nature of the subject-matters as stated in the petition pleadings, decide the competent division that is to exercise jurisdiction. Detailed regulations governing the competent divisions to exercise the jurisdiction over the petition for *habeas corpus* shall be prescribed by the Judicial Yuan.

#### Article 5

The court to which a petition for *habeas corpus* is filed shall, within twenty-four hours of the registration of the said petition, serve a writ of *habeas corpus* upon the organ that made the arrest or detention, as well as a notice upon its immediate superior organ. Notwithstanding the forgoing, the said court may, by a ruling, deny the petition on ground of one of the following:

1. That the arrest or detention was made in accordance with a court decision;
2. That in accordance with other provisions in the statutory law a person under arrest or detention may petition for a prompt court review;

3. That the person previously under arrest or detention has been released;
4. That the person previously under arrest or detention has died;
5. That the alleged deprivation of physical freedom was imposed in accordance with a court decision;
6. That there has been proved to be no such arrest or detention as alleged.

The court to which a petition for *habeas corpus* is filed may not by a ruling deny the petition on ground that it lacks jurisdiction over the petition.

#### Article 6

A writ of *habeas corpus* shall indicate the following:

1. The organ that made the arrest or detention, as well as the place where it is located;
2. The name, gender, or any other details for identification of the person under arrest or detention;
3. The court issuing the writ of *habeas corpus*;
4. The court to which the person under arrest or detention shall be turned over;
5. The date of the writ of *habeas corpus*.

The authenticated copies of the writ of *habeas corpus* shall be served upon the organ that made the arrest or detention, with the duplicates served upon the petitioner and the person under arrest or detention; where the court issuing the writ of *habeas corpus* is not identical to the court to which the person under arrest or detention shall be turned over, the authenticated copies of the writ of *habeas corpus* shall be annexed to the dossier of the petition, which shall be forwarded to the court to which the person under arrest or detention shall be turned over.

When necessary, the writ of *habeas corpus* and the dossier of the petition for *habeas corpus* may be transmitted via teletext, telefax or other electronic means.

#### Article 7

The organ that made the arrest or detention shall, within twenty-four hours upon the receipt of the writ of *habeas corpus*, deliver the person under arrest or detention; where the person in question has been transferred to another organ prior to the receipt of the writ of *habeas corpus*, the organ that made the arrest or detention shall immediately reply the court issuing the writ with

such a circumstance, as well as transfer the writ to the organ to which the person in question has been transferred to, so as that transferred organ shall deliver the person in question within the twenty-four hours time-limit; where the court takes its own initiative in securing the holding of the person in question, the organ concerned shall immediately deliver the person under arrest or detention .

Where there exist special circumstances that render it difficult for the delivery or the court's securing of the holding of the person in question, and that there are apparatus to facilitate direct personal examination via two-way transmission of audio and video signals which the court deems appropriate, the court may proceed with the remote examination via those transmissions and suspend the performance of the duty by the detaining organ to deliver the detainee.

Where the person previously under arrest or detention has been released or has died prior to the receipt of the writ of *habeas corpus*, the organ that made the arrest or detention shall promptly reply the court issuing the writ of *habeas corpus* with such a circumstance.

The audio and video transmissions of the remote examination done in accordance with Paragraph 2 of this Article shall be recorded for their entire duration.

## Article 8

The court shall base its review of the legality of the arrest or detention on the following: the alleged legal basis of the arrest or detention; the alleged factual circumstances that have given rise to the arrest or detention; and the procedural regularity of the arrest or detention.

In conducting the review in accordance with the preceding paragraph, the court shall grant an opportunity to be heard to the petitioner, the person under arrest or detention, and the organ that made the arrest or detention. When necessary, the court may notify other interested parties to be present in the court proceedings to be heard therefrom.

With respect to the handling of the petition for *habeas corpus*, in addition to the provisions of this Act, the court shall apply, *mutatis mutandis*, other related procedural provisions in the statutory law.

## Article 9

Upon determining the arrest or detention to be devoid of a legal basis at the conclusion of the review, the court shall, by a ruling, immediately order the release of the person in question; upon determining that the arrest or detention has been made with an appropriate legal basis, the court shall, by a ruling, deny the petition and order the return of the person in question to the organ that turned over the said person.

A ruling ordering the release of a person made in accordance with the preceding paragraph is not reviewable.

#### Article 10

Where the petitioner or the person otherwise covered by the court ruling objects to the ruling that denied the petition, the said persons may, within ten day following the service of the said ruling and stating in writing with particularity the reasons for objection, take an interlocutory appeal from the ruling to the immediate superior court.

Upon determining the interlocutory appeal to have not been taken in conformity with the law or to be groundless, the said superior court shall, by a ruling, deny the interlocutory appeal; upon determining the interlocutory appeal to be meritorious, the said superior court shall, by a ruling, revoke the original ruling and order the release of the person under arrest or detention.

A ruling made in accordance with the preceding paragraph is not reviewable.

#### Article 11

Personnel of the organ that made the arrest or detention who violated the provisions of Paragraph 1 of Article 2 shall be sentenced to a fine of not more than one hundred thousand New Taiwan dollars.

Personnel of the organ that made the arrest or detention who violated the provisions of Paragraph 1 of Article 7 shall be sentenced to imprisonment for not more than three years, short-term imprisonment, or, in lieu thereof or in addition thereto, a fine of not more than one hundred thousand New Taiwan dollars.

#### Article 12

This Act shall come into effect six months after the date of its promulgation.