

The Due Process Requirements for the Deprivation of Physical Freedom: Focusing on Judicial Intervention

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Abstract

Albeit Article 8 of the Constitution guarantees the physical freedom of a person, the scope of due process requirements thereof remains a controversial issue in both the academic discussions and legal practices. This paper examines various factors including text, history, structure of the constitutional provision, and related constitutional interpretations made by the Justices of the Constitutional Court, Judicial Yuan. This paper then argues that although the due process requirements provided in Article 8 of the Constitution apply admittedly to criminal defendants, the requirements shall apply to non-criminal defendants by analogy. In other words, when prescribing due process requirements in terms of physical freedom, the legislature should provide an immediate judicial intervention for both criminal or non-criminal defendants, in accordance with the Constitution. For a specific institutional design, this paper comments upon that the newly-amended Habeas Corpus Act, and makes suggestions in response to jurisdiction and review process for future reference.

Keywords: physical freedom, due process, Richtervorbehalt, habeas corpus, jurisdiction

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