

**Examining the Tuberculosis Isolation Law and Policy:
An Empirical and Constitutional Analysis**

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Abstract

This article analyzes how Taiwan's tuberculosis isolation regulatory scheme authorized under Article 44 and 45 of the Communicable Disease Control Act (Act) was implemented to check the constitutionality of the isolation power. It finds that: first, the requirements for TB isolation are too general, not based on specific risk to public health posed by patients; its implementation might have gone beyond the scope of legal authorization since the authorities confused different powers of detention; second, the use of isolation power was not completely in line with the least restrictive means principle; due to unavailability of legally authorized less restrictive means and lack of medical and social support system, public health officials had little choice but to use isolation as a temporary relief to the patients' economic and social problems; third, socio-economic status of patients potentially became an important factor for isolation decisions; fourth, the isolation regulatory scheme are short of significant procedural safeguard mechanism, including appropriate and timely judicial review. To comply with the requirements of article 8, paragraph 1 of the Constitution, the Act should authorize different detention powers based on different purposes of confinement; the "when necessary" limit on isolation is too vague and should be abandoned; the isolation power against TB patients should be justified by assessment of patients' risk behavior; patients have a right to healthy and safe environments for detention and are entitled to procedural protections provided to non-criminal detainees, i.e. timely court remedies and periodic review held in recent Judicial Yuan Explanations.

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