

The Constitutional Boundaries of the Reasons for Detention

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Abstract

Since the J.Y. Interpretation No.392, the Justice of the Constitutional Court has excluded many legal defects of ROC's detention system. With the growing awareness of human rights protection, in addition to the procedure reforms such as refining the judicial review process of detention, imposing limits on the detention period and improving the defendant's situation under detention, it is essential to examine whether the reasons for detention according to the current law exceed the constitutional boundaries. This article suggests that under the constraints of current law, whether it is for evidence preservation or crime prevention, all the reasons for detention violate the principle of proportionality. The detention for evidence and testimony forging violates the principle of equality, meanwhile the detention for felony and the suspensive detention for execution of punishment violate the principle of presumed innocence. Therefore, despite the fact that detention is indispensable to the operation of criminal justice system, this article suggests that the legislator should conduct an overall review on the reasons for detention, otherwise they may be declared unconstitutional in the future.

Keyword: Principle of Presumed Innocence, Personal Freedom, Principle of Proportionality, Principle of Equality of Arms, Detention, Detention for Felony, Preventive Detention, Detention for Evidence and Testimony Forging, Detention for Abscondence

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