

Review and Reform of the Legal Framework of Isolation and Quarantine for Infectious Diseases Control

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Abstract

During the COVID-19 epidemic, Taiwan implemented a three-year large-scale isolation and quarantine. Although there was no such huge human rights controversy as the Heping Hospital incident, there are concerns that these isolation and quarantine measures weakened the rule of law compared to the "compulsory isolation" measure, of which constitutionality was confirmed by Judicial Yuan Interpretation No. 690. To keep in line with the progress of contemporary public health and the rule of law, this article reviews the isolation and quarantine regulatory framework based on Taiwan's experiences in controlling two general reportable infectious diseases (tuberculosis and measles) as well as two emerging infectious diseases (SARS and COVID-19). This paper finds that the contents of the Communicable Disease Control Act are fragmented in regulating intervention measures taken against individuals. There is no definition of means and substantive elements for isolation and quarantine and no judicial reservation before or after the event. However, the interpretation of No. 690 makes this kind of law with the characteristics of emergency laws exist normally. When large-scale isolation and quarantine are needed to prevent significant public health risks in an outbreak of emerging infectious diseases, the law fails to provide a responsive legal framework. As a result, public health

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officials expand the use of general clauses and weaken the principle of proportionality. The court also kept the procedural requirements low and continued to replace the constitutional right to immediate relief for personal freedom with the right of appeal, as Interpretation No. 690 announced. The law should specify the definition of means, substantive requirements, and procedural guarantees for the implementation of isolation or quarantine under normal conditions for the control of general reportable infectious diseases following the standard of strict scrutiny. For public health emergencies triggered by epidemics of emerging infectious diseases, it is necessary to clarify the mechanism for expanding administrative power, the elements, and the procedures. The legal system should be prepared to balance the public health needs of controlling the epidemic of emerging infectious diseases and protecting personal freedom under different public health risks.

Keywords: Isolation, Quarantine, Communicable Disease Control Act, Covid-19, Detention, Public Health Emergency, Habeas Corpu