Taiwan’s Fight against COVID-19: Constitutionalism, Laws, and the Global Pandemic

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Taiwan has demonstrated to the world its strength and success in combating the spread of COVID-19 despite decades of exclusion from the World Health Organization (WHO) and ongoing bullying from the People’s Republic of China (China). Given its geographical proximity and close economic exchanges with China, Taiwan was estimated to be heavily hit by the spread of COVID-19 originated from Wuhan, China. Reversing the trend, Taiwan has maintained a considerably low number of confirmed cases, and detected most cases of possible community spread, while Europe, the United States and the rest of the world are struggling with an ongoing global pandemic.

Constitutional and legal grounds paved from the SARS outbreak

Taiwan’s success, however, has not come without cost. Taiwan has had hard lessons learned from past tragic experiences in the loss of medical personnel and individual lives, particularly from the global outbreak of SARS (Severe Acute Respiratory Syndrome) in 2003. Having no opportunity to be informed by the WHO, Taiwan’s government then was criticized as responding belatedly or ineffectively to protect public health and undertaking overtly sweeping measures in restricting personal freedoms. Complaints and cases eventually reached to Taiwan’s Constitutional Court.

In JY Interpretation No 690 decided in 2011, the Constitutional Court upheld the constitutionality of all necessary measures, or administrative dispositions, broadly delegated by the Communicable Disease Control Act (CDC Act) as well as by the Provisional Act for Prevention and Relief of SARS that was enacted in 2003 and then repealed in 2004. According to the Court, those compulsory physical examinations, short-term detentions or quarantines, or other similar dispositions did not violate the principle of legal clarity, the principle of proportionality, or due process of law guaranteed in Art. 8 and Art. 23 of the Constitution (known as the Republic of China Constitution).

Mindful of excessive nature in those compulsory measures, the Constitutional Court warned the government that notwithstanding the necessity in preventing and combating serious communicable diseases, the CDC Act must set a time limit for compulsory quarantine and provide further detailed regulations, and that more
importantly, prompt remedies and an adequate compensation regime were advised to be established for quarantined persons.

Following the constitutional ruling, the CDC Act underwent a major revision, and has since been amended quite a few times, most recently in 2019. Yet, criticism continues because the CDC Act still gives health authorities broad powers to impose restrictive measures and adds only one provision to delegate the compensation regime to be established by subsidiary regulations. Art. 59, § 3 CDC Act reads that

“regulations governing methods of quarantine, procedures, control measures, management and other matters to be complied with for § 1 and § 1 of the preceding Art.; regulations governing target groups, amount, methods of payment, duration and other matters to be complied with for fees to be collected shall be decided by the central competent authority.”

The COVID-19 Special Act for relief and compensatory measures

As discussed above, Taiwan’s present battle against COVID-19 has been grounded on the CDC Act and its subsidiary regulations with upheld constitutionality. It is with this constitutional and legal authority that Taiwan’s government has been able to undertake swift –and restrictive– measures in combating the spread of COVID-19.

As early as 30 December 2019, Taiwan Centers for Disease Control (CDC) under the authorization of Art. 58, § 1, Clause 4 of the CDC Act undertook inspections on those traveling from Wuhan, China. On 15 January 2020, the CDC officially added the novel coronavirus, COVID-19, into the Category V Communicable Disease in accordance with Art. 3 of the CDC Act. On 20 January 2020, the Central Epidemics Command Center (CECC or Central Command) was established to coordinate a wide-array of combating measures under the authorization of Art. 17 of the CDC Act. All of these were undertaken well before the first meeting of the WHO’s Emergency Committee and its declaration of the new coronavirus as a global emergency.

Beginning 26 January 2020, people from Hubei province of China were banned from entering into Taiwan, and from 6 February, all people from China were banned. These bans were issued under the broad authorization of Art. 58, § 1, Clause 6 CDC Act. Also based on the same Art. 58, § 1, Clause 4 CDC Act, 14-day quarantines are imposed on those entering into Taiwan from the countries listed on the Travel Notice. Being the epicenter, China was the first on the list, followed by South Korea, Singapore, Iran and Italy. As the global pandemic of COVID-19 has drastically worsened, beginning 19 March 2020, all foreigners are banned from entering into Taiwan, and Taiwan nationals are imposed with 14-day quarantines when traveling back.

The restrictive nature of these travel bans and mandatory quarantines became serious public concerns. On 1 February 2020, a new legislature in which the present government continues to occupy the majority was commenced. The new legislators took swift actions to respond to public concerns by providing generous reliefs and
compensations. On 25 February 2020, the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens (Special Act or COVID-19 Special Act) was promulgated. Most notable was Art. 11 of this Special Act, under which a budget totaling 60 billion new Taiwan dollars (NTD) was authorized for government expenditure on relief, compensation and economic stimulus. In Art. 11, the Special Act specifies the period in which it remains effective: from 15 January 2020 to 30 June 2021. Further extension must be granted by legislative resolution.

Based on Art. 9 Special Act, the Regulations Governing Compensation for Periods of Isolation and Quarantine for COVID-19 were promulgated on 10 March 2020. Those who are imposed with isolation or quarantines or must take care of those isolated or quarantined with stipulated eligibility can receive a daily compensation of 1000 NTD for 14 days.

On the same legal basis, the Regulations Governing the Operational Procedures and Compensation for Requisition of Manufacturing Equipment and Raw Materials of Disease Control Resources for COVID-19 was issued on 10 March 2020. This was made in response to the shortage of medical supplies such as face masks as a result of panic buying and storage in late January. On 31 January, the government first issued a ban on all exports of medical masks according to Art. 11 of the Foreign Trade Act and its delegated Regulations Governing Export of Commodities. Then the government ordered to requisition all medical masks produced in domestic factories on the basis of Art. 54 of the CDC Act and its Regulations Governing the Requisition of Materials Property for the Control of Communicable Diseases. To ensure sufficient supplies, a few key mask manufacturers were ordered by the government to collaborate with each other for massive production. Since February 6, a real-name distribution system of masks has been in place. Masks are sold at a very low price on the basis of universal healthcare system at authorized pharmacies, local health centers and convenient stores. The introduction of e-governance into the system by the Digital Minister was the key to ensuring fairness and efficiency in the distribution of masks and other medical supplies. Owing to this system, while most countries are facing serious shortage of masks and other medicinal equipment, Taiwan’s relevant supplies have risen at a steady pace. Based on the COVID-19 Special Act and authorized regulations, all of the requisitioned factories, services and even personnel will be provided for adequate compensation.

As early as 2 February 2020, fearing school and university campuses might fall prey to virus hotspots, the Ministry of Education ordered all schools and universities to postpone the starting date of spring semester for two weeks in order to get ready for necessary sanitation. While school children were pleased to have two more weeks of winter break, their working parents were facing difficulties in balancing family with works. The Ministry of Labor quickly decided to grant a special unpaid leave of fourteen days for workers if they needed to take care of their children. The government also decided to provide tax deduction incentives if businesses are willing to give workers paid leaves.
In Taiwan, because the pandemic of COVID-19 has been substantially under control, businesses and events are not compulsorily closed or banned. Yet, given the situation, many businesses have been willing to take measures or close events voluntarily. Undoubtedly, a number of industries including tourism, restaurants and transportations have been hit hard. Art. 9 of the COVID-19 Special Act provides a broad mandate for the government to stipulate subsidies, compensations, revitalization funds for industries in dire need. These budgets are part of the 60 billion NTD packages that must be placed under parliamentary review.

**Emergency decree necessary or not?**

As the global pandemic of COVID-19 has drastically worsened in early March due to its rapid spread into Europe, North America and other parts of Asia, Taiwan has been facing the second—and even more serious—wave of challenges. With broadly delegated powers in the CDC Act and the COVID-19 Special Act, the Central Command has issued more and more restrictive measures. Unnecessary travel restrictions have been issued for medical personnel, civil servants, school teachers and students. As stated above, beginning 19 March 2020, all inbound foreign visitors are banned.

These further restrictive measures have caused public concerns, and doubts were cast on whether those broad delegations of the CDC Act and the COVID-19 Special Act are met with the principle of legal clarity and proportionality notwithstanding the previous constitutional decision, *JY Interpretation No 690*. Calls were made by some opposition party leaders for presidential issuance of emergence decree. Thus far, President Tsai Ing-Wen, who just won a landslide election in January and will continue on her second term on 20 May, has resisted such calls, stating that “any contingencies can be addressed by existing legislation”.

President Tsai’s position appears to be quite in line with an earlier decision made by Taiwan’s Constitutional Court. In *JY Interpretation No 543* decided in 2002, the Constitutional Court made it clear that even in time of crisis, supplementary regulations delegated by emergency decrees were still required with some extents of legal clarity for their objectives, and “the issuance of emergency decrees, though not restricted by the principle of legal reservation stipulated in Art. 23 of the Constitution, should observe the principle of proportionality.” To this extent, the actual, functional difference between an emergency decree and an ordinary law with broad authorization is *ex post or ex ante* legislative consent. According to Art. 43 of the Constitution, an emergency decree must be submitted—within ten days of issuance—to the legislature for ratification.

Calls for emergency decrees to replace the CDC Act or the COVID-19 Special Act, or mere criticism against broad delegations in these acts, are misdirected. Facing the rapid global spread of new coronavirus and its resulting death tolls, scientists and public health experts are running against time only to begin to know about the virus and try their best to save lives and prevent the virus from further spread. What they can rely on are their previous and ongoing experiences, and as a result, proper actions they take are not always foreseeable or squarely fallen into strict
legal construction. To mitigate tensions between resolving public health crisis and ensuring individual freedoms and rule of law, what are necessary are not always well specified laws, but a legal framework under which democratic processes can function to respond promptly and ensure accountability. Thus far, Taiwan’s relative success in fighting against the new coronavirus has demonstrated its capacity in swiftly dealing with a public health crisis within a transparent, democratic and legal framework. Though the framework is not without flaw, it continues to work with a vibrant civil society to negotiate possible best solutions in time of public health urgency.

*The Author of this post would like to express her gratitude to Mr. Yu-Wei Chen and Ms. Yi-Ting Wu, both LLM students at National Chiao Tung University School of Law, for their superb research assistance on this blog post.*