

Case on Ministry of Justice Notice that Prohibited COVID-19 Patients, and Restricted Self-Quarantining or High-Risk Individuals, from Taking Bar Examination

[2020Hun-Ma1736, February 23, 2023]

In this case, the Court confirmed the unconstitutionality of the Ministry of Justice’s notice and notification that prohibited COVID-19 patients, and restricted self-quarantining or high-risk individuals, from taking a bar examination.

Background of the Case

Respondent, minister of the Ministry of Justice, issued the “Notice of 10th Bar Examination Administration Schedule for 2021” (Ministry of Justice Notice No. 2020-269) (hereinafter referred to as the “Bar Exam”) on September 18, 2020, setting the testing period for the Bar Examination from January 5, 2021, to January 9, 2021 (January 7 was a rest day). Complainants were scheduled to take the Bar Exam.

Respondent issued the “Notice of 10th Bar Examination Dates, Times, Locations, and Rules for Applicants” (Ministry of Justice Notice No. 2020-360, hereinafter referred to as the “Notice”) on November 20, 2020, and the “Notification of COVID-19-Related 10th Bar Examination Applicant Instructions, Etc.” (hereinafter referred to as the “Notification”) on November 23, 2020, thereby prohibiting COVID-19 patients, and restricting self-quarantining or high-risk individuals, from taking the Bar Exam.

Complainants filed the constitutional complaint in this case on December 29, 2020, arguing that their freedom of occupational choice, etc. were infringed by the Notice and Notification. Simultaneously, they applied for a preliminary injunction (2020Hun-Sa1304) to suspend the effect of the Notice and Notification until the issuance of a final

decision on their case. As regards this application, the Court suspended the effect of the portions of the Notice and Notification that prohibited confirmed COVID-19 patients, and restricted self-quarantining or high-risk individuals, from taking the Bar Exam.

Subject Matter of Review

The subject matter of review in this case is whether the following portions infringe a fundamental right of Complainants: (1) the portion “COVID-19 confirmed patients may not take the exam.” of “Attachment 1: Instructions for Applicants with COVID-19” of the Notification, issued by Respondent on November 23, 2020, (2) the portions of the Application Period of paragraph B “Exam Application for Individuals in Self-Quarantine” of Section 4 of the Notice—issued by Respondent on November 23, 2020—stating “Sunday, January 3, 2021, 6:00 p.m.” and “the deadline for application is Sunday, January 3, 2021, 6:00 p.m.”; and the portions of the Application Period of the “Exam Application for Individuals in Self-Quarantine” of “Attachment 1: Instructions for Applicants with COVID-19” of the Notification—issued by Respondent on November 23, 2020—stating “Sunday, January 3, 2021, 6:00 p.m.” and “the deadline for application is Sunday, January 3, 2021, 6:00 p.m.” and (3) the portion of “Attachment 3: Checking In and Fever Screening Process at Exam Sites for Applicants” of the Notification—issued by Respondent on November 23, 2020—concerning the transfer of high-risk individuals to medical facilities (said portions hereinafter collectively referred to as the “Exam Restrictions”).

Summary of the Decision

If confirmed COVID-19 patients are allowed to take a bar exam in medical facilities or residential treatment centers where they are hospitalized or isolated, the purpose of preventing the spread of an infectious disease can be achieved while ensuring the opportunity for

them to take the exam.

So long as separate testing facilities and staff, including proctors, are prepared for individuals in self-quarantine, it is not impossible or difficult to allow individuals who entered self-quarantine after the application deadline to take the exam in such testing facilities. It cannot be assumed that such test taking would cause significant problems in the operation and management of the exam. However, for individuals who received a notification of self-quarantine after the application deadline, depriving them of the opportunity to take the exam based solely on the convenience of exam operation and management is difficult to justify.

Respondent allowed applicants to take the exam in an alternate testing room separate from regular testing rooms if they exhibited symptoms such as fever or respiratory issues when entering the exam site or during the exam. By providing such accommodations, the purpose of preventing the spread of an infectious disease would have been achieved satisfactorily. Additionally, applicants had the option to discontinue the exam or request transportation to a medical facility if their infectious disease symptoms worsened. The Court does not find that giving applicants such an option would have caused significant disruptions to the operation or management of the exam.

It is found that safeguards were applied to prevent the risk of infection within the exam sites. These include expanding the number of nationwide exam locations from the original 9 to 25, allowing for dispersion of applicants; mandating mask usage within the exam venues to minimize the potential transmission of droplets through conversations, etc.; and providing separate testing facilities for self-quarantining or symptomatic individuals carrying the risk of transmitting infections. Given these safeguards, Respondent should have adopted a method that can minimize restrictions on test taking in consideration of the possibility that, even if an applicant is found to be infected with COVID-19 during the exam, such cases would remain within controllable limits. The

outbreak of an infectious disease cannot serve as a blanket justification for uniform and extensive limitations on fundamental rights. The Court cannot but find that it amounts to an undue restriction of Complainants' fundamental rights to impose, on the basis of a vague concern about potential shortage of medical resources, a complete prohibition against confirmed COVID-19 patients, etc. taking the Bar Exam.

The bar examination may only be taken within five years from the last day of obtaining a juris doctor's degree from a law school, and no exceptions are recognized for conditions such as illness. The Exam Restrictions prevent confirmed COVID-19 patients, etc. from taking the bar examination for at least one year, leading to significant disadvantages for them.

Accordingly, the Exam Restrictions infringe the freedom of occupational choice of Complainants in violation of the rule against excessive restriction.

Summary of Concurring Opinion of One Justice

The National Bar Examination Act and its regulations provide the requirements for the notice of the bar examination, the qualifications and disqualifications of applicants, and the reasons for examination restrictions. Considering these contents, it can be argued that, when announcing a notice of the administration of the bar examination, Respondent has the authority to specify the qualifications required by statute or establish other qualifications related to the practice of law but is not entrusted with the authority to create completely new examination qualifications or disqualifications unrelated to assessing the professional competence to practice law.

Further, provisions of the Infectious Disease Control and Prevention Act establish mandatory measures such as hospitalization, isolation, or movement restrictions for confirmed COVID-19 patients or individuals

under self-quarantine, but they do not envision any decisions that would result in completely new restrictions on fundamental rights, such as limitations on taking exams.

In sum, I cannot find any statutory basis to arbitrarily designate confirmed COVID-19 patients or others as disqualified from taking the bar examination and to uniformly restrict them from taking the exam. The creation of such additional disqualifications goes against the content of the Bar Examination Act, which enumerates qualifications for, and disqualifications from, taking a bar exam. Thus, the Exam Restrictions violate the principle of statutory reservation by limiting fundamental rights without statutory basis.

Therefore, the Exam Restrictions infringe the freedom of occupational choice of Complainants in violation of the principle of statutory reservation.