R.O.C.
Constitutional Court
Reporter

INTERPRETATIONS
Nos. 571～622
(2004－2006)

Second Edition

ISBN 978-986-01-0744-9

GPN 1009602317
定價：新台幣 940 元

The Republic of China Constitutional Court Reporter

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Judicial *Yuan,* Republic of China
September, 2007

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(Grand Justices Council)
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Under Personal Supervision of
Dr. Yueh-Sheng Weng
President of Judicial Yuan
Compiled and Executed by
Justice Lai, In-Jaw
Justice Tzu-Yi Lin
Justice Vincent Sze
Justice Syue-Ming Yu
Translated and Published by
the ROC Judicial Yuan
September 2007

Published by the Judicial Yuan
124, Chung Ching South Road, Section 1,
Taipei 100, Taiwan, R.O.C.
http://www.judicial.gov.tw/

Printed by Fan Yu Printing & Design Co., Ltd.
5F., No.13, Lane 333, Yonghe Rd.,
Jhonghe City, Taipei County 235,
Taiwan, R.O.C.
Tel: (+886-2)2226-7617
Fax: (+886-2)2221-5425

2d edition, September 2007

Printed in the Republic of China
Cover design: David Sze

For information on ordering
Please contact the Secretariat of the Judicial Yuan
124, Chung Ching South Road, Section 1,
Taipei 100, Taiwan, R.O.C.
Phone: (+886-2) 2361-8577 extension 176
Fax: (+886-2) 2388-6904

Cited as

Interpretation No._____[translated by _____]

5 ROC Const. Ct. (page number) (2007)

A Catalogue record for this Reporter is available from
the ROC National Library

ISBN 978-986-01-0744-9

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BAKER & McKENZIE
（國際通商法律事務所）
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Contents

J. Y. Interpretation No.571（January 2, 2004）*

ISSUE: Is the directives of the Ministry of Interior, providing to the effect that the granting of consolation funds in respect of the 921 Earthquake should be based on household registration records and de facto residency, in line with the Constitution?

RELEVANT LAWS:

Articles 7, 23 and 155 of the Constitution（憲法第七條、第二十三條、第一百五十五條）; Article 2, Paragraph 3, of the Amendment to the Constitution（憲法增修條文第二條第三項）; J. Y. Interpretation No. 543（司法院釋字第五四三號解釋）; Article 1 of the September 25, 1999 Emergency Decree（中華民國八十八年九月二十五日緊急命令第一點）; Article 3, Paragraph 1, Subparagraph 4, of the September 25, 1999 Emergency Decree Execution Guidelines（中華民國八十八年九月二十五日緊急命令執行要點第三點第一項第四款）.

KEYWORDS:

emergency decrees（緊急命令）, principle of equality（平等原則）, disaster relief（災難救助）, immediate relief（緊急救助）, directive（函釋）.**

HOLDING: Article 2, Paragraph 3, of the Amendment to the Constitution

解釋文：憲法增修條文第二條第三項規定，總統為避免國家或人民遭

* Translated by David Yang and Alfred Huang of Baker&Mckenzie Law Offices, Taipei.

** Contents within frame, not part of the original text, are added for reference purpose only.

provides that the President may, by resolution of the Executive Yuan Council, issue emergency decrees and take necessary measures to avert imminent catastrophe which may endanger the State or the people, or to cope with any serious financial or economic crisis. Article 155 of the Constitution also provides that the State shall give immediate and appropriate emergency assistance and relief to victims of a catastrophe. Regarding the subject, conditions and scope of the relief, the government, in accordance with the principle of equality, and in consideration of the national financial capability, the effective use of resources and other circumstances, may take necessary measures to promulgate appropriate regulations. The destructive earthquake that devastated many areas of Taiwan on September 21, 1999, caused extreme hardship for the people and extensive damage to property in Taiwan. In order to implement disaster relief, provide temporary housing for the victims, and to rebuild the disaster area, the President issued an emergency decree according to the abovementioned provisions of the Constitution on September 25

遇緊急危難或應付財政經濟上重大變故，得經行政院會議之決議發布緊急命令，為必要之處置。又對於人民受非常災害者，國家應予以適當之扶助與救濟，憲法第一百五十五條亦定有明文。此項扶助與救濟，性質上係國家對受非常災害之人民，授與之緊急救助，關於救助之給付對象、條件及範圍，國家機關於符合平等原則之範圍內，得斟酌國家財力、資源之有效運用及其他實際狀況，採取合理必要之手段，為妥適之規定。台灣地區於中華民國八十八年九月二十一日發生罕見之強烈地震，人民遭遇緊急之危難，對於災區及災民，為實施緊急之災害救助、災民安置及災後重建，總統乃於同年月二十五日依上開憲法規定之意旨，發布緊急命令。行政院為執行該緊急命令，繼而特訂「中華民國八十八年九月二十五日緊急命令執行要點」（以下簡稱執行要點）。該緊急命令第一點及執行要點第三點第一項第四款規定目的之一，在對受災戶提供緊急之慰助。內政部為其執行機關之一，基於職權發布八十八年九月三十日台（八八）內社字第八八八五四六五號、八十八年十月一日台（八八）內社字第八八八二三三九號及八十八年十月三十日台（八八）內社字第八八八五七一一

of the same year (hereinafter referred to as the "Emergency Decree"). The Executive Yuan then promulgated the "September 25, 1999 Emergency Decree Execution Guidelines" (hereinafter referred to as the "Execution Guidelines") to enforce the said Decree. One of the purposes as provided in Article 1 of the Emergency Decree and Article 3, Paragraph 1, Subparagraph 4, of the Execution Outlines Guidelines is to provide immediate relief to the victims. The Ministry of the Interior, as one of the authorized executive agencies of the Emergency Decree, issued the directives Tai(88)-Nei-She-Zi-No.8885465 (September 30, 1999), Tai(88)-Nei-She-Zi-No.8882339 (October 1, 1999) and Tai(88)-Nei-She-Zi-No.8885711 (October 30,1999). The directives stipulate that owners of buildings which were severely damaged or completely destroyed by the 921 earthquake may apply for subsidy provided that they have household registration and actually reside in the disaster area. The directives also provide a deadline for application. The purpose of such directive is to implement the Emergency Decree and the Execution Outlines Guide-

號函，對於九二一大地震災區住屋全倒、半倒者，發給慰助金之對象，以設籍、實際居住於受災屋與否作為判斷依據，並設定申請慰助金之相當期限，旨在實現前開緊急命令及執行要點規定之目的，並未逾越其範圍。且上述設限係基於實施災害救助、慰問之事物本質，就受非常災害之人民生存照護之緊急必要，與非實際居住於受災屋之人民，尚無提供緊急救助之必要者，作合理之差別對待，已兼顧震災急難救助之目的達成，手段亦屬合理，與憲法第七條規定無違。又上開函釋旨在提供災害之緊急慰助，並非就人民財產權加以限制，故亦不生違反憲法第二十三條之問題。

lines, and it does not exceed the scope of the said Decree or the Execution Outlines Guidelines. Such restriction on disaster relief and subsidy permits reasonable preferential treatment of victims of catastrophes who are in urgent need over people who did not actually reside in the disaster area. It reasonably corresponds with the purpose of immediate relief to the earthquake disaster victims, and does not conflict with Article 7 of the Constitution. Furthermore, the intention of the above-mentioned directives is to provide emergency relief in times of disaster, and is not to restraint the property and rights of the people. Therefore, it does not conflict with Article 23 of the Constitution.

REASONING: Article 2, Paragraph 3, of the Amendment to the Constitution provides that the President may, by resolution of the Executive Yuan Council, issue emergency decrees and take necessary measures to avert imminent catastrophe which may endanger the State or the people, or to cope with any serious financial or economic crisis. Article 155 of the Constitution also provides that the State

解釋理由書：憲法增修條文第二條第三項規定，總統為避免國家或人民遭遇緊急危難或應付財政經濟上重大變故，得經行政院會議之決議發布緊急命令，為必要之處置。又對於人民受非常災害者，國家應予以適當之扶助與救濟，憲法第一百五十五條亦定有明文。此項扶助與救濟，性質上係國家對受非常災害之人民，授與之緊急救助。關於救助之給付對象、條件及範圍，國家機

shall give immediate and appropriate emergency assistance and relief to victims of a catastrophe. Regarding the subject, conditions and scope of the relief, the government, in accordance with the principle of equality, and in consideration of the national financial capability, the effective use of resources and other circumstances, has broader discretion to take necessary measures to promulgate appropriate regulations. The destructive earthquake that devastated many areas of Taiwan on September 21, 1999, caused extreme hardship for the people and extensive damage to property in Taiwan. In order to implement disaster relief, provide temporary housing for the victims, and to rebuild the disaster area, the President issued an Emergency Decree according to the abovementioned regulations of the Constitution on September 25 of the same year. J.Y. Interpretation No. 543 held that though the procedure for the issuance of the Emergency Decree and the supplementary regulations made by the executive authorities were not fully in compliance with the procedures set out in said Interpretation, they could hardly be con-

關於符合平等原則之範圍內，得斟酌國家財力、資源之有效運用及其他實際狀況，採取合理必要之手段，為妥適之規定，享有較大之裁量空間。台灣地區於八十八年九月二十一日發生罕見之強烈地震，人民遭遇緊急之危難，對於災區及災民，為實施緊急之災害救助、災民安置及災後重建，總統乃於同年月二十五日依上開憲法規定意旨，發布緊急命令。該緊急命令以及執行機關所為之補充規定，其程序與本院釋字第五四三號解釋意旨，雖有未合，尚不生違憲問題，業經該號解釋有案，惟其內容仍應符合法治國家憲法之一般原則，以維憲政體制。

sidered unconstitutional. Nevertheless, the content of the decree must be in line with the principle of the Constitution so as to maintain the constitutional system.

The Emergency Decrees have the effect of temporarily replacing or altering the law. Article 1 of the Emergency Decree provides that in order to allocate financial resources for the rebuilding of the areas devastated by the catastrophe, the central government shall temporarily reduce certain expenditures, alter the budgets of the central and local governments when necessary, adjust the revenue and disbursement to meet urgent need, and issue government bonds or raise loans of no more than the amount of eighty billion New Taiwan dollars (NT$80,000,000,000) to be utilized by the Executive Yuan pursuant to the plans of relief and rebuilding. Such plans may be executed directly by the various agencies of the central government, and the payments may be paid partly in advance when necessary. Moreover, Article 3, Paragraph 1, Subparagraph 4, of the Execution Outlines Guidelines provides that the items of expendi-

緊急命令具有暫時變更或代替法律之效力。上開緊急命令第一點規定，中央政府為籌措災區重建之財源，應縮減暫可緩支之經費，對各級政府預算得為必要之變更，調節收支移緩救急，並在新臺幣八百億元限額內發行公債或借款，由行政院依救災、重建計畫統籌支用，並得由中央各機關逕行執行，必要時得先行支付其一部分款項。又上揭執行要點第三點第一項第四款規定，緊急命令第一點所定之救災、重建計畫統籌支用項目，包括受災戶慰助、補貼及減免在內。上開緊急命令第一點及執行要點第三點第一項第四款規定目的之一，乃在由執行機關衡酌國家財力、資源之有效運用及其他實際情況，對地震災區之受災戶提供緊急之慰助，符合憲法第一百五十五條規定之意旨。且為執行之迅速及實效，緊急命令之執行機關，非僅指中央政府之行政院，依有關災害救助、災民安置及災後重建等不同業務性質，並得由中央各該主管機關逕予執行，內政部即為執行該命令中央主管機

tures of the plan of relief and rebuilding as indicated in Article 1 of the Emergency Decree shall include relief, subsidy and exemption for victims. One of the purposes of the abovementioned Article 1 of the Emergency Decree and Article 3, Paragraph 1, Subparagraph 4, of the Execution Outlines Guidelines is to empower the executive bodies to provide immediate relief to victims, taking the financial capability of the State, the effective use of resources, and other circumstances into consideration, which is consistent with Article 155 of the Constitution. Furthermore, to ensure the swiftness and efficacy of the enforcement, the executive bodies of the Emergency Decree shall not be limited to the Executive Yuan of the central government. It may be enforced directly by respective competent authorities of the central government in accordance with the various types of activities relevant to disaster relief, temporary housing of victims, and rebuilding of the areas devastated by the catastrophe. The Ministry of the Interior is one of the competent authorities of the central government empowered to enforce the Decree.

關之一。

To enforce the abovementioned Emergency Decree, the Ministry of the Interior afforded relief and subsidy to the victims whose houses were severely damaged or completely destroyed by the 921 earthquake, and issued the Directives Tai(88)-Nei-She-Zi-No.8885465 (September 30, 1999), Tai(88)-Nei-She-Zi-No.8882339 (October 1, 1999) and Tai(88)-Nei-She-Zi-No.8885711 (October 30,1999). The directives stipulate that, for houses which were severely damaged or completely destroyed by the 921 earthquake, the owners may apply for emergency subsidy only if they have household registration and actually resided in the devastated areas before the occurrence of the earthquake, and the recipient of the subsidy should be the head of the household or the resident. The subsidy cannot be given to victims who did not actually reside in a damaged house. As to victims who resided in the devastated areas, but did not have their household registration, they may apply for the relief with an affidavit certified by the chief of the village or the neighborhood, provided that the application is made within a certain pe-

為執行前開緊急命令，內政部乃對於九二一大地震受災區之住屋全倒或半倒者，給予一定之救助、慰問金，並基於職權發布八十八年九月三十日台（八八）內社字第八八八五四六五號及八十八年十月一日台（八八）內社字第八八八二三三九號及八十八年十月三十日台（八八）內社字第八八八五七一一號函，敘明對於九二一大地震災區住屋全倒、半倒者，發給救助及慰助金之對象，限於災前有戶籍登記者為準，且實際居住於受災屋之現住戶，由戶長或現住人員具領，未居住於受災毀損住屋者，不予發放。至如未設籍而有實際居住之事實者，得以切結書由村、里長認定後申領，並應於一定期間申請等情。九二一震災發生後，實際居住於受災屋之人民，於劫難倖存之餘，因房屋倒塌或受嚴重之毀損，斷垣殘壁，頓失風雨之遮蔽，生活起居將暴露於大自然外力之間，甚或流離失所，生命、身體、財產之安全及精神之安寧均陷於重大之危懼，基本生活之維持有難以為繼之虞，亟需國家即時之緊急慰助。且實際居住於受災屋而受非常災害之人民，具有生存照護之緊急必要，與未實際居住於受災毀損之住屋者，尚有安身立命之所，所需照護之迫切程度，兩者相較，緩急

riod. After the 921 earthquake, victims were exposed to the natural elements when their houses collapsed or were severely damaged. Their physical and mental well-being and their property were severely affected. They could hardly maintain their basic way of life; hence they needed immediate relief from the State. Compared with the people who did not actually reside in damaged houses, needed immediate assistance, as the former still had places to stay. The abovementioned directives were issued after considering the conditions of the disaster area and the need of immediate relief to preserve life. The directives stipulate that if the houses were severely damaged or completely destroyed by the 921 earthquake, victims may apply for relief only if they have household registration and did actually live in the disaster area. The directives also provide that the application shall be made within a certain period of time. The purpose is to implement the abovementioned Emergency Decree and the Execution Guidelines with reasonable preferential treatment. It does not go beyond the scope of said Emergency Decree and Exe-

輕重，自屬有別，所處危困之境遇，亦截然不同。是上開函釋鑑於地震災區之實際狀況，斟酌生存緊急照護之迫切差異性，於採取上述緊急救助措施時，對於九二一大地震災區住屋全倒、半倒者發給慰助金，以設籍、實際居住於受災屋與否作為判斷依據，並設定申請慰助金之相當期限，係基於實施災害救助、慰問之事物本質，以合理之手段作不同之處理，為差別之對待，已兼顧震災急難慰助之目的達成，乃在實現前開緊急命令及其執行要點規定之目的，所為必要之補充規定，並未逾越其範圍，與憲法第七條規定亦無牴觸。又此項緊急慰助之給付，旨在提供受非常災害者之緊急慰助，並非對人民財產權損失之補償，是對於不符合慰助條件者，不予給付，本質上並未涉及人民財產權之限制，故不生違反憲法第二十三條之問題。

cution Guidelines nor does it conflict with Article 7 of the Constitution. The subsidy of the immediate relief is to provide assistance to the victims, not to compensate them for the loss of property. It does not result in any restraint on the property and rights of the people in case of rejection of the application of those dissatisfied with the requirement. Consequently, there is no breach of Article 23 of the Constitution.

Justice Tzu-Yi Lin filed concurring opinion.

Justice Jen-Shou Yang filed dissenting opinion.

本號解釋林大法官子儀提出協同意見書；楊大法官仁壽提出不同意見書。

J. Y. Interpretation No.572（February 6, 2004）*

ISSUE: Is there sufficient ground to constitute a concrete reasoning for the objective belief that a statute violates the Constitution when the petitioner only has doubts or when the statute at issue may possibly be reconciled with the requirement for requesting a constitutional interpretation?

RELEVANT LAWS:

Articles 7, 15, 22 and 23 of the Constitution（憲法第七條、第十五條、第二十二條、第二十三條）; J.Y. Interpretation No. 371（司法院釋字第三七一號解釋）; Articles 1, 2, Paragraph 1, 33, Subparagraph 3, and 271, Paragraph 1 of the Criminal Code（刑法第一條、第二條第一項、第三十三條第三款及第二百七十一條第一項）.

KEYWORDS:

each instance of court（各級法院）, prerequisite issue（先決問題）, concrete reasoning（具體理由）, long-term liberal sentence（長期自由刑）, parole（假釋）, life imprisonment（無期徒刑）, Sentencing Act（罪刑法定）, Principle of New and Lenient Criminal Punishment（刑罰從新從輕原則）.**

HOLDING: When deciding a case, if the judge reasonably believes that

解釋文：按法官於審理案件時，對於應適用之法律，依其合理之確

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

** Contents within frame, not part of the original text, are added for reference purpose only.

the applicable statute may conflict with the Constitution, each instance of court should regard this as a prerequisite issue, suspend the litigation procedures, provide concrete reasoning of its objective belief that the statute violates the Constitution, and petition the Grand Justices for constitutional interpretation pursuant to J.Y. Interpretation No. 371. The matter, when the court presiding over the pending case believes that the law at issue violates the Constitution and may clearly affect the ruling of the case, is called the "prerequisite issue". "To provide concrete reasons for objectively believing the unconstitutionality of the statute" signifies that in the petition, the petitioning court is required to describe in detail its interpretation of the statute that violates the Constitution, explain the standard used to interpret the Constitution, and accordingly, provide evidence that it believes the statute is unconstitutional and is objectively without obvious mistakes. If the petitioner only has doubts about whether the statute is unconstitutional or the statute may possibly be reconciled with the requirement for requesting a constitutional interpretation,

信，認為有牴觸憲法之疑義者，各級法院得以之為先決問題，裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請大法官解釋，業經本院釋字第三七一號解釋在案。其中所謂「先決問題」，係指審理原因案件之法院，確信系爭法律違憲，顯然於該案件之裁判結果有影響者而言；所謂「提出客觀上形成確信法律為違憲之具體理由」，係指聲請法院應於聲請書內詳敘其對系爭違憲法律之闡釋，以及對據以審查之憲法規範意涵之說明，並基於以上見解，提出其確信系爭法律違反該憲法規範之論證，且其論證客觀上無明顯錯誤者，始足當之。如僅對法律是否違憲發生疑義，或系爭法律有合憲解釋之可能者，尚難謂已提出客觀上形成確信法律為違憲之具體理由。本院釋字第三七一號解釋，應予補充。

this is not sufficient to constitute concrete reasons for objectively believing that the statute is unconstitutional. This Yuan hereby provides supplemental interpretation for J.Y. Interpretation No. 371.

REASONING: The petitioner claims in this petition that Article 271, Paragraph 1, of the Criminal Code should be applied during the appeal of Keelung 92-Felony Case, No. 6 murder case et al. in the district court of Keelung, Taiwan, in 2003. Furthermore, the content of Criminal Code, Article 33, Subparagraph 3, conflicts with Articles 7, 15, and 23 of the Constitution and other constitutional principles. The petitioner requests constitutional interpretation pursuant to J.Y. Interpretation No. 371 and the immediate invalidity of 15 years as maximum sentence. Hence, when each instance of court is deciding on the term of imprisonment, the judge could pronounce a long-term liberal sentence, ranging from 20 to 50 years and assert that parole is not applicable to life imprisonment, etc. ranging from 20 to 50 years and assert that parole is not applicable to life imprisonment, etc. In this peti-

解釋理由書：本件聲請人聲請意旨，以其審理台灣基隆地方法院九十二年度重訴字第六號殺人等案件時，認須適用刑法第二百七十一條第一項之規定，確信刑法第三十三條第三款之本文，牴觸憲法第七條、第十五條、第二十三條規定及其他憲法原則，乃依司法院釋字第三七一號解釋提出釋憲聲請，請求宣告有期徒刑十五年之上限規定立即失效，使各級法院法官在量刑時，得就個案宣告二十年至五十年之長期自由刑，並請闡明無期徒刑不應適用假釋規定等語。本院審理本件聲請案件，應依職權適用本院釋字第三七一號解釋，認有補充解釋之必要，爰予補充解釋，合先敘明。

tion, this Yuan has the authority to provide supplemental interpretation for J.Y. Interpretation No. 371 as addressed below.

According to the interpretation of J.Y. Interpretation No. 371, each instance of court could set as prerequisite issue whether the statute applied to reach the judgment violates the Constitution and then decide to suspend litigation procedure and petition for constitutional interpretation. “Prerequisite issue” entails a matter when the court presiding over the pending case believes that the statute violates the Constitution, and may clearly affect the ruling of the case. If the statute has been amended or abolished, and a new statute is applicable to the case; or when the facts are so ambiguous that it would be unable to verify whether the statute is applicable, it would be difficult to determine whether such statute is unconstitutional and it becomes the prerequisite issue in the ruling of the pending case. According to the petition, this Yuan makes the following interpretation: Even if this Yuan interprets that the content of

釋字第三七一號解釋所稱，各級法院得以其裁判上所應適用之法律是否違憲為先決問題，裁定停止訴訟程序，聲請解釋憲法，其中所謂「先決問題」，係指審理原因案件之法院確信系爭法律違憲，顯然於該案件之裁判結果有影響者而言。如系爭法律已修正或廢止，而於原因案件應適用新法；或原因案件之事實不明，無從認定應否適用系爭法律者，皆難謂系爭法律是否違憲，為原因案件裁判上之先決問題。本件縱依聲請意旨為解釋，宣告刑法第三十三條第三款本文規定違憲，惟基於人權之保障及罪刑法定、刑罰從新從輕原則，憲法解釋不得使原因案件之刑事被告更受不利益之結果。是法院對原因案件之刑事被告仍應依有利於該被告之現行法為裁判，本件系爭法律是否違憲，自於裁判之結果無影響。至無期徒刑應否適用假釋規定，並非本件法官於審理案件時所應適用之法律。故其聲請，核與上揭要件不符，應不受理。

the Criminal Code, Article 33, Subparagraph 3, conflicts with the Constitution, based on the protection of human rights, the Sentencing Act, and the Principle of New and Lenient Criminal Punishment, the constitutional interpretation, however, does not allow the defendant of the pending criminal case to receive an additional aggravated sentence. The court of the pending case shall rule according to the current statute that is favorable to the defendant. Whether the statute violates the Constitution, naturally, has no influence on the ruling. Moreover, whether life imprisonment involves parole is not applicable to the pending case. Accordingly, this part of the petition does not correspond with the above said condition, and should be denied.

In addition, J.Y. Interpretation No. 371 states that the petitioning court "propose concrete reasons for objectively believing the unconstitutionality of the statute." In the petition, the petitioning court should describe in detail its interpretation of the statute that violates the Constitution, explain the standard used to interpret

又釋字第三七一號解釋所謂「提出客觀上形成確信法律為違憲之具體理由」，係指聲請法院應於聲請書內詳敘其對系爭違憲法律之闡釋，以及對據以審查之憲法規範意涵之說明，並基於以上見解，提出其確信系爭法律違反該憲法規範之論證，且其論證客觀上無明顯錯誤者，始足當之。如僅對法律是否違

the Constitution, and accordingly, provide evidence that it believes the statute is unconstitutional and is objectively without obvious mistakes. If the petitioner only has doubts about whether the statute violates the Constitution or the statute may possibly be reconciled with the requirement for requesting constitutional interpretation, it is not sufficient to constitute a concrete reason for objectively believing that the statute is unconstitutional. It is hereby clarified that the concrete reasons provided in the petition, explaining how Article 33, Subparagraph 3, of the Criminal Code, which concerns a liberal sentence as the upper limit, conflicts with Articles 7, 15, and 23 of the Constitution, and objectively believing that the statute is unconstitutional, is not sufficient.

憲發生疑義，或系爭法律有合憲解釋之可能者，尚難謂已提出客觀上形成確信法律為違憲之具體理由。本件聲請意旨，就刑法第三十三條第三款本文關於自由刑為上限之規定，如何牴觸憲法第七條、第十五條及第二十三條之闡釋，對其客觀上形成確信法律為違憲之具體理由亦尚有未足，併予指明。

Justice Jen-Shou Yang filed concurring opinion.

Justice Yu-hsiu Hsu filed dissenting opinion, in which Justice Chung-Mo Cheng joined.

本號解釋楊大法官仁壽提出協同意見書；許大法官玉秀及城大法官仲模共同提出不同意見書。

J. Y. Interpretation No.573（February 27, 2004）*

ISSUE: Are the relevant provisions of the Act of the Supervision of Temples, prescribing that the disposition or modification of certain temples' real properties shall be approved by the authorities-in-charge, unconstitutional?

RELEVANT LAWS:

Articles 7, 13, 15, 23 and 170 of the Constitution（憲法第七條、第十三條、第十五條、第二十三條、第一百七十條）; J. Y. Interpretations Nos. 65, 200, 445, 490 and 491（司法院釋字第六十五號、第二〇〇號、第四四五號、第四九〇號、第四九一號解釋）; Articles 1, 2, Paragraph 1, and 3, 8 of the Act of the Supervision of Temples（監督寺廟條例第一條、第二條第一項、第三條、第八條）; Articles 2, 5, Subparagraph 2, and 6 of the Standard Act for the Laws and Rules（中央法規標準法第二條、第五條第二款、第六條）.

KEYWORDS:

principle of superiority of law（法律優越原則）, principle of reservation of law *(Gesetzesvorbehalt)*（法律保留原則）, freedom of religious belief（信仰宗教自由）, freedom of religious association（宗教結社之自由）, principle of religious equality（宗教平等原則）, principle of religious neutrality（宗教中立原則）, property right（財產權）, principle of clarity and definiteness of law（法律明確性原則）, principle of proportionality（比例原則）.**

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* Translated by Vincent C. Kuan.

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HOLDING: Article 1 of the Standard Act for the Laws and Rules as promulgated by the National Government on May 14, 1929 (hereinafter referred to as the "former Standard Act for the Laws and Rules") provided, "Any legislative bill passed by the Legislative Yuan through the third reading procedure and promulgated by the National Government shall be denominated as an act." Article 2, Subparagraph 3, thereof said that any matter involving the rights and obligations of the people, in respect of which the Legislative Yuan deems it necessary to prescribe by law, should be proposed in the form of a legislative bill, to be passed by the Legislative Yuan through the third reading procedure. Furthermore, Article 3 thereof provided, "The enactment of any statute, by-law or regulation shall be made pursuant to law." Judging from the foregoing provisions, the requirements of the principles of superiority, as well as reservation, of law had been implied in the legal system during the early period of political tutelage prior to the implementation of the Constitution. However, a matter involving the rights and obligations of the

解釋文：依中華民國十八年五月十四日國民政府公布之法規制定標準法（以下簡稱「前法規制定標準法」）第一條：「凡法律案由立法院三讀會之程序通過，經國民政府公布者，定名為法。」第二條第三款所稱，涉及人民權利義務關係之事項，經立法院認為有以法律規定之必要者，為法律案，應經立法院三讀會程序通過之，以及第三條：「凡條例、章程或規則等之制定，應根據法律。」等規定觀之，可知憲法施行前之訓政初期法制，已寓有法律優越及法律保留原則之要求，但有關人民之權利義務關係事項，亦得以未具法律位階之條例等規範形式，予以規定，且當時之立法院並非由人民直接選舉之成員組成。是以當時法律保留原則之涵義及其適用之範圍，均與行憲後者未盡相同。本案系爭之監督寺廟條例，雖依前法規制定標準法所制定，但特由立法院逐條討論通過，由國民政府於十八年十二月七日公布施行，嗣依三十六年一月一日公布之憲法實施之準備程序，亦未加以修改或廢止，而仍持續沿用，並經行憲後立法院認其為有效之法律，且迭經本院作為審查對象在案，應認其為現行有效規範人民權利義務之法律。

people could also be prescribed by rules not having the status of a law, and members of the Legislative Yuan were not directly elected by the people at the time. Therefore, the denotation of the principle of reservation of law *(Gesetzesvorbehalt)* and the scope of application of such principle were not exactly the same as what we have known since the Constitution was put into effect. The Act of the Supervision of Temples at issue was enacted pursuant to the former Standard Act for the Laws and Rules, but was passed by the Legislative Yuan after an article-by-article review and discussion, and promulgated and implemented by the National Government on December 7, 1929. Subsequently, despite the promulgation of the preparatory procedure for the implementation of the Constitution on January 1, 1947, the Act at issue remained unchanged or un-repealed and continues to be applied today. Moreover, not only the post-Constitution Legislative Yuan also considered it a good law, this Yuan has repeatedly reviewed it in various cases on record. Hence it should be regarded as an existing and effective law that regulates

人民之宗教信仰自由及財產權，均受憲法之保障，憲法第十三條與第十五條定有明文。宗教團體管理、處分其財產，國家固非不得以法律加以規範，惟應符合憲法第二十三條規定之比例原則及法律明確性原則。監督寺廟條例第八條就同條例第三條各款所列以外之寺廟處分或變更其不動產及法物，規定須經所屬教會之決議，並呈請該管官署許可，未顧及宗教組織之自主性、內部管理機制之差異性，以及為宗教傳布目的所為財產經營之需要，對該等寺廟之宗教組織自主權及財產處分權加以限制，妨礙宗教活動自由已逾越必要之程度；且其規定應呈請該管官署許可部分，就申請之程序及許可之要件，均付諸闕如，已違反法律明確性原則，遑論採取官署事前許可之管制手段是否確有其必要性，與上開憲法規定及保障人民自由權利之意旨，均有所牴觸；又依同條例第一條及第二條第一項規定，第八條規範之對象，僅適用於部分宗教，亦與憲法上國家對宗教應謹守中立之原則及宗教平等原則相悖。該條例第八條及第二條第一項規定應自本解釋公布日起，至遲於屆滿二年時，失其效力。

certain rights and obligations of the people. The freedom of religious belief and property right of the people are both guaranteed under the Constitution, as clearly provided for under Articles 13 and 15 thereof, respectively. The State is not barred from regulating, by means of law, the management or disposition of the property owned by a religious group. In doing so, however, the principles of proportionality and clarity of law under Article 23 of the Constitution should be complied with. Article 8 of the Act of the Supervision of Temples provides that, with respect to any kind of temple not listed in Article 3 thereof, the disposition or modification of its real properties or ritual objects shall be made by means of a resolution reached by the religious society to which such temple belongs and subject to approval by the authorities-in-charge. Such provision, in putting restraints on the autonomy and property right of such religious organizations, fails to give considerations to the autonomy of a religious organization, differences in internal management mechanisms among such organizations, as well as their needs to manage

properties for purposes of missionary work or preaching. As a result, more than necessary restrictions have been placed upon religious activities. Furthermore, in respect of the approval by the authorities-in-charge, the procedure and requirements for relevant applications are wanting, which is against the principle of clarity and definiteness of law, not to mention whether it is indeed necessary to adopt prior approval by a government agency as a regulatory means in this regard. They are in violation of both the aforesaid constitutional provision and the purpose of protecting the freedom and rights of the people. In addition, according to Article 1 and Article 2-I of said Act, Article 8 thereof merely applies to some, but not all, religions, which is contrary to such constitutional principles of religious neutrality and religious equality as should be carefully upheld by the State. From the date of this Interpretation, Article 8 and Article 2, Paragraph 1, of said Act shall become void within two years.

REASONING: Article 23 of the Constitution unambiguously provides that

解釋理由書：關於人民自由權利之限制，應以法律加以規範，憲法第

the freedoms and rights of the people shall only be restricted by law. The term "law" as used therein shall mean any legislative bill that shall have been passed by the Legislative Yuan and promulgated by the President of the Republic. Article 2 of the existing Standard Act for the Laws and Rules provides, "A law may be denominated as an act, a lu, a statute or a general act." Article 5, Subparagraph 2, thereof provides that such matters as concern the rights and obligations of the people shall be legislated and Article 6 thereof further provides that "those matters that should be prescribed by law may not be governed by administrative regulation." Judging from the foregoing provisions, the principle of reservation of law *(Gesetzesvorbehalt)* must be followed in the legal system during the constitutional period when it comes to matters regarding the rights and obligations of the people. Nevertheless, one of the foregoing denominations of "law," namely, statute, though accorded the status of a law nowadays, was not so during the early era of the political tutelage. Article 1 of the former Standard Act for the Laws and Rules provided, "Any

二十三條定有明文。此所謂法律，依憲法第一百七十條規定，係指經立法院通過，總統公布者而言。依現行中央法規標準法第二條：「法律得定名為法、律、條例或通則。」第五條第二款所稱，關於人民之權利義務事項，應以法律定之，及第六條：「應以法律規定之事項，不得以命令定之。」等規定觀之，憲政時期之法制，就規範人民權利義務之事項，須符合法律保留原則，甚為明確。惟關於上開法律名稱中之條例一種，於今固屬法律位階，然於訓政初期，依前法規制定標準法第一條：「凡法律案由立法院三讀會之程序通過，經國民政府公布者，定名為法。」第二條：「左列事項為法律案，應經立法院三讀會程序之通過：一、關於現行法律之變更或廢止者。二、現行法律有明文規定應以法律規定者。三、其他事項涉及國家各機關之組織或人民之權利義務關係，經立法院認為有以法律規定之必要者。」及第三條：「凡條例、章程或規則等之制定，應根據法律。」第四條：「條例、章程、規則等，不得違反或牴觸法律。」第五條：「應以法律規定之事項，不得以條例、章程、規則等規定之。」等規定觀之，當時之法制，固已寓有法律優越及法律保留原則之要

legislative bill passed by the Legislative Yuan through the third reading procedure and promulgated by the National Government shall be denominated as an act." Article 2 thereof said, "The following matters shall be made in the form of a legislative bill to be passed by the Legislative Yuan through the third reading procedure: (i) any matter concerning the modification or repeal of any existing law; (ii) any matter that should be prescribed by law in accordance with an existing law; and (iii) any other matter concerning the organization of various agencies of the State or involving the rights and obligations of the people, in respect of which the Legislative Yuan deems it necessary to prescribe by law." Article 3 thereof further provided, "The enactment of any statute, by-law or regulation shall be made pursuant to law." Article 4 thereof then said, "Any statute, by-law or regulation shall not be contrary to or in conflict with law." And, finally, Article 5 thereof provided, "Those matters that should be prescribed by law shall not be prescribed by a statute, by-law or regulation." In light of the aforesaid provisions, it may be inferred that the require-

求，但條例尚屬命令位階（迨前法規制定標準法於三十二年六月四日修正公布後，依其第三條：「法律得按其規定事項之性質，定名為法或條例。」之規定，條例始具法律地位），然制定法律之立法機關，即隸屬於國民政府之立法院，並非由人民直接選舉之成員組成，法律案經其議決通過後，仍須經國民政府之國務會議議決始能公布（十七年十月八日公布之中華民國國民政府組織法第十三條、第三十一條參照），且依上開前法規制定標準法第二條第三款規定解釋，關於涉及人民權利義務關係之事項，如未經立法院以法律規定者，國民政府或其所屬五院或行政院各部會尚非不得制定公布或訂定發布條例、章程、規則等命令（十七年十月八日公布之中華民國國民政府組織法第十三條、第十四條、第二十三條參照），予以規範。是以當時法律保留原則之涵義及其適用之範圍，均與行憲後者未盡相同。

ments of the principles of superiority, as well as reservation, of law had been implied in the legal system at that time, but that a statute remained a regulation (and had not achieved the status of a law until Article 3 of the former Standard Act for the Laws and Rules, as amended and promulgated on June 4, 1943, provided, "A law may be denominated as an act or a statute based on the nature of the matters prescribed thereby.") Nevertheless, the law-making body at the time, i.e., the Legislative Yuan, was subordinate to the National Government and not comprised of members directly elected by the people. A legislative bill passed by the Legislative Yuan had to be resolved by the State Council before it could be promulgated. (See Articles 13 and 31 of the Organic Act of the National Government of the Republic of China as promulgated on October 8, 1928.) Furthermore, under Article 2, Subparagraph 3, of the former Standard Act for the Laws and Rules, it would be so interpreted as to lead to the conclusion that a matter involving the rights and obligations of the people, if not prescribed by law by the Legislative Yuan, could be

regulated by the National Government or any of the five Yuans thereunder or various departments or agencies of the Executive Yuan in the form of such order or rule as a statute, by-law or regulation as announced or issued by the same. (See Articles 13, 14 and 23 of the Organic Act of the National Government of the Republic of China as promulgated on October 8, 1928.) Therefore, the denotation of the principle of reservation of law *(Gesetzesvorbehalt)* and the scope of application of such principle were not exactly the same as what we have known since the Constitution was put into effect.

The Act on the Management of Temples, drawn up by the Ministry of the Interior, was originally issued by the National Government on January 25, 1929. However, troubles and disturbances erupted after the implementation thereof in various provinces in the Chinese mainland. As a result, the Ministry of the Interior submitted said Act to the Executive Yuan, which, in turn, submitted the same to the National Government. On May 25 of that same year, the National Government

國民政府原於十八年一月二十五日發布由內政部所擬訂之寺廟管理條例，但當時大陸各省施行後，屢生窒礙及紛擾，內政部特呈由行政院轉呈國民政府，於同年五月二十五日，將該條例令交立法院審核，經立法院於同年第二十七次會議提出討論，認為該條例窒礙難行，乃另行草定監督寺廟條例草案，該院於同年十一月三十日第六十三次會議，將該草案提出逐條討論，省略三讀會程序（十七年十一月十三日公布之立法院議事規則第十條、第十一條參

sent said Act to the Legislative Yuan with the order for the latter to give it a full review. After a discussion thereof by the Legislative Yuan on its 27th Meeting held that same year, the Legislative Yuan considered said Act difficult to carry out and, thus, drafted a bill of the Act of the Supervision of Temples, which was presented at the 63rd Meeting of said Yuan on November 30 of the same year for article-by-article discussion and was then passed without going through the third reading procedure (See Articles 10 and 11 of the Regulation Governing the Meetings and Discussions of the Legislative Yuan as promulgated on November 13, 1928) before being submitted to the National Government for promulgation and implementation on December 7, 1929. This was the Act of the Supervision of Temples at issue today. Subsequently, despite the promulgation of the preparatory procedure for the implementation of the Constitution on January 1, 1947, the Act at issue remained unchanged or un-repealed and continues to be applied today. Moreover, after the implementation of the Constitution, the Legislative Yuan Committee

照），通過全案，呈由國民政府於十八年十二月七日公布施行，此即本案系爭之監督寺廟條例。嗣國民政府依三十六年一月一日公布之憲法實施之準備程序，亦未加以修改或廢止，而仍持續沿用，且行憲後經立法院法規整理委員會分類整編「中華民國現行法律目錄稿本」，交由相關委員會審查後，經第一屆立法院於四十四年一月七日第十四會期第三十一次會議決議編入「中華民國現行法律目錄」，認屬現行有效之法律（見立法院公報第十四會期第八期，四十四年二月十六日印，第五十四至五十五頁、第七十四頁；立法院法規整理委員會編印，中華民國現行法律目錄稿本《截至中華民國四十三年五月八日止》，第一及二十七頁；並參考謝振民編著、張知本校訂之中華民國立法史，正中書局，三十七年一月滬一版，第六二〇頁至六二二頁），並迭經本院作為審查對象在案（本院釋字第六十五號、第二〇〇號解釋等參照），自應認其已具法律之性質及效力。是以上開條例有關人民權利義務事項之規定，尚難謂與我國行憲後之法律保留原則有所違背。

on the Arrangement of Laws and Regulations categorized and compiled a "Preliminary Catalogue of Existing Laws of the Republic of China" and submitted the same to relevant committees of the Legislative Yuan for the latter's review. Whereupon the first Legislative Yuan resolved on January 7, 1955, at its 31st Meeting of the 14th Session that said Act be compiled into the "Catalogue of Existing Laws of the Republic of China," thus recognizing it as an existing and effective law. (See LEGISLATIVE YUAN GAZETTE, 14th Sess., 8th Vol., February 16, 1955, at 54-55, 74; LEGISLATIVE YUAN COMMITTEE ON the ARRANGEMENT OF LAWS AND REGULATIONS, PRELIMINARY CATALOGUE OF EXISTING LAWS OF THE REPUBLIC OF CHINA, as of May 8, 1954, at 1, 27; see also HSIEH ZHENMIN, LEGISLATIVE HISTORY OF THE REPUBLIC OF CHINA at 620-622 (Chang Zhi-Ben, Ed., Zheng Chung Bookstore (January 1948, Hu-1st ed.).) Besides, this Yuan has repeatedly reviewed it in various cases on record. (See J.Y. Interpretations Nos. 65 and 200.)

Thus, it should be deemed to have achieved the status and force and effect of a law. The provisions of the aforesaid Act that involve the rights and obligations of the people, therefore, are not contrary to the principle of reservation of law(Gesetzesvorbehalt) as applied subsequent to the implementation of the Constitution.

Article 13 of the Constitution provides for the people's freedom of religious belief. This should refer to the people's freedom to—or not to—believe in any religion, as well as the freedom to—or not to—participate in any religious activities. It also means that the State shall not encourage or forbid any specific religion, nor shall it give favorable or unfavorable treatment to any people having specific beliefs. The scope of such protection extends to the freedom of inner belief, freedom of religious activity, and freedom of religious association. (See J.Y. Interpretation No. 490). It is impossible to completely separate the religious activities engaged in and religious association attended by the people from the heartfelt,

憲法第十三條規定人民有信仰宗教之自由，係指人民有信仰與不信仰任何宗教之自由，以及參與或不參與宗教活動之自由，國家不得對特定之宗教加以獎勵或禁制，或對人民特定信仰畀予優待或不利益。其保障範圍包含內在信仰之自由、宗教行為之自由與宗教結社之自由（本院釋字第四九〇號解釋參照）。人民所從事之宗教行為及宗教結社組織，與其發乎內心之虔誠宗教信念無法截然二分，人民為實現內心之宗教信念而成立、參加之宗教性結社，就其內部組織結構、人事及財政管理應享有自主權，宗教性規範苟非出於維護宗教自由之必要或重大之公益，並於必要之最小限度內為之，即與憲法保障人民信仰自由之意旨有違。憲法第十五條規定人民之財產權應予保障，旨在確保個人

devout religious convictions held by the same. In respect of a religious association established and attended by the people for the purpose of observing their religious beliefs, autonomy should be given to it as far as its internal organization and structure, personnel and financial administration are concerned. Any religious regulations, if not made to maintain the freedom of religion or any significant public interests, or if not made to the minimum extent necessary, should be deemed to be in conflict with the constitutional intent to protect the people's freedom of belief. Article 15 of the Constitution provides that the people's property right shall be guaranteed. The intent thereof is to ensure that an individual may freely exercise the rights and powers to use, derive benefits from, and dispose of any and all of his properties depending upon the existing status of such properties, and that such properties will not be subject to intrusion by a third party, public or private. The property of a temple, therefore, should also be subject to the protection of the Constitution under the provisions regarding the property right.

依其財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害。寺廟之財產亦應受憲法有關財產權規定之保障。

The freedom of religious association should extend to such matters as the internal organization and structure of a temple, its participation (or non-participation) in another religious civil organization (religious society) as an institutional member, the internal privity between the temple and such other religious civil organization, as well as the management and disposition of the property of the temple. Article 8 of the Act of the Supervision of Temples provides, "The real properties or ritual objects of a temple shall not be disposed of or modified unless made by means of a resolution reached by the religious society to which such temple belongs and subject to approval by the authorities-in-charge." The said provision is designed to protect the properties of any kind of temple not listed in Article 3 of said Act, preventing the real properties and ritual objects from improper disposition or modification that may restrict the spread and subsistence of the beliefs of the temple. No doubt, the foregoing are legitimate grounds for such provision. As far as the consent of the religious society to which the temple belongs is concerned,

寺廟內部之組織結構、是否加入其他宗教性人民團體（教會）成為團體會員，及其與該宗教性人民團體之內部關係，暨寺廟財產之管理、處分等事項，均屬宗教結社自由之保障範圍。監督寺廟條例第八條規定：「寺廟之不動產及法物，非經所屬教會之決議，並呈請該管官署許可，不得處分或變更。」旨在保護同條例第三條各款所列以外之寺廟財產，避免寺廟之不動產及法物遭受不當之處分或變更，致有害及寺廟信仰之傳布存續，固有其正當性，惟其規定須經所屬教會同意部分，未顧及上開寺廟之組織自主性、內部管理機制之差異性，以及為宗教傳布目的所為財產經營之需要，對該等寺廟之宗教組織自主權及財產處分權加以限制，妨礙宗教活動自由已逾越必要之程度；且其規定應呈請該管官署許可部分，就申請之程序及許可之要件，均付諸闕如，不僅受規範者難以預見及理解，亦非可經由司法審查加以確認，已違法律明確性原則（本院釋字第四四五號、第四九一號解釋參照），遑論採取官署事前許可之管制手段是否確有其必要性，其所採行之方式，亦難謂符合最小侵害原則，牴觸憲法第二十三條規定。

however, it fails to give considerations to the autonomy of a religious organization, differences in internal management mechanisms among such organizations, as well as their needs to manage properties for purposes of missionary work or preaching while putting restraints on the autonomy and property right of such religious organizations. As a result, more than necessary restrictions have been placed upon religious activities. Furthermore, in respect of the approval by the authorities-in-charge, the procedure and requirements for relevant applications are wanting, not only rendering it difficult for the subjects of such provisions to foresee and comprehend, but also making it impossible for such procedure and requirements to be confirmed through judicial review, which is against the principle of clarity and definiteness of law (See J.Y. Interpretations Nos. 445 and 491), not to mention whether it is indeed necessary to adopt prior approval by a government agency as a regulatory means in this regard. The means adopted thereby also cannot be said to have satisfied the requirements of the principle of least intru-

sion, thus conflicting with the provisions of Article 23 of the Constitution.

The constitutional guarantee of the people's freedom of religious belief is intended to preserve self-development and self-realization of the human spirits of the people, as well as to make social and cultural diversity a tangible reality. Therefore, as stated earlier, the State shall discreetly abide by the principles of neutrality and tolerance by not encouraging or forbidding any specific religion, nor giving favorable or unfavorable treatment to any people having specific beliefs. Moreover, Article 7 of the Constitution says, "All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal under the law." Therefore, if the State forbids a specific religion or gives it unfavorable treatment, it goes counter to the principles of religious neutrality and religious equality. Under Article 3 of the Act of the Supervision of Temples, the Act does not apply to any temple managed by a government agency or local public group, or established as a private entity. In contrast,

憲法保障人民有信仰宗教之自由，係為維護人民精神領域之自我發展與自我實踐，及社會多元文化之充實，故國家對宗教應謹守中立及寬容原則，不得對特定之宗教加以獎勵或禁制，或對人民特定信仰畀予優待或不利益，前已述及；且憲法第七條明文規定：「中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。」是國家如僅針對特定宗教而為禁制或畀予不利益，即有悖於宗教中立原則及宗教平等原則。監督寺廟條例第三條規定，排除由政府機關、地方公共團體管理以及私人建立管理之寺廟適用該條例，僅將由信眾募資成立之寺廟（實務上稱為「募建寺廟」）納入該條例規範，其以寺廟財產來源作為差別待遇之區分標準，尚未涉及對不同宗教信仰之差別待遇，參酌前述該條例保護寺廟財產、防止弊端之立法目的，當屬考量規範對象性質之差異而為之合理差別待遇，固難謂與實質平等之要求有違。惟同條例第八條之規定，依該條例第一條所稱「凡有僧道住持之宗教上建築物，不論用何名稱，均為寺廟」，及第二條第一項所

only those temples that are established by means of funds raised by the followers (referred to as "fund-supported temples" in practice) are subject to the provisions of said Act. Differential treatment is given based on such criterion as the source of properties of a temple. As such, no discriminatory treatment as to various religious beliefs is involved. In light of the legislative objectives of the aforesaid provisions of said Act, namely, protecting properties of a temple and preventing abusive activities, such discriminatory treatment should be considered as reasonable measures adopted after having taken into account the nature of the subjects of such regulation. No requirements of substantive equality can be said to have been breached. However, the provisions of Article 8 of said Act merely apply to some religions like Buddhism and Taoism but do not impose identical restrictions on other religions by operation of Articles 1 and 2, Paragraph 1, thereof, which provide, respectively, that any religious structure over which a Buddhist monk or a Taoist priest presides, irrespective of the name of such structure, shall be a temple

定「寺廟及其財產法物，除法律別有規定外，依本條例監督之」，僅適用於佛、道等部分宗教，對其餘宗教未為相同之限制，即與憲法第十三條及第七條所定之宗教中立原則及宗教平等原則有所不符。

for the purpose of said Act, and that, unless otherwise provided by law, a temple, as well as its properties and ritual objects, shall be supervised pursuant to said Act. Consequently, the principles of religious neutrality and religious equality as required by Articles 13 and 7 of the Constitution are violated.

To sum up, the provisions of Articles 8 and 2, Paragraph 1, of the Act of the Supervision of Temples are contrary to Articles 7, 13, 15 and 23 of the Constitution. In view of the fact that the foregoing provisions of said Act are the primary norms on the supervision of the disposition of properties of the aforesaid temples, reasonable time will be required to respond to such change of supervisory systems. Therefore, from the date of this Interpretation, Article 8 and Article 2, Paragraph 1, of said Act shall become void within two years.

Justice Lai, In-Jaw filed concurring opinion in part.

Justice Yu-hsiu Hsu filed concurring opinion.

綜上所述，監督寺廟條例第八條及第二條第一項之規定牴觸憲法第七條、第十三條、第十五條、第二十三條，鑒於該條例上開規定係監督前揭寺廟財產處分之主要規範，涉及管理制度之變更，需有相當時間因應，爰均應自本解釋公布日起，至遲於屆滿二年時，失其效力。

本號解釋賴大法官英照提出部分協同意見書；許大法官玉秀、王大法官和雄分別提出協同意見書。

Justice Ho-Hsiung Wang filed concurring opinion.

J. Y. Interpretation No.574（March 12, 2004）*

ISSUE: Are the relevant precedents and resolutions, holding that whether a remanded civil judgment rendered by a court of second instance is appealable should depend on the increased statutory amount of benefits, in line with the Constitution?

RELEVANT LAWS:

Articles 7, 16 and 23 of the Constitution（憲法第七條、第十六條、第二十三條）; J. Y. Interpretations Nos. 396, 442 and 512（司法院釋字第三九六號、第四四二號、第五一二號解釋）; J. Y. Interpretation Yuan-Tze No. 2446（司法院院字第二四四六號解釋）; Articles 77-1 and 466 of the Code of Civil Procedure（民事訴訟法第七十七條之一、第四百六十六條）; Article 8 of the Enforcement Act of the Code of Civil Procedure（民事訴訟法施行法第八條）; Supreme Court under (74) Tai-Kang-Tze No. 174（最高法院七十四年台抗字第一七四號判例）; first civil tribunal meeting of the Supreme Court on January 14, 1997（最高法院八十六年一月十四日第一次民事庭會議決議）.

KEYWORDS:

right to institute legal proceedings（訴訟權）, trial-instance（審級制度）, protection of system（制度保障）, valid legal procedure（正當法律程序）, rule-of-law nation（法治國）,

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* Translated by Roger K. C. Wang.

** Contents within frame, not part of the original text, are added for reference purpose only.

legalitatsprinzip（法安定性原則）, principle of non-retroactivity（法律不溯及既往原則）, principle of trust protection（信賴保護原則）, principle of equity（平等原則）, transitional provisions（過渡條款）, benefit arising from appeal（上訴利益）.**

HOLDING: The right to institute legal actions referred to in Article 16 of the Constitution is available when the people's rights are infringed and fair legal proceedings may be resorted to in seeking certain remedy from the courts. The trial instances, procedures and relevant requisites to be followed by the legal actions shall be justified by the legislative authority under laws by taking into consideration the type, nature and purpose of the legal actions, as well as the function of litigious systems. According to the provisions of Article 466 of the Code of Civil Procedure with respect to appeal against the court's judgment of the second trial instance in a case concerning property rights, whether an appeal is claimable against the judgment of the second trial instance should depend on whether the

解釋文：憲法第十六條所規定之訴訟權，係以人民於其權利遭受侵害時，得依正當法律程序請求法院救濟為其核心內容。而訴訟救濟應循之審級、程序及相關要件，則由立法機關衡量訴訟案件之種類、性質、訴訟政策目的，以及訴訟制度之功能等因素，以法律為正當合理之規定。民事訴訟法第四百六十六條對於有關財產權訴訟上訴第三審之規定，以第二審判決後，當事人因上訴所得受之利益是否逾一定之數額，而決定得否上訴第三審之標準，即係立法者衡酌第三審救濟制度之功能及訴訟事件之屬性，避免虛耗國家有限之司法資源，促使私法關係早日確定，以維持社會秩序所為之正當合理之限制，與憲法第十六條、第二十三條尚無違背。

concerned party's benefit arising from the appeal will exceed a specific amount or not. In other words, because legislators want to avoid wasting the limited national judicial resources, they have to examine the function of the remedial system at the third trial instance and the attributes of the matters, in order to establish the relationship of private law and to maintain fair and reasonable restrictions under the social order; therefore, no violation of Articles 16 and 23 of the Constitution is constituted.

Upon amendments to Article 466 of the Code of Civil Procedure to increase the specific amount of benefit arising from appeal against the judgment of the second trial instance, any concerned parties who filed an appeal against the judgment of the second trial instance after the amendments became effective shall, in principle, apply the post-amendment Article 466 of the Code of Civil Procedure without retroaction, provided that for the cases in which the concerned parties who have acquired the rights to institute legal actions pursuant to laws fail to file the

民事訴訟法第四百六十六條修正提高第三審上訴利益之數額時，當事人於法律修正生效後，始對第二審判決提起上訴者，原則上應適用修正後民事訴訟法第四百六十六條規定，並非法律溯及適用。惟第二審判決後，上訴期間進行中，民事訴訟法第四百六十六條修正提高第三審上訴利益之數額，致當事人原已依法取得上訴權，得提起而尚未提起上訴之事件，依新修正之規定而不得上訴時，雖非法律溯及適用，對人民之信賴利益，難謂無重大影響，為兼顧公共利益並適度保護當事人之信賴，民事訴訟法施行法第八條規定：「修正民事

appeal under the newly amended requirements against the judgment of the second trial instance being rendered due to amendments to Article 466 of the Code of Civil Procedure that increase the specific amount of the benefit arising from appeal against the judgment of the second trial instance, it is likely to have material impact on the people's trust interest for no retroaction can be applied. Therefore, in order to ensure the public interest and protect the concerned parties' trust, Article 8 of the Enforcement Act of the Code of Civil Procedure provides, as a transitional provision, that "An appeal may be filed against the judgment rendered prior to enforcement of amendments to the Code of Civil Procedure, where such appeal is allowable under the provisions prior to the increase in the specific amount of benefit as provided in Article 466 upon enforcement of the amended Code." In other words, this is not contradictory to the non-retroactive and trust protection principles adopted by a rule-of-law nation.

訴訟法施行前所為之判決，依第四百六十六條所定不得上訴之額數，於修正民事訴訟法施行後有增加時，而依增加前之法令許之者，仍得上訴」，以為過渡條款，與法治國之法律不溯及既往原則及信賴保護原則，並無違背。

The precedent rendered by the Supreme Court under (74) Tai-Kang-Tze

最高法院民國七十四年台抗字第一七四號判例及最高法院八十六年一月

No. 174 and the first civil tribunal meeting of the Supreme Court on January 14, 1997, resolved that: "Where the specific amount of the benefit as provided in Paragraph 1 of Article 466 of the Code of Civil Procedure is increased, according to Article 8 of the Enforcement Act of the Code of Civil Procedure, the appeal is allowed subject to the original limitation on the specific amount only when the judgment at issue is rendered prior to the increase in the specific amount. Where the judgment at issue is rendered after that, whether an appeal may be filed against the judgment shall be subject to the increased specific amount, even if the judgment is a new judgment rendered by the court of the third trial instance." The aforementioned is intended as a ruling that the contents of Paragraph 1 of Article 466 of the Code of Civil Procedure and Article 8 of the Enforcement Act of the Code of Civil Procedure are not contradictory to the intent of the Constitution. Accordingly, they do not violate Article 7, 16 or 23 of the Constitution, nor are they contradictory to the non-retroactive and trust protection principles adopted by a rule-of-

十四日第一次民事庭會議決議：「民事訴訟法第四百六十六條第一項所定不得上訴之額數有增加時，依民事訴訟法施行法第八條規定，以其聲明不服之判決，係在增加前為之者，始依原定額數定其上訴之准許與否。若其判決係在增加後為之者，縱係於第三審法院發回後所為之更審判決，皆應依增加後之額數定其得否上訴。」乃在闡釋民事訴訟法第四百六十六條第一項及民事訴訟法施行法第八條規定之內容，與上開憲法意旨並無不符，自難謂牴觸憲法第七條、第十六條及第二十三條，與法治國之法律不溯及既往原則與信賴保護原則，亦均無違背。

law nation.

REASONING: The right to institute legal action referred to in Article 16 of the Constitution is available when people are entitled to seek remedies from courts in accordance with justified legal proceedings after their rights are infringed. The state shall provide effective systems to protect this right, so as to ensure the right. The legislative authorities shall enact appropriate laws governing the courts' organization and proceedings. The courts shall also aim at protecting the right when applying the relevant laws, so that the people's right may be restored in a timely manner when their rights are infringed. Where the proceedings do not prejudice the core content of the right to initiate legal actions, the legislators shall enact various reasonable requirements concerning the proceedings by taking into account the requirement of valid protection provided in the Constitution and the nature of cases, and this is not considered to be a violation of the protection of the right to initiate legal action (See J.Y. Interpretation No. 442).

解釋理由書：憲法第十六條所規定之訴訟權，係以人民於其權利遭受侵害時，得依正當法律程序請求法院救濟為其核心內容，國家應提供有效之制度保障，以謀其具體實現，除立法機關須制定法律，為適當之法院組織及訴訟程序之規定外，法院於適用法律時，亦須以此為目標，俾人民於其權利受侵害時，有及時、充分回復並實現其權利之可能。訴訟程序倘未損於訴訟權核心內容，立法者自得斟酌憲法上有效法律保護之要求，衡諸各種案件性質之不同，就其訴訟程序為合理之不同規定，尚無違於訴訟權之保障（本院釋字第四四二號解釋參照）。

The trial-instance system constitutes a part of the procedure. According to the internal monitoring mechanism under the judicial relief system, the upper-instance court has the right to correct the rulings rendered by the lower-instance court. The number of trial instances shall be determined by the legislative authority in consideration of the nature of cases and function of the legal system. Therefore, it is not necessarily the case that the intent of protecting the people's right to initiate legal action referred to in the Constitution will be complied with only when cases are appealed to the third trial instance for the protection of rights to initiate legal action (See J.Y. Interpretations Nos. 396, 442 and 512).

審級制度為訴訟程序之一環，有糾正下級審裁判之功能，乃司法救濟制度之內部監督機制，其應經若干之審級，得由立法機關衡量訴訟案件之性質及訴訟制度之功能等因素定之，尚難謂其為訴訟權保障之核心內容（本院釋字第三九六號、第四四二號及第五一二號等解釋參照），而要求任何訴訟案件均得上訴於第三審，始與憲法保障人民訴訟權之意旨相符。

Taiwan's Code of Civil Procedure applies the remedial system subject to trial instance, namely the three trial instances. Nevertheless, though the third trial instance provides the remedial function, the trial is carried out in terms of laws, which focuses on integrating the interpretation and application of laws, so as to keep the legal opinion consistent. Therefore, the

我國民事訴訟法採審級救濟制度，以三級三審制為建構原則。第三審固有救濟之功能，但其性質為法律審，著重統一法律之解釋與適用，以維法律見解之一致性，故立法機關得衡酌訴訟事件之性質，以定其第三審上訴之程序要件。八十八年二月三日修正公布之民事訴訟法第四百六十六條第一項規定：「對於財產權訴訟之第二審判決，如因

legislative authority may determine the procedural requirements for appeal to the court of third instance by taking the nature of cases into account. Paragraph 1 of Article 466 of the Code of Civil Procedure, amended and promulgated on February 3, 1999, provides that: "No appeal may be lodged against the judgment of the court of first instance in a case concerning property rights if the benefit arising from such appeal does not exceed 600,000 yuan [New Taiwan Dollars]." Accordingly, whether a concerned party may appeal to the court of third instance will be subject to whether the benefit to arise from the appeal against the judgment of the court of second instance will exceed the specific amount. This is a reasonable limitation on the procedure for the people's exercise of the right to initiate legal action. Following the growth of our economy and national income, commodity prices and monetary claims have risen comparatively, and the number of cases concerning property rights handled by the court of third instance has increased dramatically. Therefore, the trial in terms of laws to be conducted in the third instance has been seri-

上訴所得受之利益，不逾新臺幣六十萬元者，不得上訴。」對於有關財產權訴訟上訴第三審之規定，以第二審判決後，當事人因上訴所得受之利益是否逾一定之數額，而決定得否上訴第三審之標準，乃對人民訴訟權行使程序之合理限制。嗣因我國經濟及國民所得成長，物價及爭訟數額相對提高，使第三審法院受理之財產事件大幅增加，致影響第三審法律審功能之發揮，遂於八十九年二月九日修正上開規定，將不得上訴第三審之利益數額提高為一百萬元，乃為合理分配有限之司法資源，促使私法關係早日確定，以維持社會秩序所為之正當合理之限制，與憲法第十六條、第二十三條並無違背。

ously affected. Given this, the said provisions were amended on February 9, 2000, to raise the benefit to 1,000,000 yuan [New Taiwan Dollars], in order to distribute limited judicial resources reasonably and to establish the relationship among private laws to maintain the justified limitation for the purpose of social order, without contradicting Articles 16 and 23 of the Constitution.

According to the doctrine of a rule-of-law nation, the basic principles of a constitution shall first guarantee the people's rights, stability of the legal order and compliance with the principle of trust protection. Therefore, once laws are amended, unless the laws provide special requirements for retroactivity, the laws shall be effective as of the date when they are promulgated. Nevertheless, human life is of a continuous nature; therefore, though new laws, which are not retroactive, are applicable to the constitutional facts fulfilled after the new laws become effective, the life order established by people under the old laws is inevitably affected. In such circumstances, without prejudicing the

法治國原則為憲法之基本原則，首重人民權利之維護、法秩序之安定及信賴保護原則之遵守。因此，法律一旦發生變動，除法律有溯及適用之特別規定者外，原則上係自法律公布生效日起，向將來發生效力。惟人類生活有其連續性，因此新法雖無溯及效力，而係適用於新法生效後始完全實現之構成要件事實，然對人民依舊法所建立之生活秩序，仍難免發生影響。此時立法者於不違反法律平等適用之原則下，固有其自由形成空間。惟如人民依該修正前法律已取得之權益及因此所生之合理信賴，因該法律修正而向將來受不利影響者，立法者即應制定過渡條款，以適度排除新法於生效後之適用，或採取其他合理之補救措施，俾符法治國之法安定

equity of laws, legislators may enact requirements at their sole discretion, provided that if the right and reasonable trust deriving therefrom acquired by the people prior to amendments of the laws are affected adversely due to the amendments, legislators shall enact certain transitional provisions to exclude the application of new laws, or shall take other reasonable measures, in order to comply with the principles of stability and trust protection of a rule-of- law nation.

性原則及信賴保護原則。

According to Paragraph 1 of Article 466 of the Code of Civil Procedure amended on February 9, 2000 (hereinafter referred to as "the new Code"), the benefit to arise from appeal to the court of third instance was increased and no special requirement for retroactivity was provided. Therefore, the amended provision was effective after the new Code was promulgated. However, if any concerned party has lodged legal action in the court of first instance pursuant to laws, or the court of first instance has rendered its judgment, or the concerned party has appealed to the court of second instance and the appeal is

八十九年二月九日修正公布民事訴訟法第四百六十六條第一項（下稱新法），提高第三審上訴利益數額，並無溯及既往適用之特別規定，因此該項修正係自公布生效後向將來發生效力。惟如當事人於法律修正生效前，已依法提起第一審訴訟；或第一審已判決；或已提起第二審上訴，於訴訟進行中；或曾上訴第三審，經第三審廢棄原判決發回原審而回復第二審訴訟程序者，則相關訴訟事件之訴訟規畫，難免因新法向將來生效後受到影響。第因財產權訴訟第三審上訴利益之決定，應就上訴聲明範圍內訴訟標的之金額或依起訴時之價額定之（民事訴訟法第四百六十六條第四

pending, or has appealed to the court of third instance and resumed the procedure for the second instance after the original judgment was revoked by the court of third instance, before the amendments to the Code became effective, the relevant procedures for the case would inevitably be affected after the new Code became effective. The value of an object in an action appealed to the court of third instance for cases concerning property rights shall be determined subject to the object amount specified in the claim of the appeal or the amount claimed in the complaint (See Paragraph 4 of Article 466 and Paragraph 2 of Article 77-1 of the Code of Civil Procedure). The said value of an object in an action is the appellant's benefit arising from the claim of an appeal, which is different from the objective value determined subject to the claim of the plaintiff's complaint. The court of second instance shall ex officio determine whether the value of an object in an action complies with Article 466 of the Code of Civil Procedure when examining the legal requisites for appeal to the third instance, regardless of the value of the object de-

項、第七十七條之一第二項參照），上訴利益乃上訴人依上訴聲明所得受之利益，此與原告起訴，係依原告起訴之聲明，定其客觀利益係屬兩事。第二審法院審查第三審上訴合法要件時，就上訴利益是否符合民事訴訟法第四百六十六條規定，應依職權核定之，不受原第一審法院核定訴訟標的價額之羈束。如第二審法院認定上訴利益不逾法定數額，以上訴不合法裁定駁回第三審上訴，經上訴人提起抗告時，第三審法院仍得再行斟酌核定之，亦不受第二審法院核定之羈束。職是，非至第二審法院判決時，無以認定當事人有無上訴利益，此並非於起訴時即可逕予認定。至訴訟事件提起第三審上訴，經第三審法院審理後認上訴有理由而廢棄原判決者，第二審判決即因第三審法院之廢棄而失其效力，由原第二審法院更為審判。是對於第二審法院之更審判決得否提起第三審上訴，應視更審裁判之結果而定，因此原第二審法院所為更審判決，如在民事訴訟法第四百六十六條第一項所定數額增加後為之者，對於該判決因上訴所得受之利益不逾增加之數額，不得上訴，業經本院院字第二四四六號解釋闡釋在案。故第二審之更審判決，既非原已廢棄之第二審判決，則對於原第二審判決

termined by the court of first instance. If the court of second instance considers that the value of the object does not exceed the statutory amount, it shall deny the appeal to the third instance by rendering a judgment stating that no appeal is allowed, provided that, where the appellant files an appeal, the court of third instance may still consider the amount, regardless of that determined by the court of second instance. Given this, the concerned party's benefit deriving from the appeal will not be determined until the court of first instance renders its judgment, as it can not be determined immediately when the complaint is lodged initially. If the original judgment is abandoned after the appeal filed to the third instance is considered groundless by the court of third instance, the judgment of the second instance shall become invalid by the judgment of the court of third instance, and the court of second instance shall render a new judgment. Whether an appeal may be filed against the new judgment rendered by the court of second instance shall be subject to the outcome of the new judgment. Therefore, assuming that the new

依舊法得提起第三審上訴，於新法公布後，依法律適用之一般原則，對於經第三審法院廢棄發回第二審更審所為之判決，限制其不得提起上訴，於憲法第七條之平等原則並無違背。同時，當事人亦不得主張信賴修正前之規定得對於原第二審判決提起第三審上訴，主張新法溯及既往，侵害其既有之上訴利益。此時，立法者若未制定任何過渡條款，而使新法立即、全面適用，尚不逾越其自由形成之範圍。惟雖同屬訴訟事件之訴訟規畫自新法生效後向將來受到影響之情形，如第二審判決係在新法公布之前所為，當事人依修正前民事訴訟法第四百六十六條第一項規定，原得提起第三審上訴而尚未提起，於上訴期間進行中，法律修正生效後始提起第三審上訴者，若第二審法院或第三審法院依裁定時之新法，以上訴所得受之利益未逾新法所定數額而駁回其上訴時，勢必侵害當事人依修正前民事訴訟法第四百六十六條第一項規定原已取得之上訴第三審權益，及因此所生之合理信賴。此時，立法者若未制定過渡條款，以排除該修正規定於生效後對上開情況之適用，即有因違反信賴保護原則而違憲之虞。民事訴訟法施行法第八條規定：「修正民事訴訟法施行前所為之判決，依第四百

judgment is rendered by the court of second instance after the increase in the amount referred to in Paragraph 1 of Article 466 of the new Code, no appeal can be filed against the new judgment if the benefit arising from the appeal against the judgment is not considered to be in excess of the increased amount. This can be evidenced by this court's interpretation No. 2446. Given this, since the new judgment is not the original judgment, which has been overturned, no appeal shall be filed against the new judgment rendered by the court of second instance after the court of third instance has revoked the original judgment, pursuant to the general principle for application of law, after the new Code was promulgated. This does not breach the principle of equity provided under the Constitution. Meanwhile, the concerned party cannot claim that he or she relies on the requirement prior to the amendment that allows him or her to file an appeal against the original judgment of the court of second instance in an attempt to claim the retroactivity of the new Code regarding infringement of his or her existing benefit arising from the appeal. In

六十六條所定不得上訴之額數，於修正民事訴訟法施行後有增加時，而依增加前之法令許之者，仍得上訴。」係立法者審酌民事訴訟之性質，以及第三審為法律審之功能，並為特別保護依修正前民事訴訟法第四百六十六條第一項規定曾經取得上訴第三審權利當事人之既得利益，所制定之過渡條款，既未逾越其制定法律過渡條款之自由形成範圍，與法治國之信賴保護原則自亦無違背。

such a circumstance, if the legislators do not enact any transitional provisions to enable the new Code to be applied immediately and comprehensively, they still can retain free discretion. However, though the relevant procedures for the case would be affected after the new Code became effective, if the judgment of the court of second instance was rendered before the new Code became effective and the concerned party failed to file an appeal which should be claimable pursuant to Paragraph 1 of Article 466 of the former Code of Civil Procedure, but filed an appeal to the court of third instance after the amended Code became effective, and the court of second instance or third instance rejected his or her appeal reasoning that the benefit to arise from the appeal did not exceed the specific amount referred to in the new Code, the concerned party's right to file an appeal to the court of third instance under Paragraph 1 of Article 466 of the former Code of Civil Procedure and the reasonable trust deriving therefrom would have inevitably been infringed. Under the circumstance, if the legislators did not enact any transitional

provisions to exclude the application of the amended Code to the said circumstance after it became effective, there would have been the likelihood of violation of the Constitution for breach of the trust principle. Article 8 of the Enforcement Act of the Code of Civil Procedure provides that judgments made prior to the enforcement of the amended Code of Civil Procedure may be subject to appeal if they are appealable in accordance with the former laws, provided that the amount fixed in Paragraph 1 of Article 466 as a limitation to appeals is raised after the enforcement of the amended Code of Civil Procedure. This can be considered as a transitional provision enacted by the legislators in terms of the nature of the civil cases and the function of trial at law in the third instance and in order to protect the vested interest of the concerned party in filing an appeal to the court of third instance pursuant to Paragraph 1 of Article 466 of the former Code of Civil Procedure, which is not contradictory to their free discretion to enact transitional provisions or the trust principle applied by a rule-of-law nation.

The precedent rendered by the Supreme Court under (74) Tai-Kang-Tze No. 174 and the first civil tribunal meeting of the Supreme Court on January 14, 1997, resolved that: "Where the specific amount of the benefit as provided in Paragraph 1 of Article 466 of the Code of Civil Procedure is increased, according to Article 8 of the Enforcement Act of the Code of Civil Procedure, the appeal is allowed subject to the original limitation on the specific amount only when the judgment at issue is rendered prior to the increase in the specific amount. Where the judgment at issue is rendered after that, whether an appeal may be filed against the judgment shall be subject to the increased specific amount, even if the judgment is a new judgment rendered by the court of the third instance". The aforementioned is intended as a ruling that the contents of Paragraph 1 of Article 466 of the Code of Civil Procedure and Article 8 of the Enforcement Act of the Code of Civil Procedure are not contradictory to the intent of the Constitution. Accordingly, they do not violate Article 7, 16 or 23 of the Constitution, nor are they contradictory to the non-

最高法院七十四年台抗字第一七四號判例及最高法院八十六年一月十四日第一次民事庭會議決議：「民事訴訟法第四百六十六條第一項所定不得上訴之額數有增加時，依民事訴訟法施行法第八條規定，以其聲明不服之判決，係在增加前為之者，始依原定額數定其上訴之准許與否。若其判決係在增加後為之者，縱係於第三審法院發回後所為之更審判決，皆應依增加後之額數定其得否上訴。」乃在闡釋民事訴訟法第四百六十六條第一項及民事訴訟法施行法第八條規定之內容，並未增加法律所無之限制，與上開憲法意旨亦無不符，自難謂牴觸憲法第七條、第十六條及第二十三條規定，與法治國之法律不溯及既往原則與信賴保護原則，均無違背。

retroactive and trust principles adopted by a rule-of-law nation.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Tzong-Li Hsu filed concurring opinion.

本號解釋許大法官玉秀提出部分協同意見書；許大法官宗力提出協同意見書。

J. Y. Interpretation No.575（April 2, 2004）*

ISSUE: Does the Household and Police Separation Implementation Plan provide sufficient mitigation for police officers, who served in household registration affairs but did not possess the qualifications for public functionary, to return to their original posts or remain in office after the rebellion-suppression period has ended? Does the remuneration and ranking system under the Act Governing the Management of Police Officers conflict with the constitutional principle of equal rights?

RELEVANT LAWS:

Articles 7, 18 and 23 of the Constitution（憲法第七條、第十八條及第二十三條）; Article 7, Paragraphs 1 and 2 of the Household Registration Act（戶籍法第七條第一項、第二項）; Article 3 of Enforcement Rules of the Household Registration Act（戶籍法施行細則第三條）; Public Functionaries Appointment Act（公務人員任用法）; Article 22, Paragraph 2, Remuneration Chart of Police Officers of the Act Governing the Management of Police Officers（警察人員管理條例第二十二條第二項附警察人員俸表）; Household-Police Alliance Implementation Plan（戶警合一實施方案）; Regulation on the Improvement of Household Registration in the Taiwan Area during the Rebellion-Suppression Period（戡亂時期台

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

** Contents within frame, not part of the original text, are added for reference purpose only.

灣地區戶政改進辦法）; Article 4.2 of the Household and Police Separation Implementation Plan（戶警分立實施方案第四之(二)點）; Outline for Officials who Possess Police Appointment Qualifications and Wish to Return to Their Police Posts in the Transfer of the Household Registration Unit after the Household and Police Separation（戶警分立移撥民（戶）政單位具警察官任用資格人員志願回任警察機關職務作業要點）.

KEYWORDS:

right to serve in public office（服公職之權利）, official affairs（公務）, secure status（身分保障）, change of subordinate institutions（改隸）, public functionary（公務人員）, transitional provisions（過渡條款）, mitigating measures（緩和措施）, separation of household and police（戶警分立）, constitutional order（憲政秩序）, civil administration system（民政系統）, household registry functionary（戶政人員）, administration cost（行政成本）, constitutional state *（Rechtsstaat）*（法治國家）, remuneration rank（俸級）, personnel ordinances（人事法令）, personnel system（人事制度）, principle of reservation of law *(Gesetzesvorbehalt)*（法律保留原則）.**

HOLDING: The people have the right to serve in public office under Article 18 of the Constitution, the main purpose of which is to ensure that the people

解釋文：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務，暨由此衍生享有之身分保障、俸給與退休金等權利。機關因

who are engaged in official affairs, pursuant to the laws and ordinances, shall, subsequently, be entitled to the right to secure status, request for remuneration and retirement pension, etc. If the change of organization, dissolution, or change of subordinate institutions greatly restricts the constitutionally protected right of public functionaries to serve in public office, the government shall formulate appropriate transitional provisions or other mitigating measures to give both proper consideration.

改組、解散或改隸致對公務人員之憲法所保障服公職之權利產生重大不利影響，應設適度過渡條款或其他緩和措施，以資兼顧。

Article 7, Paragraph 2, of the Household Registration Act amended and declared on July 17, 1973, states: "During the Period of National Mobilization for Suppression of the Communist Rebellion, the Household Registration Office shall be under the jurisdiction of executive-governed-municipality and -county police administrations after the approval and determination of the Executive Yuan." Because this period had ended, Article 7 of the Household Registration Act, amended and declared on June 29, 1992, deleted the original Paragraph 2, and amended Para-

中華民國六十二年七月十七日修正公布之戶籍法第七條第二項規定：「動員戡亂時期，戶政事務所得經行政院核准，隸屬直轄市、縣警察機關；其辦法由行政院定之。」為因應動員戡亂時期之終止，八十一年六月二十九日修正公布之戶籍法第七條將上開規定刪除，並修正同條第一項及該法施行細則第三條，回復戶警分立制度，乃配合國家憲政秩序回歸正常體制所為機關組織之調整。戶政單位回歸民政系統後，戶政人員之任用，自應依公務人員任用法、各戶政單位員額編制表及相關人事法令規定為之。原辦理戶政業務之警察

graph 1 and Article 3 of its Enforcement Rules. Returning to the system of separation of household and police coincides with the adjustment of institutional organization as the constitutional order normalizes. After the household registration unit returned to the civil administration system, the appointment of household registry functionaries followed the Public Functionaries Appointment Act, the personnel establishment chart of each household registration unit, and the laws and regulations related to personnel. The police officers, who had originally served in household registration affairs but did not possess the qualifications for public functionary, were not allowed to remain in office. Obviously, the right of such officials to serve in public office was greatly restricted. To seek mitigation, the Ministry of the Interior issued Tai-Nei-Hu-Tze No. 8103536 on June 10, 1992, and applied the "Household and Police Separation Implementation Plan" on July 1, 1992. According to this plan, the police officers who had originally served in household registration affairs, whether they had remained at the original post or

人員，其不具一般公務人員資格者，即不得留任，顯已對該等人員服公職權利產生重大不利影響。為謀緩和，內政部於八十一年六月十日以台（八一）內戶字第八一〇三五三六號函發布、同年七月一日實施之「戶警分立實施方案」，使原辦理戶政業務之警政人員或可於五年內留任原職或回任警職；或可不受考試資格限制而換敘轉任為一般公務人員，已充分考量當事人之意願、權益及重新調整其工作環境所必要之期限，應認國家已選擇對相關公務員之權利限制最少、亦不至於耗費過度行政成本之方式以實現戶警分立。當事人就職缺之期待，縱不能盡如其意，相對於回復戶警分立制度之重要性與必要性，其所受之不利影響，或屬輕微，或為尊重當事人個人意願之結果，並未逾越期待可能性之範圍，與法治國家比例原則之要求，尚屬相符。

returned to the police posts within five years, and were no longer restricted by exam qualifications, could transfer and become ordinary public functionaries. Such plan has sufficiently considered the willingness and rights of the people involved and adjusted the time period necessary for a new working environment; thus, the government has chosen a method that least constrains the rights of associated public functionaries and does not result in excessive waste of administrative costs to achieve the separation of household and police. Although not all of the expectations of the people applying for post openings were satisfied, compared to the significance and necessity of returning to the system of separation of household and police, such expectations were only slightly affected. The result of respecting them did not exceed the scope of possible expectations, which was consistent with the request of the proportionality principle of a constitutional state *(Rechtsstaat)*.

The regulations associated with the aforesaid Implementation Plan, which involve the rights of the people, were not

前開實施方案相關規定，涉及人民權利而未以法律定之，固有未洽，然因其內容非限制人民之自由權利，尚難

passed into law, and therefore, were not appropriate. However, the content did not restrict the rights of the people. Thus, the Implementation Plan does not conflict with the principle of reservation of law *(Gesetzesvorbehalt)* under Article 23 of the Constitution. It must be pointed out that if those transitional provisions have the effect of abolishing or restricting the law, new statutes shall be passed, abiding by the principle of separation of powers under a constitutional state (Rechtsstaat).

謂與憲法第二十三條規定之法律保留原則有違。惟過渡條款若有排除或限制法律適用之效力者，仍應以法律定之，方符法治國家權力分立原則，併此指明。

The Act Governing the Management of Police Officers was amended and declared on November 21, 1983. The attached chart under its Article 22, Paragraph 2, annotated that police officers, transferring to posts that are not designated for police officers, shall convert to the corresponding remuneration rank at the new post according to the original rank, subject to the maximum annual remuneration; if the remuneration exceeds the maximum, the amount of remuneration in excess will be withheld. Because officials of different systems employ different personnel ordinances, it is neces-

七十二年十一月二十一日修正公布之警察人員管理條例第二十二條第二項附表附註，就警察人員轉任非警察官職務按其原敘俸級，換敘轉任職務之相當俸級至最高年功俸為止，超出部分仍予保留，係因不同制度人員間原適用不同人事法令而須重新審定俸級之特別規定，乃維護公務人員人事制度健全與整體平衡所為之必要限制，與憲法保障平等權之意旨亦無牴觸。

sary to reassess and formulate special regulations for remuneration and ranking. This is an essential restriction to protect the well-being and overall balance of the public functionary personnel system, which does not conflict with the implication of equal rights protected under the Constitution.

REASONING: The people have the right to serve in public office under Article 18 of the Constitution, whose main purpose is to ensure that the people who are engaged in official affairs, pursuant to the laws and ordinances, shall, subsequently, be entitled to the right to secure status, request for remuneration and retirement pension, etc. If the constitutionally protected right of public functionaries to serve in public offices is greatly restricted by the change of organization, dissolution, or change of subordinate institutions, the government shall formulate appropriate transitional provisions or other mitigating measures to protect their rights.

解釋理由書：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務，暨由此衍生享有之身分保障、俸給與退休金請求等權利。公務人員如因服務機關之改組、解散或改隸致其憲法所保障之服公職權利受到重大不利影響，國家應制定適度之過渡條款或其他緩和措施，以兼顧公務人員權利之保障。

Article 7, Paragraph 2, of the House

六十二年七月十七日修正公布之

hold Registration Act amended and declared on July 17, 1973 states: "During the Period of National Mobilization for Suppression of the Communist Rebellion, the Household Registration Office shall be under the jurisdiction of executive-governed-municipality and -county police institutions after the approval and determination of the Executive Yuan." Thus, subject to the Household-Police Alliance Implementation Plan, the Regulation on the Improvement of Household Registration in the Taiwan Area during the Rebellion-Suppression Period and other rules, police officers may serve in household registration affairs under the joint household-police system, which is in accordance with the law. After this period had ended, on June 29, 1992, Article 7 of the Household Registration Act deleted the original Paragraph 2, and amended Paragraph 1 and Article 3 of its Enforcement Rules. Returning to the system of separation of household and police coincides with the adjustment of institutional organization as the constitutional order normalizes.

戶籍法第七條第二項規定：「動員戡亂時期，戶政事務所得經行政院核准，隸屬直轄市、縣警察機關；其辦法由行政院定之。」遂使警察人員原依戶警合一實施方案、戡亂時期台灣地區戶政改進辦法等規定，可辦理戶政業務之戶警合一制度而有法律依據。嗣為因應動員戡亂時期之終止，八十一年六月二十九日修正公布之戶籍法第七條將原第二項刪除，並修正同條第一項及該法施行細則第三條，回復戶警分立制度，乃配合國家憲政秩序回歸正常體制所為機關組織之調整。

After the household registration unit has returned to the civil administration system, the appointment of household registry functionaries shall follow the Public Functionaries Appointment Act, the personnel establishment chart of each household registration unit, and the laws and regulations related to personnel. The police officers, who had originally served in household registration affairs but did not possess the qualifications for public functionary, without satisfying the appointment qualifications and the regulations for the personnel system, unless otherwise permitted by other ordinances, shall not remain in office. Such a result was due to the return of the institutional organization to the civil administration and the original personnel system; however, it has already greatly affected the rights of such officials to serve in public office. The government has the duty to establish corresponding placement for related personnel; for example, to formulate transitional provisions or other mitigating measures to suitably decrease the impact of structural changes on the rights of the people.

戶政單位回歸民政系統後，戶政人員之任用，自應依公務人員任用法、各戶政單位員額編制表及相關人事法令規定為之。故原於戶政事務所辦理戶政業務之警察人員，其不具一般公務人員資格者，因其任用資格與人事體制規定不符，若無其他法令依據，即不得留任；產生此種後果，固係因機關組織回歸民政系統以及既有之人事制度使然，但顯已對該等人員服公職權利產生重大不利之影響。國家自有義務對相關人事為相應之安置，例如制定過渡條款或其他緩和措施，以適度降低制度變更對其權益所造成之衝擊。

Based on the consideration of protection of the people's rights, the Ministry of the Interior issued Tai-Nei-Hu-Tze No. 8103536 on June 10, 1992, and applied the "Household and Police Separation Implementation Plan" on July 1, 1992. Article 4.2 states that police officers, who did not satisfy the appointment qualifications and the regulations of the personnel system, after the change of affairs, may remain in the Household Registration Office with the original appointment qualifications, and according to their preference, return to their previous police positions. Such Article gives these officials the opportunity to carefully assess whether to apply for service in public offices in the future. Tai-Nei-Ching-Tze No. 8180130, issued by the Ministry of the Interior, June 24, 1992, declared the "Outline for Officials who Possess Police Appointment Qualifications and Wish to Return to Their Police Posts in the Transfer of the Household Registration Unit after the Household and Police Separation." If officials have not requested to return to their previous positions within five years and still perform such duties, subject to the

內政部基於保障人民權利之考慮，而以八十一年六月十日台（八一）內戶字第八一〇三五三六號函發布、同年七月一日實施之「戶警分立實施方案」，其第四之(二)點，即規劃該等任用資格與相關人事法令有所不符之警察人員，隨同業務移撥後仍得以原任用資格繼續留任於戶政事務所，再依其志願辦理回任警職，已賦予該等人員審慎評估未來服公職計畫之機會，即使該等人員未於五年內依內政部八十一年六月二十四日台（八一）內警字第八一八〇一三〇號函發「戶警分立移撥民（戶）政單位具警察官任用資格人員志願回任警察機關職務作業要點」申請回任，仍繼續執行原職務者，復容許其得轉任為一般公務人員，繼續留任原職。至於回任之意願應於五年內表示之限制，係基於行政效能之考量，以及職務分配之需要，俾於相當期間內確定各機關之職缺以達人事之安定。綜此，戶警分立實施方案已充分考量當事人之意願、權益及重新調整其工作環境所必要之期限，足使機關改隸後原有人員身分權益所受不利益減至最低，應認國家已選擇對相關公務員之權利限制最少、亦不至於耗費過度行政成本之方式以實現戶警分立。當事人就職缺之期待，縱不能盡如其

aforesaid provision, they may be allowed to become ordinary public functionaries and remain in office. The five-year limitation, subject to the consideration of administrative effect and the need of duty allocation, is to verify the openings of each institution during a certain period of time in order to achieve personnel stability. Consequently, the Household and Police Separation Implementation Plan has sufficiently considered the willingness and rights of the people involved, adjusted the time period necessary for a new working environment, so that after the change of subordinate institutions, the restrictions on the rights of the original officials would be minimized. Therefore, the government has chosen a method that least constrains the rights of associated public functionaries and does not result in the excessive waste of administrative costs to achieve the separation of household and police. Following the principles of a legal state and appropriately allocating police and normal administrative duties is a significant and necessary public welfare of normalizing the constitutional system. Although not all the expectations of the

意，相對於遵守法治國原則、適當分配警察任務與一般行政任務以回復憲政體制此一重大公益之重要性與必要性，其所受之不利影響，或屬輕微，或為尊重當事人個人意願之結果，並未逾越期待可能性之範圍，與法治國家比例原則之要求，尚屬相符。

people applying for post openings were satisfied, they were only slightly affected; the result of respecting them did not exceed the scope of possible expectations, which was consistent with the request of the proportionality principle of a constitutional state (Rechtsstaat).

The regulations associated with the aforesaid Implementation Plan, which involve the freedoms and rights of the people, were not passed into law, and therefore, were not appropriate. However, these actions were taken because the agency-in-charge did not formulate transitional provisions or other mitigating measures when the Legislative Yuan was amending the Household Registration Act during the period of constitutional transformation. Because the content did not restrict the freedoms and rights of the people, the Implementation Plan did not conflict with the principle of reservation of law (Gesetzesvorbehalt) under Article 23 of the Constitution. Since the Period of National Mobilization in Suppression of the Communist Rebellion has ended and the constitutional order has normalized,

前開實施方案相關規定，涉及人民之自由權利，其未以法律定之，固有未洽。惟此乃主管機關於憲政轉型期為因應立法院於修正戶籍法時，未制定過渡條款或其他緩和措施之不得已之舉，因其內容並非限制人民之自由權利，尚難謂與憲法第二十三條規定之法律保留原則有違。茲動員戡亂時期既經終止，憲政體制已回復常態，前開情事不復存在，過渡條款若有排除或限制法律適用之效力，且非行政機關於組織或人事固有權限範圍內之事項者，仍應一併以法律定之或以法律授權相關機關以為適當規範，方符法治國家權力分立原則，併此指明。

the aforesaid situation no longer exists. It must be pointed out that if transitional provisions have the effect of abolishing or restricting the law, and for an administrative agency whose organization and personnel are not within the scope of inherent jurisdiction, new statutes shall be passed or legally authorized associated institutions shall formulate appropriate regulations, abiding by the principle of separation of powers under a constitutional state (Rechtsstaat).

The Act Governing the Management of Police Officers was amended and declared on November 21, 1983. Its attached chart (The Remuneration Chart of Police Officers) of Article 22, Paragraph 2, annotates: "According to this chart, after police officers are ranked, transferring to posts that are not designated for police officers, they shall adhere to the remuneration system applicable to the posts to which they transfer. Following the original remuneration rank, the police officer shall convert to the corresponding ranking at the new post, subject to the maximum annual remuneration; if the remuneration exceeds

七十二年十一月二十一日修正公布之警察人員管理條例第二十二條第二項附表（警察人員俸表）附註規定：「警察人員依本表規定敘級後，如轉任非警察官職務時，應依所轉任職務適用之俸給法，按其原敘警察官俸級，換敘轉任職務之相當俸級，以至最高年功俸為止，如有超出，仍予保留」，係因不同制度人員間原適用不同之任用、敘薪、考績（成）、考核規定，警察人員轉任非警察官職務時，須重新審定俸級所為之特別規定，以確保同一體系內公務人員之待遇公平，並保障警察人員依法敘級後之俸給利益。該規定未因轉任是否基於自願而訂定差別待遇，乃在避

the maximum, the exceeding portion would be withheld." Officials of different systems employ different appointment, remuneration, examination, and inspection regulations. When police officers transfer to posts not designated for police officers, special regulations for remuneration and ranking shall be reassessed and formulated to guarantee the fair treatment of public functionaries in the same system and the remuneration benefits of legally ranked police officers. Such a provision, which does not create unequal treatment based on whether the transfer was voluntary in order to avoid the difficulty in executing a personnel transfer of proper cause, is a necessary restriction to protect the well-being and overall balance of the public functionary personnel system. Such a method is appropriate and does not conflict with the implication of equal rights protected under Article 7 of the Constitution.

免具有正當目的之人事調度難以執行，係維護公務人員人事制度健全與整體平衡所為之必要限制，其手段亦屬適當，與憲法第七條保障平等權之意旨亦無牴觸。

J. Y. Interpretation No.576（April 23, 2004）*

ISSUE: Does the restriction on multiple insurance adopted from the Supreme Court precedent apply to personal insurance under Articles 36 and 37 of the Insurance Act?

RELEVANT LAWS:

Articles 7, 14, 15, 22 and 23 of the Constitution（憲法第七條、第十四條、第十五條、第二十二條、第二十三條）; Articles 35, 36 and 37 of the Insurance Act（保險法第三十五條、第三十六條、第三十七條）; Articles 5, Paragraph 1, Subparagraph 2, and 7, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款、第七條第一項第二款及第三項）; Supreme Court Precedent T.S.T. No. 1166 (Supreme Court, 1987) and T. S. T. No. 2490 (2000)（最高法院七十六年台上字第一一六六號判例、八十九年台上字第二四九〇號判決）.

KEYWORDS:

freedom of contract（契約自由）, multiple insurance（複保險）, personal insurance（人身保險）, insurant（要保人）, insured（被保險人）, insurer（保險人）.**

HOLDING: Freedom of contract is an essential mechanism for individual

解釋文：契約自由為個人自主發展與實現自我之重要機制，並為私法

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

** Contents within frame, not part of the original text, are added for reference purpose only.

self-development and self-accomplishment. It is also the basis for self-government under the private law. In addition to the material content of the contract being protected by the Constitution under related provisions of fundamental rights, freedom of contract is also one of the liberties preserved under Article 22 of the Constitution. Only when it is necessary to defend public interests may such a right be reasonably restricted under the law.

自治之基礎，除依契約之具體內容受憲法各相關基本權利規定保障外，亦屬憲法第二十二條所保障其他自由權利之一種。惟國家基於維護公益之必要，尚非不得以法律對之為合理之限制。

Article 36 of the Insurance Act states that: “The insurant of multiple insurance shall inform each insurer the names of and the amount insured under other insurers, unless specified otherwise.” Article 37 stipulates that: “The insurance agreement shall be void if the insurant purposely fails to inform or intentionally obtains multiple insurance for unjust enrichment.” The principle of compensation for actual damages prevents the insured from unjust enrichment and obtaining insurance payments exceeding the value of property damages. Moreover, to maintain the trade order of the insurance market, lower transaction costs, and protect the devel-

保險法第三十六條規定：「複保險，除另有約定外，要保人應將他保險人之名稱及保險金額通知各保險人。」第三十七條規定：「要保人故意不為前條之通知，或意圖不當得利而為複保險者，其契約無效。」係基於損害填補原則，為防止被保險人不當得利、獲致超過其財產上損害之保險給付，以維護保險市場交易秩序、降低交易成本與健全保險制度之發展，而對複保險行為所為之合理限制，符合憲法第二十三條之規定，與憲法保障人民契約自由之本旨，並無牴觸。

opment of the insurance system, reasonable restriction on multiple insurance in compliance with Article 23 of the Constitution does not conflict with the fundamental right of freedom of contract.

The coverage for personal insurance (personal insurance includes, but is not limited to, health, life, and accident insurances) neither provides remedy for the property damages of the insured, nor does the insured amount exceed the value insured as in property insurance; therefore, the restriction on multiple insurance under the Insurance Act is not applicable. The Supreme Court Precedent T.S.T. No. 1166, which adopted the above restriction on multiple insurance on personal insurance agreements, should no longer be valid due to its burden on the people's freedom of contract.

人身保險契約，並非為填補被保險人之財產上損害，亦不生類如財產保險之保險金額是否超過保險標的價值之問題，自不受保險法關於複保險相關規定之限制。最高法院七十六年台上字第一一六六號判例，將上開保險法有關複保險之規定適用於人身保險契約，對人民之契約自由，增加法律所無之限制，應不再援用。

REASONING: When the people's protected constitutional rights are violated, they may pursue litigation following legal procedures. If the petitioner has questions on the constitutionality of the statute or regulation relied thereupon

解釋理由書：人民於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義，依司法院大法官審理案件法第五條第一項第二款規定聲請本院解釋憲法

by the court of last resort in its final judgment, the petitioner may request interpretation by the Judicial Yuan according to Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act. The interpretation of the subject matter evaluated is not limited to that specified in the petition, but may include the laws and orders adopted to reach the final verdict and those closely related requested for interpretation in the petition. The Supreme Court Precedent T.S.T. No. 1166 (Supreme Court, 1987) and Articles 36 and 37 of the Insurance Act have been adopted as bases for ruling by the same court in T.S.T. No. 2490 (2000). Whether this decision coincides with the principle of the Insurance Act and conflicts with the Constitution shall be addressed below.

時，本院審查之對象，非僅以聲請書明指者為限，且包含該確定終局裁判援引為裁判基礎之法令，並與聲請人聲請釋憲之法令具有重要關聯者在內。最高法院七十六年台上字第一一六六號判例，經同院八十九年度台上字第二四九〇號判決適用保險法第三十六條、第三十七條時一併援引為裁判基礎，其是否符合保險法上開規定之意旨，而發生牴觸憲法之疑義，亦應一併審理，合先敘明。

Freedom of contract is an essential mechanism for individual self-development and self-accomplishment, and the basis for self-government under private law. Depending on the actual content of the contract, freedom of contract is protected by the Constitution under related provi-

契約自由為個人自主發展與實現自我之重要機制，並為私法自治之基礎。契約自由，依其具體內容分別受憲法各相關基本權利規定保障，例如涉及財產處分之契約內容，應為憲法第十五條所保障，又涉及人民組織結社之契約內容，則為憲法第十四條所保障；除此

sions of fundamental rights. For example, a contract for property disposal is protected by Article 15 of the Constitution; a contract regarding the association of people is protected by Article 14. In addition, the freedom of contract is one of the liberties preserved under Article 22 of the Constitution. Only when it is necessary to defend public interests may such a freedom be reasonably restricted under the law. Article 36 of the Insurance Act provides: "The insurant of multiple insurance shall inform each insurer of the names of and the amount insured under other insurers, unless specified otherwise." Article 37 states: "The insurance agreement shall be void if the insurant purposely fails to inform or intentionally obtains multiple insurance for unjust enrichment." The principle of compensation for actual damages prevents the insured from unjust enrichment and obtaining insurance payments exceeding the value of property damages. Moreover, to maintain the trade order of the insurance market, lower transaction costs, protect the development of the insurance system, and defend the rights of the insured public, reasonable

之外，契約自由亦屬憲法第二十二條所保障其他自由權利之一種。惟國家基於維護公益之必要，尚非不得以法律對之為合理之限制。保險法第三十六條規定：「複保險，除另有約定外，要保人應將他保險人之名稱及保險金額通知各保險人。」同法第三十七條規定：「要保人故意不為前條之通知，或意圖不當得利而為複保險者，其契約無效。」係基於損害填補原則，防止被保險人獲取超過損害程度之不當利益，以維護保險市場交易秩序、降低交易成本、健全保險制度之發展並兼顧投保大眾權益，而對複保險行為所為之合理限制，符合憲法第二十三條之規定，與憲法保障人民契約自由之本旨，並無牴觸。

restriction on multiple insurance in compliance with Article 23 of the Constitution does not conflict with the fundamental right of freedom of contract.

Providing remedy for the actual property damage of the insured is not the main purpose of personal insurance. Since the life and physical integrality of the insured cannot be monetarily quantified, there is no objective standard by which to determine whether the insurance payment is overcompensating. The parties of the contract can merely agree upon a fixed amount of insurance payment when an accident occurs. Unlike property insurance that compensates for actual damages, personal insurance does not cause unjust enrichment. Hence, Articles 36 and 37 of the Insurance Act do not apply to personal insurance policies. The Supreme Court Precedent T.S.T. No. 1166 holds: "Article 35 of the Insurance Act states that when the insurant enters into several insurance agreements with several insurers for the same insured interest or insured accident, it is called 'multiple insurance.' According to Article 36 of the same Act, the in-

人身保險並非以填補被保險人財產上之具體損害為目的，被保險人之生命、身體完整性既無法以金錢估計價值，自無從認定保險給付是否超額，僅得於締約時，事先約定一定金額作為事故發生時給付之保險金額。故人身保險契約與填補財產上具體損害之財產保險契約有所不同，無不當得利之問題。是以保險法第三十六條、第三十七條之規定並不適用於人身保險契約。最高法院七十六年台上字第一一六六號判例謂：「所謂複保險，係指要保人對於同一保險利益，同一保險事故，與數保險人分別訂立數個保險之契約行為而言，保險法第三十五條定有明文。依同法第三十六條規定，複保險除另有約定外，要保人應將他保險人之名稱及保險金額通知各保險人。準此，複保險之成立，應以要保人與數保險人分別訂立之數保險契約同時並存為必要。若要保人先後與二以上之保險人訂立保險契約，先行訂立之保險契約，即非複保險，因其保險契約成立時，尚未呈複保險之狀態。要保

surant of multiple insurance shall inform each insurer of the names of and the amount insured under other insurers, unless specified otherwise. Therefore, for the multiple insurance to be valid, the insurant shall simultaneously establish insurance agreements with each insurer individually. If the insurant enters into insurance agreements with more than two insurers, one after the other, the agreements do not yet constitute multiple insurance. If the insurant purposely fails to inform the latter insurer of the existence of the prior insurance agreement, according to Article 37 of the Insurance Act, the latter insurance agreement, rather than the former one, shall be void." Although the scope of application of multiple insurance is not expressly specified, the above Precedent relates to a dispute arising from multiple personal insurance, applying Articles 36 and 37, of the Insurance Act, relating multiple insurance to personal insurance policies. For the protection of freedom of contract, the Precedent enforces restrictions not included in the two provisions, thus, it shall cease to be effective from the declaration date of this in-

人嗣與他保險人訂立保險契約，故意不將先行所訂保險契約之事實通知後一保險契約之保險人，依保險法第三十七條規定，後一保險契約應屬無效，非謂成立在先之保險契約亦屬無效。」雖未明確指出複保險之適用範圍，惟上開判例係涉及締結複數人身保險契約之爭議，而認保險法第三十六條、第三十七條有關複保險之規定應適用於人身保險契約，已對人民受憲法保障之契約自由，增加保險法第三十六條、第三十七條所無之限制，應自本解釋公布之日起，不再援用。

terpretation.

As to the petitioner's assertion that Articles 36 and 37 of the Insurance Act adopted to reach the above final verdict conflict with Article 7 of the Constitution, it should be noted that the subject provisions did not result in discrimination or violation of equal rights.

至於聲請人主張前開確定終局判決所適用之保險法第三十六條、第三十七條有牴觸憲法第七條之疑義一節，經查系爭法律無論於文義上或適用上均未涉及差別待遇，不生違反平等權之問題，併此敘明。

The petitioner requested a unified interpretation due to the difference between the above final verdict and other verdicts of the Supreme Court. The difference was among the opinions in reaching the final verdict in the same court, rather than among different courts applying identical laws or orders in reaching the final verdict. This does not coincide with Article 7 Paragraph 1 Subparagraph 2 of the Constitutional Interpretation Procedure Act. Accordingly, the petition should be denied based on Paragraph 3 of the same Article.

本件聲請人認本案確定終局判決與最高法院其他判決所表示之見解有異，而聲請統一解釋部分，核其所陳，係屬同一審判機關內裁判見解所生之歧異，並非不同審判機關間之確定終局裁判適用同一法律或命令所表示之見解有異，核與司法院大法官審理案件法第七條第一項第二款之要件不符，依同條第三項規定，應不受理。

Justice Tzu-Yi Lin filed concurring opinion, in which Justice Tzong-Li Hsu and Justice Jen-Shou Yang joined.

本號解釋林大法官子儀、許大法官宗力與楊大法官仁壽共同提出協同意見書。

J. Y. Interpretation No.577（May 7, 2004）*

ISSUE: Is the Tobacco Control Act, in compelling the tobacco businesses to label on the boxes of tobacco products the quantities of nicotine and tar contained therein, in violation of the freedom of speech as safeguarded by the Constitution?

RELEVANT LAWS:

Articles 11, 23 and 157, of the Constitution（憲法第十一條, 第二十三條及第一百五十七條）; Article 10, Paragraph 8, of the Amendments to the Constitution（憲法增修條文第十條第八項）; J.Y. Interpretation No.414（司法院釋字第四一四號解釋）; Article 8, Paragraph 1, and Articles 21 and 30, of the Tobacco Control Act（菸害防制法第八條第一項, 第二十一條及第三十條）.

KEYWORDS:

freedom of active expression（積極表意之自由）, freedom of passive omission（消極不表意之自由）, expressions of subjective opinions（主觀意見之表達）, statements of objective facts（客觀 意見之陳述）, product labeling（商品標示）, commercial speech（商業言論）, substantial public interests（重大公益）, the principle of clarity and definiteness of law（法律明確性原則）, a less restrictive means（較小侵害手段）, a reasonably necessary and proper means（合

* Translated by Li-Chih Lin, Esq, JD.

** Contents within frame, not part of the original text, are added for reference purpose only.

理必要之適當手段）, property rights（財產權）, duty to disclose（標示義務）, *ex post facto* laws（溯及既往法律）, retroactive application（溯及適用）, transitional provisions（過渡條款）.**

HOLDING: Article 11 of the Constitution protects the freedom of active expression and passive omission of the people. The scope of protection includes expressions of subjective opinions and statements of objective facts. Being a means to provide subjective information of a product, product labeling constitutes a type of commercial speech and shall fall within the scope of protection provided to freedom of speech by the Constitution. However, to advance other substantial public interests, the government may adopt some more restrictive means through legislation to serve the government objective by requiring product suppliers to provide material product information.

解釋文：憲法第十一條保障人民有積極表意之自由，及消極不表意之自由，其保障之內容包括主觀意見之表達及客觀事實之陳述。商品標示為提供商品客觀資訊之方式，應受言論自由之保障，惟為重大公益目的所必要，仍得立法採取合理而適當之限制。

To improve the health of the people, the government shall promote health care

國家為增進國民健康，應普遍推行衛生保健事業，重視醫療保健等社會

and devote attention to social warfare programs such as Medicare. Article 8, Paragraph 1, of the Tobacco Control Act provides that the amount of nicotine and tar contained in the tobacco product shall be labeled in Chinese on the package. Article 21 of the said Act provides sanctions on the violative tobacco product suppliers who fail to comply with their statutory duty of disclosure. Such a legal duty to disclose imposed upon the tobacco product suppliers constitutes a restriction on the freedom of passive omission by compelling them to provide material product information. However, this duty of disclosure is not only helpful in providing consumers with material product information but also sufficient to achieve the government objective in safeguarding the health of the people, and is therefore consistent with the principle of necessity and the provisions set forth in both Articles 11 and 23 of the Constitution. Although requiring the tobacco product suppliers to provide product in-formation on the tobacco product package constitutes a restriction on their property rights, such product labeling nevertheless is a social

福利工作。菸害防制法第八條第一項規定：「菸品所含之尼古丁及焦油含量，應以中文標示於菸品容器上。」另同法第二十一條對違反者處以罰鍰，對菸品業者就特定商品資訊不為表述之自由有所限制，係為提供消費者必要商品資訊與維護國民健康等重大公共利益，並未逾越必要之程度，與憲法第十一條保障人民言論自由及第二十三條比例原則之規定均無違背。又於菸品容器上應為上述之一定標示，縱屬對菸品業者財產權有所限制，但該項標示因攸關國民健康，乃菸品財產權所具有之社會義務，且所受限制尚屬輕微，未逾越社會義務所應忍受之範圍，與憲法保障人民財產權之規定，並無違背。另上開規定之菸品標示義務及責任，其時間適用之範圍，以該法公布施行後之菸品標示事件為限，並無法律溯及適用情形，難謂因法律溯及適用，而侵害人民之財產權。至菸害防制法第八條第一項規定，與同法第二十一條合併觀察，足知其規範對象、規範行為及法律效果，難謂其規範內容不明確而違反法治國家法律明確性原則。另各類食品、菸品、酒類等商品對於人體健康之影響層面有異，難有比較基礎，立法者對於不同事物之處理，有先後優先順序之選擇權限，相關法律

duty imposed upon the tobacco product suppliers because the labeling concerns the health of the people and provides the necessary information regarding the content of the product. Since the restriction on the tobacco product suppliers' property rights incurred from such social duty is minor and tolerable, it is consistent with the constitutional provisions providing protection to the property rights of the people. The stipulations of Article 8, Paragraph 1, of the Tobacco Control Act prescribing the elements of the governing acts and Article 21 of the said Act prescribing the governing object and the violative legal consequences, are sufficient to determine the governing object, applicable scope and effectiveness of the regulations. The prescription of governing object, governing acts and the violative legal consequences set forth in the said Act are definite and unequivocal, and are thus consistent with the principle of clarity and definiteness of law in rule-of-law nations. In addition, with regard to various kinds of foods, tobacco products and liquor products, comparisons of these products are difficult to make because different

或有不同規定，與平等原則尚無違背。

products cause different harmful effects to the human body and are thus regulated differently under different areas of law promulgated by the legislators within their discretion. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.

REASONING: Article 11 of the Constitution protects the freedom of active expression and passive omission of the people. The scope of protection includes expressions of subjective opinions and statements of objective facts. Being a means to provide subjective information of a product, product labeling constitutes a type of commercial speech helpful to consumers in making their rational economic choices. If a product labeling is to promote lawful trading and its content is not false or misleading, it has the same function of promoting self-realization as other types of speech by providing information and helping people to form opinions. Such product labeling shall fall within the scope of protection provided to freedom of speech by Article 11 of the Constitution and is recognized and upheld

解釋理由書：憲法第十一條保障人民有積極表意之自由，及消極不表意之自由，其保障之內容包括主觀意見之表達及客觀事實之陳述。商品標示為提供商品客觀資訊之方式，為商業言論之一種，有助於消費大眾之合理經濟抉擇。是以商品標示如係為促進合法交易活動，其內容又非虛偽不實或不致產生誤導作用者，其所具有資訊提供、意見形成進而自我實現之功能，與其他事務領域之言論並無二致，應屬憲法第十一條言論自由保障之範圍，業經本院釋字第四一四號解釋所肯認。惟國家為保障消費者獲得真實而完整之資訊、避免商品標示內容造成誤導作用、或為增進其他重大公益目的，自得立法採取與目的達成有實質關聯之手段，明定業者應提供與商品有關聯性之重要商品資訊。

by J.Y. Interpretation No. 414. However, to provide consumers with truthful and complete information and to prevent any misleading information or deception caused by the content of product labeling or to advance other substantial public interests, the government may adopt some more restrictive means through legislation to serve the government objective by requiring product suppliers to provide material product information.

Administrative regulations often prescribe the elements of the governing acts and the violative legal consequences separately. However, to determine the governing object, applicable scope and effectiveness of the regulations, both the elements of the governing acts and the violative legal consequences must be jointly evaluated. Article 8, Paragraph 1, of the Tobacco Control Act prescribes the elements of the governing acts while Article 21 of the same Act prescribes the governing object and the violative legal consequences. By taking both the elements of the governing acts and the violative legal consequences into consideration, it is evi-

行政法規常分別規定行為要件與法律效果，必須合併觀察，以確定其規範對象、適用範圍與法律效果。菸害防制法第八條第一項乃行為要件之規定，其行為主體及違反效果則規定於同法第二十一條，二者合併觀之，足以確定規範對象為菸品製造者、輸入者及販賣者，其負有於菸品容器上以中文標示所含尼古丁及焦油含量之作為義務，如有違反，主管機關得依法裁量，對製造者、輸入者或販賣者擇一處新臺幣十萬元以上三十萬元以下罰鍰，並通知製造者、輸入者或販賣者限期收回改正；逾期不遵行者，停止其製造或輸入六個月至一年；違規之菸品並沒入銷燬之。舉凡規範對象、所規範之行為及法律效果

dent that the governing objects of the said Act are tobacco product manufacturers, importers and sellers. These suppliers have a legal duty to indicate in Chinese on the package labeling the amount of nicotine and tar contained in the tobacco product. If such suppliers fail to include the amount of nicotine and tar on the labeling in violation of the Tobacco Control Act, the competent authority may impose an administrative fine between NT$100,000 and NT$300,000 on any of them with discretion and order them to recall all tobacco products to ratify the omission within a specified time period. If tobacco product manufacturers, importers and sellers fail to comply with the administrative order before the deadline, the competent authority may order them to cease the manufacture or importation of the tobacco products for six months to one year. The competent authority may also confiscate all of the violative tobacco products from the tobacco product suppliers and destroy them. The prescription of governing object, governing acts and the violative legal consequences set forth in the Tobacco Control Act are definite and

皆屬明確，並未違背法治國家法律明確性原則。

unequivocal, and are thus consistent with the definite and unequivocal principle of law in a rule-of-law nation.

To improve the health of the nationals, the government shall promote health care and devote attention to social warfare programs such as Medicare. The significance of the public health is evident by the provisions set forth in Article 157 of the Constitution and Article 10, Paragraph 8, of the Amendments to the Constitution. Article 8, Paragraph 1, of the Tobacco Control Act, which was promulgated on March 19, 1997, and went into force on September 19 of the same year, provides that the amount of nicotine and tar contained in the tobacco product shall be indicated in Chinese on the package label. Article 21 of the same Act provides that any tobacco product supplier who violates the provisions set forth in Article 7, Paragraph 1, and Article 8, Paragraph 1, of the said Act or any tobacco product supplier who engages in the prohibited acts prescribed in Article 7, Paragraph 2, of the said Act, shall receive an administrative fine between NT$100,000 and NT$300,000

國家為增進國民健康，應普遍推行衛生保健事業，重視醫療保健等社會福利工作，憲法第一百五十七條及憲法增修條文第十條第八項規定足資參照。中華民國八十六年三月十九日公布、同年九月十九日施行之菸害防制法第八條第一項規定：「菸品所含之尼古丁及焦油含量，應以中文標示於菸品容器上。」第二十一條規定：「違反第七條第一項、第八條第一項或依第七條第二項所定方式者，處新臺幣十萬元以上三十萬元以下罰鍰，並通知製造、輸入或販賣者限期收回改正；逾期不遵行者，停止其製造或輸入六個月至一年；違規之菸品並沒入銷燬之。」乃國家課予菸品業者於其商品標示中提供重要客觀事實資訊之義務，係屬對菸品業者不標示特定商品資訊之不表意自由之限制。惟此項標示義務，有助於消費者對菸品正確了解。且告知菸品中特定成分含量之多寡，亦能使消費者意識並警覺吸菸行為可能造成之危害，促其審慎判斷，作為是否購買之參考，明顯有助於維護國民健康目的之達成；相較課予菸品業者

and be ordered to recall all tobacco products to ratify the omission within a specified time period. If such suppliers fail to comply with the administrative order before the deadline, the competent authority may order them to cease the manufacture or importation of the tobacco products for six months to one year. The competent authority may also confiscate all of the violative tobacco products from the tobacco product suppliers and destroy them. The prescription set forth in the Tobacco Control Act is a legal duty imposed by the government on the tobacco product suppliers to provide material subjective information of a product on the product label. Such a legal duty to disclose imposed upon tobacco product suppliers constitutes a restriction on the freedom of passive omission by compelling them to provide material product information. However, this duty of disclosure helps consumers to properly understand the content of tobacco products. In addition, disclosing the amount of a certain constituent in the tobacco products will help consumers to realize and to be alert to the potential danger caused by smoking. It will also help

標示義務，責由各機關學校辦理菸害防制教育，固屬較小侵害手段，但於目的之達成，尚非屬相同有效手段，故課予標示義務並未違反必要原則；又衡諸提供消費者必要商品資訊與維護國民健康之重大公共利益，課予菸品業者標示義務，並非強制菸品業者提供個人資料或表達支持特定思想之主張，亦非要求其提供營業秘密，而僅係要求其提供能輕易獲得之商品成分客觀資訊，尚非過當。另鑑於菸品成癮性對人體健康之危害程度，為督促菸品業者嚴格遵守此項標示義務，同法第二十一條乃規定，對違反者得不經限期改正而直接處以相當金額之罰鍰，如與直接採取停止製造或輸入之手段相較，尚屬督促菸品業者履行標示義務之有效與和緩手段。又在相關菸品業者中，明定由製造、輸入或販賣者，負擔菸品標示義務，就菸害防制目的之達成而言，亦屬合理必要之適當手段。故上開菸害防制法規定雖對菸品業者之不表意自由有所限制，然其目的係為維護國民健康及提供消費者必要商業資訊等重大之公共利益，其手段與目的間之實質關聯，符合法治國家比例原則之要求，並未逾越維護公共利益所必要之程度，與憲法第十一條及第二十三條之規定均無違背。

consumers to make a rational and informed purchase by considering the harmful effect caused by smoking. This duty to disclose the material product information imposed upon the tobacco product suppliers is sufficiently helpful to achieve the government objective of safeguarding the health of the people. While holding all levels of government agencies and schools responsible for anti-smoking education is a less restrictive means, such compulsory education is less effective to achieve the government objective in comparison with the duty to disclose material product information imposed upon the tobacco product suppliers. The imposition of duty to disclose upon such suppliers is therefore consistent with the principle of necessity. Furthermore, to advance the substantial public interests in providing consumers with necessary product information and safeguarding the health of the people, the imposition of duty to disclose upon the tobacco product suppliers does not compel them to provide personal information or express a specific supporting view or to require them to disclose trade secrets. The imposition of duty to disclose

upon the tobacco product suppliers merely requires them to provide objective constituent information which they can easily obtain and is therefore not more extensive than is necessary. Furthermore, considering the physical harm caused by the addiction to tobacco products, for the purpose of compelling the tobacco product suppliers to strictly comply with the duty of disclosure, the government has imposed upon a violator a considerable administrative fine in Article 21 of the Tobacco Control Act without first requiring the violator to ratify the omission within a specified time period. In comparison with a direct administrative order requiring the tobacco product manufacturers, importers and sellers to cease the manufacture or importation of the tobacco products for six months to one year, the imposition upon a violator of a considerable administrative fine without first requiring the violator to ratify the omission within a specified time period is considered a relatively effective and mild means. Moreover, to achieve the purpose of anti-smoking legislation, requiring the tobacco product manufacturers, importers and sellers among the

entire tobacco industry to provide material product information on the tobacco product package is considered a reasonably necessary and proper means. Thus, while Article 21 of the Tobacco Control Act has imposed a restriction on the tobacco product suppliers' freedom of passive omission to serve significant public interests in safeguarding the health of the people and providing necessary trade information to consumers, the more restrictive means adopted by the government to serve the ends is in proportion to the public interests served. The restriction proscribed in Article 21 of the said Act is therefore reasonably necessary to serve the public interests and is consistent with the provisions set forth in both Articles 11 and 23 of the Constitution.

Although requiring the tobacco product suppliers to provide product information on the tobacco product package constitutes a restriction on their property rights, such product labeling nevertheless complies with the principles of good faith dealing and information transparency because the labeling concerns the health of

於菸品容器上應為前開一定之標示，縱屬對菸品業者財產權有所限制，但該項標示因攸關國民健康，並可提供商品內容之必要訊息，符合從事商業之誠實信用原則與透明性原則，乃菸品財產權所具有之社會義務，且所受限制尚屬輕微，未逾越社會義務所應忍受之範圍，與憲法保障人民財產權之規定，並

the people and provides the necessary information regarding the content of the product. The duty to disclose product information on the tobacco product package is a social duty imposed upon the tobacco product suppliers in exchange for the property rights. Because the restriction on tobacco product suppliers' property rights incurred from such social duty is minor and tolerable, it is consistent with the Constitutional provisions providing protection to the property rights of the people. In addition, the newly promulgated and implemented regulation is generally inapplicable to events that occurred prior to the implementation. This is the *ex post facto* principle which bans *ex post facto* laws that have retroactive punitive effect. The so-called "event" means all legal facts which meet the statutory requirement; the so-called "occurred" means all legal facts must have been realized in reality. The duty of disclosure and legal liability prescribed in Article 8, Paragraph 1, and Article 21 of the Tobacco Control Act is only applicable to the tobacco control events that occurred after the promulgation and implementation of the said

無違背。又新訂生效之法規，對於法規生效前「已發生事件」，原則上不得適用，是謂法律適用上之不溯既往原則。所謂「事件」，指符合特定法規構成要件之全部法律事實；所謂「發生」，指該全部法律事實在現實生活中完全具體實現而言。菸害防制法第八條第一項及第二十一條規定之菸品標示義務及責任，僅適用於該法公布施行後之菸品標示事件，並未規定菸品業者於該法施行前亦有標示義務，無法律溯及適用情形，自難謂因法律溯及適用而侵害人民之財產權。至立法者對於新訂法規構成要件各項特徵相關之過去單一事實，譬如作為菸品標示規範標的物之菸品，於何時製造、何時進口、何時進入銷售通路，認為有特別保護之必要者，則應於兼顧公益之前提下，以過渡條款明文規定排除或延緩新法對之適用。惟對該法施行前，已進入銷售通路，尚未售出之菸品，如亦要求須於該法施行時已履行完畢法定標示義務，勢必對菸品業者造成不可預期之財產權損害，故為保障人民之信賴利益，立法者對於此種菸品，則有制定過渡條款之義務。八十六年三月十九日公布之菸害防制法第三十條規定「本法自公布後六個月施行」，使菸品業者對於該法制定生效前已進入銷售

Act. Neither Paragraph 1 of Article 8 nor Article 21 of the Tobacco Control Act imposes the duty of disclosure upon the tobacco product suppliers prior to the promulgation and implementation of the said Act. Since the Tobacco Control Act cannot be retroactively applied to the tobacco product suppliers, it can hardly be claimed that their property rights are infringed because of the retroactive application of the said Act. With regard to some prior individual information such as the manufacturing time, importation time, or distribution time of the prescribed tobacco products relevant to the statutory requirements under the newly promulgated Tobacco Control Act, if the legislators consider that such information shall be protected, the legislators shall premise such protection on the public interests to include some provisional exemptions or deferments of application in the said Act. However, to require those tobacco products which have already entered the distribution channel but not yet been sold to comply with the labeling disclosure requirement before the implementation of the Tobacco Control Act, it will incur un-

通路之菸品，得及時就其法定標示義務預作準備，不致因法律變更而立即遭受不利益，而六個月期限，亦尚不致使維護國民健康之立法目的難以實現，此項過渡期間之規定，符合法治國家信賴保護原則之要求。至各類食品、菸品、酒類商品等，對於人體健康之影響層面有異，難有比較基礎，相關法律或有不同規定，惟立法者對於不同事物之處理，有先後優先順序之選擇權限，與憲法第七條規定之平等原則尚無違背。

foreseeable detriment to the tobacco product suppliers' property rights. Thus, to protect the reliance interests of the people, the legislators are obligated to include some transitional provisions in the said Act for those tobacco products which have already entered the distribution channel but not yet been sold. Article 30 of the Tobacco Control Act, which includes a transitional provision, provides that the said Act shall be implemented six months after the promulgation. This transitional provision saves the tobacco product suppliers from immediate legal detriment incurred by the change of law. The six months' transitional period is too short to defeat the legislative intent to safeguard the health of the people. Therefore, the transitional provision set forth in Article 30 of the Tobacco Control Act complies with the reliance interest protection principle. With regard to various kinds of foods, tobacco products and liquor products, comparisons of these products are difficult to make because different products cause different harmful effects to the human body and are thus regulated differently under different areas of law promul-

gated by the legislators within their discretion. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Syue-Ming Yu filed concurring opinion.

本號解釋許大法官玉秀、余大法官雪明分別提出協同意見書。

J. Y. Interpretation No.578（May 21, 2004）*

ISSUE: Are the provisions of the Labor Standards Act, imposing upon employers the obligation to pay for workers' retirement pensions, and applying to all forms of employment relationships except for those that are difficult to enforce, constitutional?

RELEVANT LAWS:

Articles 7, 15, 23 and 153, Paragraph 1 of the Constitution（憲法第七條、第十五條、第二十三條、第一百五十三條第一項）; Articles 3, Paragraphs 1 and 3, 53, 55, 56, 78 and 79, Subparagraph 1 of the Labor Standards Act（勞動基準法第三條第一項、第三項、第五十三條、第五十五條、第五十六條、第七十八條、第七十九條第一款）; Article 33 of the Income Tax（所得稅法第三十三條）; Articles 2, 3 and 5 of the Measures for the Deduction, Deposit and Management of the Workers' Retirement Funds（勞工退休準備金提撥及管理辦法第二條、第三條、第五條）.

KEYWORDS:

reserve fund for retirement payment（退休準備金）, social insurance（社會保險）.**

HOKDING: Paragraph 1 of Article 153 of the Constitution stipulates that

解釋文：國家為改良勞工之生活，增進其生產技能，應制定保護勞工

* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

** Contents within frame, not part of the original text, are added for reference purpose only.

the state, in order to improve the livelihood of laborers and to upgrade their productive skills, shall enact laws and implement policies for their protection. The Labor Standards Act is enacted to realize this fundamental national policy. Legislators possess a certain amount of discretion in determining the substance and methods of working conditions for workers' protection. But when a law has the effect of restricting the fundamental rights of the people as a result, the constitutional principle of proportionality should still be followed.

之法律，實施保護勞工之政策，憲法第一百五十三條第一項定有明文，勞動基準法即係國家為實現此一基本國策所制定之法律。至於保護勞工之內容與方式應如何設計，立法者有一定之自由形成空間，惟其因此對於人民基本權利構成限制時，則仍應符合憲法上比例原則之要求。

Articles 55 and 56 of the Labor Standards Act (hereinafter the "Act") respectively provide that employers are responsible for paying for workers' retirement pensions, and are obligated to deduct a certain amount of money every month and deposit the same into a special account as the reserve fund of workers' retirement pensions. These provisions, as one of the means to ensure workers' livelihood, help protect workers' rights and interests, strengthen employment relationships, promote overall social stability and

勞動基準法第五十五條及第五十六條分別規定雇主負擔給付勞工退休金，及按月提撥勞工退休準備金之義務，作為照顧勞工生活方式之一種，有助於保障勞工權益，加強勞雇關係，促進整體社會安全與經濟發展，並未逾越立法機關自由形成之範圍。其因此限制雇主自主決定契約內容及自由使用、處分其財產之權利，係國家為貫徹保護勞工之目的，並衡酌政府財政能力、強化受領勞工勞力給付之雇主對勞工之照顧義務，應屬適當；該法又規定雇主違反前開強制規定者，分別科處罰金或罰

economic development, and thereby do not exceed the scope of legislative discretion. The resulting restriction on employers' rights to freely determine the contents of employment contracts and to use and dispose of assets at their own discretion shall be deemed proper under the Constitution, since such restriction helps to accomplish the state's goal of caring for workers and takes into account the fiscal capabilities of the government, as well as confirming the obligation of the employers—as the recipients of workers' labor—to take care of their employees. The Act imposes fines on employers who violate the aforesaid compulsory provisions in order to compel employers to fulfill their retirement payment obligations, so as to ensure the livelihood and sustenance of workers after their retirement. In consideration of factors such as the context of the legislation, labor relations, the nature and impact of the interference with legitimate interests, and so forth, it is therefore necessary for the state to prescribe criminal fines. Such a compulsory provision, conforming to the principle of proportionality under Article 23 of the Con-

鍰，係為監督雇主履行其給付勞工退休金之義務，以達成保障勞工退休後生存安養之目的，衡諸立法之時空條件、勞資關係及其干涉法益之性質與影響程度等因素，國家採取財產刑罰作為強制手段，尚有其必要，符合憲法第二十三條規定之比例原則，與憲法保障契約自由之意旨及第十五條關於人民財產權保障之規定並無牴觸。

stitution, does not contradict the constitutional purpose of protecting people's freedom to enter into contracts or violate people's property rights protected by Article 15 of the Constitution.

The Act imposes upon employers the obligations to pay for workers' retirement pensions, and it applies to all forms of labor relationships except for those that are difficult to enforce. Therefore, it does not contradict the equal protection principle stated in Article 7 of the Constitution. The pension system for workers put in place by legislators entails prioritized choices and designs, reflecting legislators' evaluation of the objective socioeconomic situations as well as the effective distribution of state resources. This, again, does not contradict the equal protection principle stated in Article 7 of the Constitution. Moreover, the Constitution does not prohibit the state from adopting means other than the provision of social insurance to accomplish the goal of protecting workers. Legislators, therefore, enjoy a certain degree of discretion in designing the overall system for workers' protection. Both

勞動基準法課雇主負擔勞工退休金之給付義務，除性質上確有窒礙難行者外，係一體適用於所有勞雇關係，與憲法第七條平等權之保障，亦無牴觸；又立法者對勞工設有退休金制度，係衡酌客觀之社會經濟情勢、國家資源之有效分配，而為不同優先順序之選擇與設計，亦無違憲法第七條關於平等權之保障。復次，憲法並未限制國家僅能以社會保險之方式，達成保護勞工之目的，故立法者就此整體勞工保護之制度設計，本享有一定之形成自由。勞工保險條例中之老年給付與勞動基準法中之勞工退休金，均有助於達成憲法保障勞工生活之意旨，二者性質不同，尚難謂兼採兩種制度即屬違憲。惟立法者就保障勞工生活之立法選擇，本應隨社會整體發展而隨時檢討，勞動基準法自中華民國七十三年立法施行至今，為保護勞工目的而設之勞工退休金制度，其實施成效如何，所採行之手段應否及如何隨社會整體之變遷而適時檢討改進，俾能與

the old-age benefits prescribed under the Labor Insurance Act and the retirement pension prescribed under the Labor Standards Act help to achieve the constitutional purpose of protecting the livelihood of workers. Since the two systems are different in nature, adoption of both systems can hardly be regarded as a violation of the Constitution. Nonetheless, legislators should consider the overall social changes and accordingly from time to time review the options regarding protecting the livelihood of workers. The Act was enacted and implemented in 1984, and issues such as whether the current workers' pension system has been effectively implemented, whether this approach needs to be examined, and how it can be improved to correspond to the overall social changes in order to keep up with the pace of changes and to be consistent with the constitutional goal of labor protection, should be reviewed at appropriate times. The decision of whether to integrate the existing workers retirement system and social insurance system in response to the emerging graying trend should also be considered, as such trends result from the changing

時俱進，符合憲法所欲實現之勞工保護政策目標，以及國內人口年齡組成之轉變，已呈現人口持續老化現象，未來將對社會經濟、福利制度等產生衝擊，因此對既有勞工退休制度及社會保險制度，應否予以整合，由於攸關社會資源之分配、國家財政負擔能力等全民之整體利益，仍屬立法形成之事項，允宜在兼顧現制下勞工既有權益之保障與雇主給付能力、企業經營成本等整體社會條件之平衡，由相關機關根據我國憲法保障勞工之基本精神及國家對人民興辦之中小型經濟事業應扶助並保護其生存與發展之意旨，參酌有關國際勞工公約之規定，並衡量國家總體發展，通盤檢討，併此指明。

ing demographic composition and are likely to impact the socioeconomic structure and the welfare system in the future, and such decisions will include everyone's interests and involve the issue of the distribution of social resources and the financial capabilities of the state to shoulder such burdens. The relevant authorities should, in addition to striking a balance between retaining the existing protection enjoyed by workers and noting the ability of employers to pay for workers' retirement pensions and the operational costs of enterprises, conduct a comprehensive examination of the current scheme in accordance with the fundamental principle of the Constitution to protect workers and the purpose of supporting and preserving the survival and development of small- and medium-sized businesses. The provisions of international labor conventions and the overall development of the nation shall also be taken into account.

REASONING: Paragraph 1 of Article 153 of the Constitution stipulates that the state, in order to improve the livelihood of laborers and to upgrade their

解釋理由書：國家為改良勞工之生活，增進其生產技能，應制定保護勞工之法律，實施保護勞工之政策，憲法第一百五十三條第一項定有明文，勞

productive skills, shall enact laws and implement policies for their protection. The Labor Standards Act is enacted to realize this fundamental national policy. Legislators possess a certain amount of discretion in determining the substance and methods for workers' protection. But when a law has the effect of restricting the fundamental rights of the people as a result, the constitutional principle of proportionality should still be followed.

動基準法即係國家為實現此一基本國策所制定之法律。至於保護勞工之內容與方式應如何設計，立法者有一定之自由形成空間，惟其因此對於人民基本權利構成限制時，則仍應符合憲法上比例原則之要求。

The Labor Standards Act (hereinafter "the Act") was enacted for the purpose of protecting the rights and interests of workers, providing the minimum standard for work conditions. A business entity may, considering the nature of its business and the form of labor, negotiate the specific terms of the employment contract with workers, but the terms cannot be lower than the minimum standard prescribed by the Act. Legislators possess a certain amount of discretion in establishing the minimum standard of working conditions for workers' protection. And the worker's retirement pension system provided for in Chapter VI of the Act is

按勞動基準法係國家本於保護勞工權益之意旨，規範各項勞動條件最低標準之法律，事業單位固得依事業性質及勞動態樣與勞工另行訂定勞動條件，但仍不得低於勞動基準法所定之最低標準。至於保護勞工最低勞動條件之內容及其保障方式等如何設計，則立法者有一定之形成空間，勞動基準法第六章有關勞工退休制度，即係國家透過立法方式所積極建構之最低勞動條件之一，旨在減少勞工流動率，獎勵久任企業之勞工，俾使其安心工作，提高生產效率，藉以降低經營成本，增加企業利潤，具有穩定勞雇關係，並使勞工能獲得相當之退休金，以維持其退休後之生活，與憲法第一百五十三條第一項規定國家應

one of such minimum working conditions that the state purposefully establishes through legislation, aimed at lowering worker turnover rate, rewarding seniority, enabling the workers to concentrate on their work, and raising productivity, so as to reduce the operational costs of businesses and increase corporate profits. Moreover, the pension system cultivates stable employment relationships, and makes it possible for workers to receive fair retirement pensions to sustain their livelihood after retirement. Therefore, the provisions in Chapter VI of the Act are consistent with Paragraph 1 of Article 153 of the Constitution, which provides that the state shall implement policies for workers' protection. The Act stipulates that employers shall deduct a certain amount of money every month and deposit the same into a special account as the reserve fund of workers' retirement payment, and shall make a lump sum retirement payment in accordance with the payment standard prescribed by the law to workers who meet the required legal standard. According to the Act, the fund in that special account cannot be transferred,

實施保護勞工政策之意旨，尚無不符。該法規定雇主應按月提撥一定之勞工退休準備金，並於勞工符合法定要件時按照法定給與標準，一次發給勞工退休金。雇主按月提撥之勞工退休準備金須專戶存儲，不得作為讓與、扣押、抵銷或擔保之標的，其按月提撥之準備金則匯集為勞工退休基金，由中央主管機關會同財政部指定金融機構保管運用，並由勞雇雙方共同組織委員會監督之（勞動基準法第五十三條、第五十五條及九十一年六月十二日修正前同法第五十六條規定參照）。就雇主言，以強制其按月提撥勞工退休準備金並為專戶存儲之規定，作為促使其履行給付勞工退休金義務之手段，雖因此使雇主自主決定契約內容之契約自由以及自由使用、處分其財產之財產權受到限制，惟其目的乃在貫徹保護勞工之憲法意旨，並衡酌政府財政能力、強化受領勞工勞力給付之雇主對勞工之照顧義務，應屬適當。而透過專戶存儲之方式，即在使勞工退休金之財源與企業財務分離，避免相互影響或有挪用情事發生，以穩定勞工退休時之資金來源，使勞工領取退休金之權益能獲得充分保障，同時減少雇主須於短期內籌措退休金而衍生之財務問題，明顯有助於保護勞工權益目的之達成，

attached, or offset against other obligations or used as security. The fund shall become a part of the Labor Retirement Fund; its safekeeping and utilization are managed by the financial institution designated by the central competent authority and the Ministry of Finance, and monitored by a joint committee composed of representatives of both employers and employees (See Articles 53 and 55 of the Act, as well as Article 56 of the Act before the revision on June 12, 2002). The compulsory requirement of monthly deduction to be deposited in a special account as the reserve fund of retirement payment for workers, although a means to require employers to fulfill their legal obligations of taking care of workers, does restrict employers' rights to freely determine the content of employment contracts and to use and dispose of assets at their own discretion. The requirement, however, shall be deemed proper under the Constitution, as it helps to accomplish the state's goal of caring for workers and takes into account the fiscal capabilities of the government, at the same time confirming the obligation of employers—as the

且雇主負擔勞工退休準備金之提撥比率（依勞工退休準備金提撥及管理辦法第二條規定，勞工退休準備金由各事業單位依每月薪資總額百分之二至百分之十五範圍內按月提撥之）、程序等事項則授權由中央主管機關衡酌實際情形訂定，均具有相當之彈性（同辦法第三條及第五條規定參照），其負擔提撥責任之同時，又享有一定之稅賦優惠（所得稅法第三十三條規定參照），故其手段仍在合理範圍內；又為促使雇主確實遵行給付勞工退休金之義務，勞動基準法第七十八條、九十一年十二月二十五日修正前同法第七十九條第一款規定，違反給付退休金或按月提撥退休準備金規定者，分別科三萬元以下罰金或處二千元以上二萬元以下罰鍰，衡諸立法之時空條件及其所干涉之法益性質暨影響程度，並考量經濟條件居於相對弱勢之勞工，仍難以透過勞動契約或團體協約方式，與雇主協商合理之退休制度等因素，國家採取財產刑罰作為強制手段，以達成保障勞工退休後生存安養之目的，尚有其必要，符合憲法第二十三條規定之比例原則，與憲法保障契約自由之意旨及第十五條關於人民財產權保障之規定並無牴觸。

recipients of workers' labor—to take care of their employees. The special account, by separating the pension funds from corporate accounts, prevents commingling and misappropriation, thereby securing the financial source for workers' pensions, protecting workers' pension-related rights and interests, and reducing employers' financial problems arising from the need to raise funds for pension payments in a short period of time. This measure apparently helps to achieve the goal of protecting the rights and interests of workers. Furthermore, the central competent authority is authorized to determine, in view of the circumstances, the rate of the employer's contribution to the workers' retirement fund (according to Article 2 of the Measures for the Deduction, Deposit and Management of the Workers' Retirement Funds [the "Measures"], the business entity shall deduct 2 percent to 15 percent of the total monthly wage payment and deposit the same into the workers' retirement fund each month), procedures, and other matters. The Measures confer on the competent government authority a certain flexibility to make the

determination (See also Articles 3 and 5 of the Measures). At the same time, employers can enjoy certain tax credits regarding their contribution (See Article 33 of the Income Tax Act). Accordingly, the requirement is a reasonable means to fulfill the goal of protecting workers. As another means to compel employers to perform their retirement payment obligations, Article 78 of the Act and Subparagraph 1 of Article 79 of the earlier version of the Act before its revision on December 25, 2002, respectively prescribe a fine of not more than NT 30,000 dollars for violating the provisions regarding retirement payment, and a fine between NT 2,000 and 20,000 dollars for violating the provisions regarding monthly deduction from and deposit to the fund. Considering factors such as the context of the legislation, the nature and impact of the interference with legitimate interests, and workers' comparatively disadvantageous position in the economy which makes it difficult for them to negotiate a reasonable pension arrangement with employers through labor contracts or collective bargaining agreements, it is therefore necessary for

the state to prescribe fines in order to accomplish the goal of protecting the livelihood and sustenance of workers after their retirement. Such a compulsory provision, conforming to the principle of proportionality under Article 23 of the Constitution, does not contradict the constitutional purpose of protecting people's freedom to enter into contracts or violate people's property rights protected by Article 15 of the Constitution.

The Act imposes upon employers the obligations to pay for workers' retirement pensions, and applies to all forms of labor relationships except for those that are difficult to enforce in nature (See Paragraphs 1 and 3 of Article 3 of the act, revised on December 27, 1996). Although such a broad application of the Act fails to consider factors such as the size of the business unit, the length of the employment contract, or the duration of the employment relationship, it reflects the legislators' intent, when enacting the Act and designing labor policies, to care for the livelihood of all senior workers after their retirement. Therefore, such an application

勞動基準法課雇主負擔勞工退休金之給付義務，除性質上確有窒礙難行者外，係一體適用於所有勞雇關係（八十五年十二月二十七日修正之勞動基準法第三條第一項、第三項規定參照），其雖未考慮事業單位規模之大小、存續期間之長短或勞工受僱期間之久暫而為差異性之適用規定，惟此乃立法者制定法律推動勞工政策時，照顧久任勞工退休生活所為之考量，與憲法第七條平等權之保障，尚無牴觸；又立法者對勞工設有退休金制度，係基於國民工作之性質、薪給結構、收入來源等各有不同，就退休金制度，衡酌客觀之社會經濟情勢、國家資源之有效分配，為不同優先順序之選擇及設計，故亦未牴觸憲法第

does not contradict the equal protection principle stated in Article 7 of the Constitution. Moreover, the pension system for workers put in place by legislators, a decision considering factors such as the nature of work, wage structure, income source, objective socioeconomic situations, and effective distribution of the state's resources, reflects legislators' prioritized choices and designs. This, again, does not contradict the equal protection principle of Article 7 of the Constitution.

七條平等權之保障。

The Constitution does not prohibit the state from adopting means other than social insurance to accomplish the goal of protecting workers. Legislators, therefore, enjoy a certain degree of discretion in designing the overall system for workers' protection. Both the old-age benefits prescribed under the Labor Insurance Act and the retirement pension prescribed under the Act help to achieve the constitutional purpose of protecting the livelihood of workers. Since the two systems are different in nature, adoption of both systems can hardly be considered to be in violation of the Constitution. Nonetheless, legisla-

復次，憲法並未限制國家僅能以社會保險之方式，達成保護勞工之目的，故立法者就此整體勞工保護之制度設計本享有一定之形成自由，勞工保險條例中之老年給付與勞動基準法中之勞工退休金，均有助於達成憲法保障勞工生活之意旨，二者性質不同，尚難謂兼採兩種制度即屬違憲。惟立法者就保障勞工生活之立法選擇，本應隨社會整體發展而隨時檢討，勞動基準法自七十三年立法施行至今，為保護勞工目的而設之勞工退休金制度，其實施成效如何，所採行之手段應否及如何隨社會整體情勢之變遷而適時檢討改進，俾能與時俱進，符合憲法所欲實現之勞工保護政策

tors should consider the overall social changes and accordingly from time to time review the options regarding protecting the livelihood of workers. The Act was enacted and implemented in 1984, and issues such as whether the current workers' pension system has been effectively implemented, whether this approach needs to be examined, and how it can be improved to correspond to the overall social changes in order to keep up with the pace of changes and to be consistent with the constitutional goal of labor protection, should be reviewed at appropriate times. The decision of whether to integrate the existing workers retirement system and social insurance system in response to the emerging graying trend should also be considered, as such trends result from the changing demographic composition and are likely to impact the socioeconomic structure and the welfare system in the future, and such decisions will include everyone's interests and involve the issue of the distribution of social resources and the financial capabilities of the state to shoulder such burdens. The relevant authorities should, in addition to

目標，以及國內人口年齡組成之轉變，已呈現人口持續老化現象，未來將對社會經濟、福利制度等產生衝擊，因此對既有勞工退休制度及社會保險制度，應否予以整合，由於攸關社會資源之分配、國家財政負擔能力等全民之整體利益，仍屬立法形成之事項，允宜在兼顧現制下勞工既有權益之保障與雇主給付能力、企業經營成本等整體社會條件之平衡，由相關機關根據我國憲法保障勞工之基本精神，及國家對人民興辦之中小型經濟事業應扶助並保護其生存與發展之意旨，參酌有關國際勞工公約之規定，並衡量國家總體發展，通盤檢討，併此指明。

striking a balance between retaining the existing protection enjoyed by workers and noting the ability of employers to pay for workers' retirement pensions and the operational costs of enterprises, conduct a comprehensive examination of the current scheme in accordance with the fundamental principle of the Constitution to protect workers and the purpose of supporting and preserving the survival and development of small- and medium-sized businesses. The provisions of international labor conventions and the overall development of the nation shall also be taken into account.

Justice Syue-Ming Yu filed concurring opinion.

Justice Tzong-Li Hsu filed concurring opinion.

Justice Yih-Nan Liaw filed concurring opinion.

本號解釋余大法官雪明、許大法官宗力與廖大法官義男分別提出協同意見書。

J. Y. Interpretation No.579（June 25, 2004）*

ISSUE: In the case of expropriation of leasehold farmland by the government, the law grants the lessee compensation equal to one-third of the amount of the compensation due to the landowner. Is Article 11 of the Equalization of Land Rights Act constitutional in authorizing the government to withhold compulsorily one-third of the compensation due to the landowner and pay the sum so withheld to the lessee of the farmland expropriated?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Articles 10, 11, Paragraphs 1 and 2, and 42, Paragraph 1 of the Equalization of Land Rights Act（平均地權條例第十條、第十一條第一項及第二項、第四十二條第一項）; Articles 2, Paragraph 1, First Sentence, 16, 17, Paragraph 1, 19, Paragraphs 1 and 2; and 25 of the Act Governing the Reduction of Farmland Rent to 37.5 Percent（耕地三七五減租條例第二條第一項前段、第十六條、第十七條第一項、第十九條第一項、第二項、第二十五條）; Articles 28, Paragraphs 1 and 2, of the Act of the Encouragement of Investment promulgated on September 10, 1960（四十九年九月十日公布施行之獎勵投資條例第二十八條第一項及第二項）; Articles 30 and 35 of the Act of Eminent Domain（土地徵收條例第三十條、第三

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* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

十五條）; Article 221 of the Land Act（土地法第二百二十一條）; Article 59 of the Enforcement Act of the Land Act（土地法施行法第五十九條）; Article 5, Paragraph 1, Subparagraph 2, and Paragraph 3 of the Constitutional Interpretations Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）.

KEYWORDS:

expropriate, expropriation, eminent domain（徵收）, farmland（耕地）,leasehold farmland（出租耕地）, landowner（土地所有權人）,lessor（出租人）, lessee（承租人）, *tien*（佃）, tenant (tien) farmer（佃農）, payment by subrogation（代位償付）,compensation（補償）, land value increment tax（土地增值稅）, value of lease of the land（土地租賃權價值）, land price（地價）, cost of land improvement（土地改良費用）, agricultural crops（農作改良物）.**

HOLDING: That the property right of the people shall be protected is clearly prescribed by Article 15 of the Constitution. The state may, however, expropriate in accordance with law a private property for public use or for other public interest wherever necessary. To the holder of the right to the property so expropriated, the state must give reasonable compensation and the amount of such com-

解釋文：人民之財產權應予保障，憲法第十五條定有明文。國家因公用或其他公益目的之必要，得依法徵收人民之財產，對被徵收財產之權利人而言，係為公共利益所受之特別犧牲，國家應給予合理之補償，且補償與損失必須相當。國家依法徵收土地時，對該土地之所有權人及該土地之其他財產權人均應予以合理補償，惟其補償方式，立法機關有一定之自由形成空間。

pensation must be commensurate with the special sacrifice thus made for public interest; therefore, the state must compensate him/her for the reasonable loss he/she has suffered. When the state legally exercises its power of eminent domain over land, it must give reasonable compensation to the owner of the land and the holders of other rights to the land, although the manner of compensation is to be established by the Legislature within the specific scope of its discretion.

The right of the lessee of farmland is a property right protected by the Constitution. Compensation must likewise be given where farmland ceases to be such as a result of expropriation. The right of the lessee of farmland, with the characteristics of a right in rem, has become something like an encumbrance on the land. The Equalization of Land Rights Act provides in Article 11, Paragraph 1, that if the land expropriated is a leasehold farmland, the landowner shall give the lessee compensation equal to one-third of the remaining amount of the compensation for the land price received by the landowner after de-

耕地承租人之租賃權係憲法上保障之財產權，於耕地因徵收而消滅時，亦應予補償。且耕地租賃權因物權化之結果，已形同耕地之負擔。平均地權條例第十一條第一項規定，依法徵收之土地為出租耕地時，應由土地所有權人以所得之補償地價，扣除土地增值稅後餘額之三分之一，補償耕地承租人；第二項規定，前項補償承租人之地價，應由主管機關於發放補償或依法提存時，代為扣交，係出租之耕地因公用徵收時，立法機關依憲法保障財產權及保護農民之意旨，審酌耕地所有權之現存價值及耕地租賃權之價值，採用代位總計各別分算代償之方法，將出租耕地上負擔之

ducting therefrom the land value increment tax, and in Paragraph 2 thereof that the relevant authority shall withhold and pay to the lessee the compensation payable to him/her under Paragraph 1 when making payment to the landowner or making deposit in court as compensation for the land price. This is a device of payment by subrogation adopted by the Legislature for the purpose of protecting the property right and the interest of farmers as contemplated by the Constitution, whereby, in the case of the leasehold land expropriated being a farmland, the current value of the ownership to the land and the value of the lease of the land are taken into account and separately calculated and then summed up for the purpose of paying the lessee by subrogation compensation through withholding the worth of the lease with which the leasehold farmland is burdened. It constitutes no detriment to the protection of the property right of the owner of the land. Nevertheless, the social and economic developments in recent years have obviously resulted in changes to the structure of industries, and to adapt to the government policy on the use of

租賃權價值代為扣交耕地承租人，以為補償，其於土地所有權人財產權之保障，尚不生侵害問題。惟近年來社會經濟發展、產業結構顯有變遷，為因應農地使用政策，上開為保護農民生活而以耕地租賃權為出租耕地上負擔並據以推估其價值之規定，應儘速檢討修正，以符憲法意旨，併予指明。

farmland, the abovementioned provisions for assessment of the value of the lease of farmland as a burden on such leasehold land for the purpose of protecting the livelihood of farmers must be reviewed and revised as early as possible to the extent consistent with the purpose of the Constitution.

REASONING: That the property right of the people shall be protected is clearly prescribed by Article 15 of the Constitution. The state may, however, expropriate in accordance with law a private property for public use or for other public interest wherever necessary. To the holder of the right to the property so expropriated, who has thus made special sacrifice for the public interest, the state must give reasonable compensation, and the amount of such compensation must be commensurate to the loss he/she has suffered. When the state legally exercises its power of eminent domain over land, it must give reasonable compensation to the owner of the land and the holders of other rights to the land, although the manner of compensation is subject to deliberation to be

解釋理由書：人民之財產權應予保障，憲法第十五條定有明文。國家因公用或其他公益目的之必要，得依法徵收人民之財產，對被徵收財產之權利人而言，係為公共利益所受之特別犧牲，國家應給予合理之補償，且補償與損失必須相當。國家依法徵收土地時，對該土地之所有權人及該土地之其他財產權人就因徵收被剝奪之所有權及其他財產權，均應予以合理補償，惟其補償方式，立法機關有一定之自由形成空間。

made by the Legislature within the specific scope of its discretion.

The right of the lessee of farmland is a right to farm the land owned by another person and to yield proceeds therefrom, and is a property right protected by the Constitution. When this right is terminated along with the extinction of the ownership to the farmland as a result of expropriation, it means that the lessee has thus made a special sacrifice of his/her property right for the public interest, for which the state must give the lessee reasonable compensation. Moreover, the rental for farmland must not exceed 37.5 percent of the total annual yield of the principal product of the main crop; the lessor of farmland may not terminate the lease created on such land or take the land back for self-tilling before expiration of the term of the lease or tien 1without a statutory reason; a contract of lease or tien shall remain in force with respect to the transferee in case the lessor transfers to a third person his/her ownership to the land before expiration of the lease created on such farmland, and the transferee shall

耕地承租人之租賃權，係對他人所有耕地耕作、收益之權利，屬憲法上保障之財產權，於耕地被徵收時隨同所有權而消滅，乃耕地承租人為公共利益而受之財產權特別犧牲，國家亦應予耕地承租人合理補償。又耕地地租租額，不得超過主要作物正產品全年收穫總量千分之三百七十五；耕地租約在租佃期限未屆滿前或屆滿時，非有法定情形，出租人不得終止租約或收回自耕；且出租人於耕地租期屆滿前，縱將其所有權讓與第三人，其租佃契約對於受讓人仍繼續有效，受讓人應會同原承租人申請為租約變更之登記（耕地三七五減租條例第二條第一項前段、第十六條、第十七條第一項、第十九條第一項、第二項、第二十五條參照），耕地租賃權因而物權化之結果，已形同耕地之負擔。耕地被徵收時，原則上按照徵收當期之公告土地現值代位計算（參照平均地權條例第十條，並參考中華民國八十九年二月二日公布施行之土地徵收條例第三十條），故無論出租耕地或非出租耕地，均以相同之基準核算補償地價，是出租耕地之補償地價，實質上包括耕地

apply jointly with the original lessee for recordation of alteration to the contract (See the Act Governing the Reduction of Farmland Rent to 37.5 Percent, Art. 2, Par. 1, First Sentence; Art. 16, Art. 17, Par. 1; Art. 19, Pars. 1 and 2; and Art. 25). Consequently, the right of the lessee of a farmland has become a right in rem and thus something like an encumbrance on farmland. In the case of expropriation of farmland, the compensation is computed in principle by subrogation on the basis of the declared current value of the land prevailing in the period during which the land is expropriated (See the Equalization of Land Rights Act, Art. 10; also see the Act of Eminent Domain promulgated on February 2, 2000, Art. 30). Thus, the compensation for the value of all farmlands is computed and paid on the same basis regardless of whether or not the land is leasehold, and the compensation for the land value of leasehold farmland includes in reality the current value of the ownership to the farmland and the leasehold value with which the land is burdened.

所有權之現存價值及該耕地上負擔之租賃權價值。

The Act of the Encouragement of In-

四十九年九月十日公布施行之獎

vestment promulgated on September 10, 1960, (now repealed) provided in Article 28, Paragraphs 1 and 2, respectively, that "where a leasehold farmland within an area designated as industrial land is converted by the lessor into land for industrial use, the lessor may terminate the lease in respect of that part of the land as may be converted for such purpose, irrespective of whether the land is to be so used by the owner himself/herself or to be sold or leased for such purpose" and that "where the lessor terminates the lease under the preceding paragraph, he/she shall pay the lessee a compensation equal to one-third of the price of such land, in addition to the cost of land improvement which the lessee may have made and any agricultural crops which the lessee may not yet have harvested." One of the stated legislative purposes for this Article was that: "….(2) The case of termination of the lease of farmland, resulting in loss on the part of the lessee of the use of the land which he/she has been cultivating, constitutes a tremendous loss for the lessee. Moreover, the prevalent social custom calls for payment by the lessor to the lessee of an enti-

勵投資條例（已廢止）第二十八條第一項及第二項規定：「編為工業用地區域內之出租耕地，出租人如變更作工業使用時，不論為自用、出賣或出租得就變更使用部份終止租約。」「出租人依前項終止租約時，除應補償承租人為改良土地所支付之費用，及尚未收穫之農作改良物外，並應給與該土地地價三分之一數額之損失補償。」其立法理由為：「……(2)耕地終止租約，承租人喪失耕作之土地，對承租人而言，亦有莫大之損失，現行民間終止租約之習慣，亦由出租人給予承租人地價三分之一之權利金，故有本條第二項之規定」。該條規定於五十四年一月四日修正，改列為第三十八條，遞於五十九年十二月三十日修正列為第五十四條規定，並因前開規定出租人終止租約應給承租人地價三分之一之補償，未考慮出租人是否須繳納增值稅，如增值稅過多，地主實得可能較承租人為少，頗不合理，爰修正其第二項為：「前項終止租約，除補償承租人為改良土地所支付之費用及尚未收穫之農作改良物外，並應以出售地價扣除繳納土地增值稅後餘額之三分之一，補償原耕地承租人。」六十六年二月二日修正「實施都市平均地權條例」為「平均地權條例」前，對於徵收出租耕

tlement in an amount equal to one-third of the value of the land upon termination of the lease. This is the reason for which Paragraph 2 of this Article is so designed." This Article was amended and renumbered Article 38 on January 4, 1965, and was again amended and renumbered Article 54 on December 30, 1970. As the provision of Paragraph 2 of said Article, in requiring payment by the lessor to the lessee of a compensation equal to one-third of the value of the land, failed to take into account the land value increment tax the lessor might have to pay and furthermore, if the sum of increment tax payable by the lessor was exceedingly high, such a provision would become unreasonable as the compensation to the lessor could be less than what the lessee was entitled to, it was amended to read: "Where the lessor terminates the lease under the preceding paragraph, he/she shall pay the lessee of the farmland a compensation equal to one-third of the remaining amount of the selling price of such land after paying the land value increment tax, in addition to the cost of land improvement which the lessee may have

地之佃農補償問題，缺乏明確規定。政府每於實施公共建設而徵收私有出租耕地時，均發生如何給予佃農補償問題。故前開平均地權條例修正時比照獎勵投資條例第五十四條之規定，乃增訂第十一條第一項規定：「依法徵收之土地為出租耕地時，除由政府補償承租人為改良土地所支付之費用，及尚未收穫之農作改良物外，並應由土地所有權人，以所得之補償地價扣除土地增值稅後餘額之三分之一，補償耕地承租人。」第二項規定：「前項補償承租人之地價，應由主管機關於發放補償或依法提存時，代為扣交。」係衡酌耕地所有權人與承租人間之權義關係及交易習慣，推估出租耕地上負擔之租賃權價值，為出租耕地補償地價扣除土地增值稅後餘額之三分之一；並以土地所有權人為核發補償地價之受領人，但由主管機關於發放補償或依法提存時，將出租耕地上負擔之租賃權價值代為扣交耕地承租人，以為補償，旨在闡明上開法律規定之地價補償，採用代位總計各別分算代償之方法，即土地應補償之地價，原則上以徵收當期之公告土地現值代位計算，再由主管機關在補償地價之範圍內，按其他各權利負擔，分別估定其價值，代土地所有權人發給其他權利人，再以餘款交

made and any agricultural crops which the lessee may not yet have harvested." Before the Act for the Equalization of Urban Land Rights was superseded on February 2, 1977, by the Equalization of Land Rights Act, there was no clear rule with respect to compensation for tenants of leasehold farmlands expropriated by the government. As a result, when a private leasehold farmland was expropriated by the government for the construction of public works, it often gave rise to the problem of how to compensate the tenant farmers. Therefore, when the Equalization of Land Rights Act was undergoing revision, the new Article 11 was added to it by analogy to Article 54 of the Act of the Encouragement of Investment to set out in Paragraph 1 thereof that "where the land expropriated in accordance with law is a leasehold farmland, the landowner shall pay the lessee of the farmland a compensation equal to one-third of the remaining amount of the land price received by him/her as a compensation after deducting therefrom the land value increment tax, and in addition thereto, the lessee shall be entitled to payment by the government of

付被徵收土地所有權人，以為補償（參照平均地權條例第十條、土地法第二百二十一條、土地法施行法第五十九條，並參考土地徵收條例第三十五條）。是前揭平均地權條例第十一條之規定，係就徵收耕地補償地價之核發程序與分配額所為之規定，符合憲法保障財產權、保護農民之意旨及補償與損失相當之原則，並未逾越立法機關就徵收補償方式自由形成之範圍，於土地所有權人財產權之保障，尚不生侵害問題。惟近年來社會經濟發展、產業結構顯有變遷，為因應農地使用政策，上開為保護農民生活而以耕地租賃權為出租耕地上負擔並據以推估其價值之規定，應儘速檢討修正，以符憲法意旨，併予指明。

the cost of land improvement which the lessee may have made and any agricultural crops which the lessee may not yet have harvested" and in Paragraph 2 thereof that "the compensation to which the lessee is entitled under the preceding paragraph shall be withheld by the relevant authority when compensation to the landowner is paid or deposited in court, and shall be paid to the lessee by such authority." By taking into consideration the jural relations between the owner and the lessee of the farmland and the business practices, this Article is meant to assess the value of the right to the lease created on the farmland at one-third of the remaining amount of the land price received by the land owner as a compensation after deducting therefrom the land value increment tax and to identify the landowner to be the receiver of the payment of such land price compensation, subject to withholding by the relevant authority when compensation to the landowner is paid or deposited in court, for payment to the lessee, an amount equal to the value of the right to the lease created on the farmland as a compensation for the

lessee. The purpose of the Article is to set out that the land price compensation prescribed by the above law shall be computed in the manner of separate and individual assessment and paid by subrogation. In other words, the relevant authority shall by subrogation compute the land price compensation payable for the land based on the current value of the expropriated land as declared by the government; assess the value of each and every right with which the land is burdened, within the range of the compensation for the land value; make payments to the respective holders of such rights for and behalf of the landowner; and then pay the remaining amount to the owner of the land expropriated as his/her compensation (See the Equalization of Land Rights Act, Art. 10; the Land Act, Art. 221; and the Enforcement Act of the Land Act, Art. 59; also see the Act of Eminent Domain, Art. 35). It follows that Article 11 of the Equalization of Land Rights Act quoted above is designed to regulate the procedure with respect to payment of land price compensation in the case of expropriation of farmland and the amounts to be distrib-

uted, and is thus consistent with the purpose of the Constitution in affording protection of the property right of the farmers as well as of the constitutional principle of compensation commensurate with the amount of loss. It does not go beyond the scope of compensation established by the Legislature at its discretion, and results in no encroachment upon the protection of the property right of landowners. It must be pointed out, however, that the social and economic developments in recent years have obviously resulted in changes to the structure of industries, and to adapt to the government policy on the use of farmland, the abovementioned provisions for assessment of the value of the lease of farmland as a burden on such leasehold land for the purpose of protecting the livelihood of farmers must be reviewed and revised as early as possible to the extent consistent with the purpose of the Constitution.

Furthermore, under the Constitutional Interpretations Procedure Act, Article 5, Paragraph 1, Subparagraph 2, where an individual, body corporate or political

另司法院大法官審理案件法第五條第一項第二款規定，人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確

party, upon the institution of a litigation in accordance with legal procedure by reason of unlawful infringement of his/her or its constitutional right, has questions about whether the law or order applied by the court in its irrevocable final adjudication is contrary to the Constitution, he/she or it may file a petition for interpretation of the Constitution. Hence, whether or not an irrevocable final adjudication per se or the opinion of the court when applying a law or order in its irrevocable final adjudication is constitutional does not come within the scope in which the people may petition for constitutional interpretation. In the case before us, the Petitioner alleges that the opinion of the court on the provision of Article 42, Paragraph 1, of the Equalization of Land Rights Act applied in its irrevocable final judgment at issue here has given rise to the question of being unconstitutional and petitions for pronouncement by this Court to invalidate said judgment. Based on our explanations given above, we have found that the petition does not meet the elements required by the Constitutional Interpretations Procedure Act, Article 5, Paragraph 1, Sub-

定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得聲請解釋憲法。是確定終局裁判本身，或確定終局裁判適用法律、命令所表示之見解是否有牴觸憲法之疑義，不在人民得聲請解釋憲法之範圍。本件聲請人指稱系爭確定終局判決適用平均地權條例第四十二條第一項規定之見解，違背該法條之立法本旨，有牴觸憲法疑義，並聲請宣告該判決違憲無效部分，揆諸前開說明，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。

paragraph 2, and must therefore be rejected under Subparagraph 3 of the same Article.

Justice Tsay-Chuan Hsieh filed concurring opinion.

Justice Tzong-Li Hsu filed dissenting opinion.

Justice Yih-Nan Liaw filed dissenting opinion.

本號解釋謝大法官在全提出協同意見書；許大法官宗力、廖大法官義男分別提出不同意見書。

Translator's Note:

1 Tien (佃), also known as Yung-tien (永佃權), is defined by the Civil Code as a "right to cultivate or to raise livestock permanently on the land of another person by paying a rent." (Civil Code, Art. 842, Par. 1). A yung-tien created for a definite period of term is deemed to be a lease, to which the Civil Code provisions with respect to leases shall apply. (Art. 842, Par. 2). A Yung-tien differs from a lease in that the former is a right over things (right in rem; property right) and the latter is a type of contract under the Civil Code. While the holder of a yung-tien, generally called tien farmer or tenant farmer (佃農), may legally transfer his/her right to another person, he/she can not lease the land to others. The rent may be an agreed sum of money or, more commonly, a fixed quantity of grain or percentage of the annual harvest of the crop. The tien system in Taiwan, having originated in China, has a very long history. In the past, tenant farmers, although legally "free men" rather than slaves of their landlords, would be obligated to pay rent as high as 50-70% of their crop, which made them not only the indigent class of the society but also virtually bound to the soil on which they labored from one generation to the next, with a life and status similar to that of serfs in the feudal history of England. To improve the livelihood of tenant farmers, the government of the Republic of China began to launch in Taiwan in the early 1950's a land reform program and enacted a series of legislations, including the Statute for the Reduction of Farmland Rent to 37.5 Percent discussed in this Interpretation, to put the policy into practice. As a result, a great majority of the tenant farmers have now become "self-tilling landowners" and the system of tien has gradually become obsolete and been superseded by the lease. By delivering this Interpretation, the Grand Justices have made known the main purposes and contents of some of the legislations in relation to the right of tenant farmers as the lessees of farmlands.

J. Y. Interpretation No.580（July 9, 2004）*

ISSUE: Is the provision of Article 19-III of the Act Governing the Reduction of Farm Rent to 37.5 Percent, providing that a lessor shall compensate a lessee if and when the former reclaims the farmland upon expiry of the lease, in violation of the Constitution? Furthermore, are the provisions of Article 5, as well as other relevant provisions, of the said Act unconstitutional?

RELEVANT LAWS:

Articles 7, 15, 22, 23, 143, Paragraph 4, 146 and 153, Paragraph 1 of the Constitution（憲法第七條、第十五條、第二十二條、第二十三條、第一百四十三條第四項、第一百四十六條、第一百五十三條第一項）; Article 10, Paragraph 1, of the Amendments to the Constitution（憲法增修條文第十條第一項）; Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款）; Articles 5, the first sentence , 6, Paragraph 1, 16, Paragraph 1, 17, Paragraph 1, Subparagraph 1 and Paragraph 2, Subparagraph 3, 19, Paragraph 1, Subparagraphs 1, 2 & 3, Paragraph 3, and 20 of the Act Governing the Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第五條前段、第六條第一項、第十六條第一項、第十七條第一項第一款及第二項第三款、第

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

十九條第一項第一款、第二款、第三款及第三項、第二十條）; Article 83 of the Land Act（土地法第八十三條）; Regulation on the Lease of Private Farmland in the Taiwan Provinces（臺灣省私有耕地租用辦法）; Enforcement Rules of the Regulation on the Lease of Private Farmland in the Taiwan Provinces（臺灣省私有耕地租用辦法施行細則）; Instructions on the Recordation of Private Farmland Lease Contracts in the Taiwan Provinces（臺灣省辦理私有耕地租約登記注意事項）; Organic Regulation of the Commission for the Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Taiwan Provinces（臺灣省推行三七五減租督導委員會組織規程）; Organic Regulation of the Commissions for Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Counties and Cities of the Taiwan Provinces（臺灣省各縣市推行三七五減租督導委員會組織規程）.

KEYWORDS:

freedom of contract（契約自由）, farmland lease and tenancy committee（耕地租佃委員會）, distribution and readjustment of land（土地分配與整理）, interim provision（過渡條款）, vested interest（既有利益）, agricultural resources（農業資源）, retake/demand the return of land/repossess（收回土地）, land-holding farmer（自耕農）, lessor（出租人）, lessee（承租人）, tenant farm（佃農）, government-declared current land value（土地公告現值）, cancel/terminate the lease（撤佃）, rent of tenancy（佃租）, land reform（土地改革）.**

HOLDING: In light of the freedom of development of the individual personality, every person has the right to decide freely how to use, receive benefits from and dispose of the resources needed for their livelihood, and may thus freely exchange such resources with other persons. For this reason, the Constitution provides in Article 15 for the protection of the people's property right and in Article 22 for the protection of the people's freedom of contract. However, the skills required for living being varied in degree of competency from person to person, with the possibility of resulting in excessively disproportionate distribution of the overall resources of social life, the State may certainly impose restrictions on the freedom of contract and, furthermore, the property right of the people by enacting laws within the scope defined by the principle of proportionality under Article 23 of the Constitution for the purpose of reasonable distribution of resources.

解釋文：基於個人之人格發展自由，個人得自由決定其生活資源之使用、收益及處分，因而得自由與他人為生活資源之交換，是憲法於第十五條保障人民之財產權，於第二十二條保障人民之契約自由。惟因個人生活技能強弱有別，可能導致整體社會生活資源分配過度不均，為求資源之合理分配，國家自得於不違反憲法第二十三條比例原則之範圍內，以法律限制人民締約之自由，進而限制人民之財產權。

The policy on the use of farmland through assistance to land-holding farmers as stated in the Constitution, Article 143,

憲法第一百四十三條第四項扶植自耕農之農地使用政策，以及憲法第一百五十三條第一項改良農民生活之基本

Paragraph 4, and the nation's fundamental policy on the improvement of the livelihood of farmers as announced in Article 153, Paragraph 1, are formulated for the purpose of making reasonable distribution of agricultural resources. The Act Governing the Reduction of Farm Rent to 37.5 Percent (hereinafter the "Rent Reduction Act") promulgated on June 7, 1951, in pursuance of the purposes contemplated by the Constitution as mentioned above was enacted to provide a legal basis for the policy launched in 1949 on the reduction of farm rent to 37.5 percent and to ensure that the initial outcome achieved by implementation of such policy could be maintained. To make reasonable distribution of agricultural resources and lay a foundation for development of the national economy, the Rent Reduction Act rebuilds the agricultural industrial relationship between lessors and lessees of farmland by setting a limit on the rent and specifying strict restrictive conditions on termination of a farmland lease and on repossession of such land by the lessor and has thus a legitimate legislative purpose. While no interim clauses are incor-

國策，均係為合理分配農業資源而制定。中華民國四十年六月七日制定公布之耕地三七五減租條例（以下稱減租條例），旨在秉承上開憲法意旨，為三十八年已開始實施之三七五減租政策提供法律依據，並確保實施該政策所獲致之初步成果。其藉由限制地租、嚴格限制耕地出租人終止耕地租約及收回耕地之條件，重新建構耕地承租人與出租人之農業產業關係，俾合理分配農業資源並奠定國家經濟發展方向，立法目的尚屬正當。雖未設置保護出租人既有契約利益之過渡條款，惟因減租條例本在實現憲法規定國家對於土地之分配與整理暨扶植自耕農之意旨，且於條例制定之前，減租政策業已積極推行數年，出租人得先行於過渡時期熟悉減租制度，減租條例對出租人契約自由及財產權之限制，要非出租人所不能預期，衡諸特殊之歷史背景及合理分配農業資源之非常重大公共利益，尚未違背憲法上之信賴保護原則。

porated into the Act to protect the vested contractual interest of lessors, the restrictions imposed thereby on the lessor's freedom of contract and property right are not beyond the expectation of lessors as the government policy to reduce farm rent had been actively in progress for several years before the Rent Reduction Act was enacted, allowing lessors the opportunity to familiarize themselves with the rent reduction mechanism, and the very purpose of the Act is to put into practice the constitutional provisions requiring the State to assist land-holding farmers in the distribution and readjustment of land. Hence the Act, considering the special historical background and the distinct significance to the public interest attainable through reasonable distribution of agricultural resources, is not in conflict with the constitutional principle of reliance protection.

The provisions of the Rent Reduction Act, Article 5, first sentence, requiring that the minimum duration of the lease must be no less than six years, and Article 6, Paragraph 1 and Article 16, Paragraph

減租條例第五條前段關於租賃期限不得少於六年，以及同條例第六條第一項暨第十六條第一項關於締約方式與轉租禁止之規定，均為穩定租賃關係而設；同條例第十七條第一項第一款規定

1, setting out the manner of execution of lease agreements and the prohibition of sub-lease, are all intended to stabilize the lessor-lessee relationship; and the Act specifies in Article 17, Paragraph 1, Subparagraph 1, the circumstances where the lease may be legally terminated upon the death of the lessee during the term of the lease, leaving no heir capable of continued cultivation of the land, and retains for the lessor the option to repossess the land. The foregoing provisions are all helpful in carrying out the nation's fundamental policies to assist land-holding farmers and to improve the livelihood of farmers. While the freedom of contract and property right of lessors are subject to certain restraints, the approach is necessary and appropriate in light of the purpose of the legislation, and the interest of both lessors and lessees is likewise ensured. The provisions are thus consistent with the Constitution insofar as the principle of proportionality under Article 23, the safeguard of the freedom of contract under Article 22, the right to property under Article 15 and the right of equality under Article 7 are concerned.

租賃期限內，承租人死亡無人繼承耕作之法定終止租約事由，並保留出租人收回耕地之彈性。上開規定皆有利於實現扶植自耕農及改善農民生活之基本國策，縱於出租人之契約自由及財產權有所限制，衡諸立法目的，其手段仍屬必要而且適當，亦兼顧承租人與出租人雙方之利益，與憲法第二十三條比例原則、第二十二條契約自由、第十五條財產權及第七條平等權之保障並無違背。

While the provision of Article 19, Paragraph 1, Subparagraph 1, of the Rent Reduction Act is essential to achieving the objective to assist land-holding farmers as contemplated by Article 143, Paragraph 4, of the Constitution, the meaning of "self-tilling by the lessor" therein is not limited to the situation of personal cultivation by manual labor in light of the purpose of Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution relating to the industrialization and modernization of agriculture. Within the meaning is also included self-farming or contracting someone else to do the farming by way of agricultural technology and in the manner of a business-like operation. Under the Rent Reduction Act, Article 19, Paragraph 1, Subparagraph 2, the lessor has no right to repossess the land for his own cultivation if the total income of the lessor is sufficient to support his family. This provision has virtually made the lease renewable for an indefinite term of duration. However, in consequence of the amendment made by the Legislature on December 23, 1983, by adding to the article the second paragraph

減租條例第十九條第一項第一款之規定，為實現憲法第一百四十三條第四項扶植自耕農之意旨所必要，惟另依憲法第一百四十六條及憲法增修條文第十條第一項發展農業工業化及現代化之意旨，所謂出租人之自任耕作，不以人力親自實施耕作為限，為農業科技化及企業化經營之自行耕作或委託代耕者亦屬之。減租條例第十九條第一項第二款規定出租人於所有收益足以維持一家生活者不得收回自耕，使租約變相無限期延長，惟立法機關嗣於七十二年十二月二十三日增訂之第二項，規定為擴大家庭農場經營規模得收回與其自耕地同一或鄰近地段內之耕地自耕，已放寬對於出租人財產權之限制。同條項第三款規定，如出租人收回耕地，承租人將失其家庭生活依據者，亦不得收回耕地，係為貫徹憲法第一百五十三條第一項保護農民政策之必要手段；且如出租人亦不能維持其一家生活，尚得申請耕地租佃委員會調處，以兼顧出租人與承租人之實際需要。衡諸憲法第一百四十三條第四項扶植自耕農、第一百四十六條與憲法增修條文第十條第一項發展農業工業化及現代化，以及憲法第一百五十三條第一項改善農民生活之意旨，上開三款限制耕地出租人收回耕地之規定，對於

allowing the lessor to repossess for his own cultivation the farmland situated in the same sector as or in a sector adjacent to his self-cultivated land for the purpose of expanding the business of his family farm, the restraint on the property right of lessors is accordingly eased. Subparagraph 3 of the same article which prohibits the lessor from repossessing his land if the lessee will be deprived of the subsistence for his family is an essential measure for carrying out the policy to protect farmers as declared in Article 153, Paragraph 1, of the Constitution; and if the lessor is likewise devoid of the means to support his family he may request the farmland lease and tenancy committee to mediate, so that the actual needs of both the lessor and the lessee are ensured. In light of the policies to assist land-holding farmers under Article 143, Paragraph 4, of the Constitution, to promote the industrialization and modernization of agriculture under Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution, and to improve the livelihood of farmers under Article 153, Paragraph 1, of the Constitution, the

耕地所有權之限制，尚屬必要，與憲法第二十三條比例原則及第十五條保障人民財產權規定之意旨要無不符。

provisions of the three subparagraphs cited above, which place constraint on ownership of farmland by setting forth restrictive conditions on which lessors of farmland may repossess the land, are found to be necessary and consistent with the principle of proportionality under Article 23 of the Constitution and the provision of Article 15 of the Constitution with respect to the protection of the property right of the people.

Article 17, Paragraph 2, Subparagraph 3, of the Rent Reduction Act, as added thereto by amendment on December 23, 1983, whereby the lessor of a farmland that is classified as or changed into land for non-cultivation use before the expiration of the lease thereof shall give the lessee a compensation equal to one-third of the remaining amount of the government-declared current land value after deducting therefrom the amount of land value increment tax payable therefor, is applicable only to such land that may continue to be utilized for its original purpose pending the time when such specified use begins under Article 83 of the

七十二年十二月二十三日增訂之減租條例第十七條第二項第三款關於租約期限尚未屆滿而農地因土地編定或變更為非耕地時，應以土地公告現值扣除土地增值稅後餘額之三分之一補償承租人之規定，乃限於依土地法第八十三條所規定之使用期限前得繼續為從來之使用者，方有其適用。土地法所規定之繼續使用期限，係為保護土地使用人既有之法律地位而設之過渡條款，耕地出租人如欲於期前終止租約，減租條例第十七條第二項第三款即賦予補償承租人之義務，乃為平衡雙方權利義務關係，對出租人耕地所有權所為之限制，尚無悖於憲法第十五條保障財產權之本旨。惟不問情狀如何，補償額度一概為三分之

Land Act. The period of continued use of the land under the Land Act represents an interim provision designed for the purpose of protecting the established legal status of the land user. Where the lessor of a farmland desires to terminate the lease before the expiration of its term, the Rent Reduction Act imposes upon him, by Article 17, Paragraph 2, Subparagraph 3, the obligation to give the lessee a compensation, in order to balance the jural relationship between them, and the restraint so imposed on the ownership of the lessor to the farmland constitutes no contravention of the intention of Article 15 of the Constitution in protecting the property right. Nevertheless, the inflexible rule of compensation in one-third of the amount regardless of the actual circumstances must be reviewed and modified at the earliest possible date by the government agency concerned by taking into account factors such as the protection of freedom of contract contemplated by Article 22 of the Constitution and the changes in socio-economic conditions.

一之規定，有關機關應衡酌憲法第二十二條保障契約自由之意旨及社會經濟條件之變遷等情事，儘速予以檢討修正。

Under Article 19, Paragraph 3, of the

七十二年十二月二十三日增訂之

Rent Reduction Act as added thereto by amendment on December 23, 1983, the lessor who repossesses his farmland upon expiration of the lease for the purpose of expanding the operation of his family farm and enhancing the efficient utilization of the land shall, by mutatis mutandis application of Article 17, Paragraph 2, Subparagraph 3, of the Act, give the lessee a compensation equal to one-third of the remaining amount of the land value declared by the government for the period during which the lease is terminated, after deducting therefrom the amount of land value increment tax payable therefor. But, the relationship of lease having been extinguished in consequence of expiration of the lease, imposition on the lessor of a further obligation to compensate the lessee constitutes without doubt an unnecessary burden on the farmland owner, which appears to be similar in nature to a barrier set up to prevent the lessor from repossessing his/her farmland, and is thus contrary to the legislative purpose of encouraging the expansion of the operation of family farms to promote the modernization of agriculture. A fortiori, to repossess

減租條例第十九條第三項規定，耕地租約期滿時，出租人為擴大家庭農場經營規模、提升土地利用效率而收回耕地時，準用同條例第十七條第二項第三款之規定，應以終止租約當期土地公告現值扣除土地增值稅餘額後之三分之一補償承租人。惟契約期滿後，租賃關係既已消滅，如另行課予出租人補償承租人之義務，自屬增加耕地所有權人不必要之負擔，形同設置出租人收回耕地之障礙，與鼓勵擴大家庭農場經營規模，以促進農業現代化之立法目的顯有牴觸。況耕地租約期滿後，出租人仍須具備自耕能力，且於承租人不致失其家庭生活依據時，方得為擴大家庭農場經營規模而收回耕地。按承租人之家庭生活既非無依，竟復令出租人負擔承租人之生活照顧義務，要難認有正當理由。是上開規定準用同條例第十七條第二項第三款部分，以補償承租人作為收回耕地之附加條件，不當限制耕地出租人之財產權，難謂無悖於憲法第一百四十六條與憲法增修條文第十條第一項發展農業之意旨，且與憲法第二十三條比例原則及第十五條保障人民財產權之規定不符，應自本解釋公布日起，至遲於屆滿二年時，失其效力。

the farmland for expansion of his family farm after expiration of the lease, the lessor must satisfy the requirement that he is capable of self-tilling and that the lessee is not deprived thereby of the substance for his family. Inasmuch as the lessee's family is not devoid of means of livelihood, the requirement that the lessor must assume the obligation to continue ensuring the lessee's livelihood can hardly be deemed reasonable and justifiable. Consequently, the above provision whereby Article 17, Paragraph 2, Subparagraph 3, of the Act is made applicable mutatis mutandis to require that compensation be given to the lessee as an additional condition on which the lessor may repossess his farmland is imposing an undue restraint on the property right of the lessor of farmland and can hardly be considered consistent with the purpose of the development of agriculture as embodied in Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution. Further, the provision is in conflict with the principle of proportionality under Article 23 of the Constitution and the provision set forth in Article 15 of the

Constitution for the protection of the property right of the people, and must therefore be rendered ineffective as of the date not later than the last day of the second year from the issuance of this Interpretation.

Article 20 of the Rent Reduction Act provides that if the lessee desires to renew the lease upon expiration thereof, the lessor is bound to renew the lease unless he has a statutory reason to repossess the land. This is a provision designed to protect the right of the lessee to have the lease renewed when the lessor is legally disallowed from repossessing the farmland, rather than imposing on the lessor any additional burden other than the situations where the lessor is prohibited from repossessing the farmland, and is therefore consistent with the principle of proportionality under Article 23 of the Constitution and the provision set forth in Article 15 of the Constitution for the protection of the property rights of the people.

減租條例第二十條規定租約屆滿時，除法定收回耕地事由外，承租人如有續約意願，出租人即有續約義務，為出租人依法不得收回耕地時，保障承租人續約權利之規定，並未於不得收回耕地之諸種事由之外，另行增加耕地出租人不必要之負擔，與憲法第二十三條規定之比例原則及第十五條保障財產權之規定尚無不符。

REASONING: It must be pointed out at the outset that, in this peti-

解釋理由書：本件聲請案相關確定裁判（最高行政法院九十年度判字

tion for interpretation, the laws applied in irrevocable adjudications of courts (the Supreme Administrative Court decision No. 90-Pan-Tze-1189, the Supreme Court decision No. 91-Tai-Shang-Tze-908, the Supreme Court ruling No. 90-Tai-Shang-Tze-2236, Taiwan High Court, Taichung Branch, decision No. 89-Shang-Tze-180, and the Supreme Administrative Court decision No. 91-Pan-Tze-875), including the Rent Reduction Act, Article 5, first sentence; Article 6, Paragraph 1; Article 16, Paragraph 1; Article 17, Paragraph 1, Subparagraph 1 and Paragraph 2, Subparagraph 3; Article 19, Paragraph 1; and Article 20 are documents that may be submitted for our interpretation under the Constitutional Interpretations Procedure Act, Article 5, Paragraph 1, Subparagraph 2, and that Article 19, Paragraph 3, of the Rent Reduction Act, whereby the provision of Article 17, Paragraph 2, Subparagraph 3, of the same Act relating to compensation payable to the lessee of farmland is made applicable to the situation where the lessor of a farmland repossesses his farmland for the purpose of expanding the operation of his family farm, being of

第一一八九號判決、最高法院九十一年度台上字第九〇八號判決、最高法院九十年度台上字第二二三六號裁定、台灣高等法院台中分院八十九年度上字第一八〇號判決、最高行政法院九十一年度判字第八七五號判決）所適用之法律，包括減租條例第五條前段、第六條第一項、第十六條第一項、第十七條第一項第一款與第二項第三款、第十九條第一項及第二十條等，依司法院大法官審理案件法第五條第一項第二款規定，得為解釋之客體；減租條例第十九條第三項於耕地出租人為擴大家庭農場經營規模而收回耕地時，應準用同條例第十七條第二項第三款補償耕地承租人之規定，與第十九條第一項第二款之適用有重要關聯，應一併納入解釋範圍，合先敘明。

important relevance to the application of Article 19, Paragraph 1, Subparagraph 2, thereof, is also considered by us in delivering this interpretation.

In light of the freedom of development of the individual personality, every person has the right to decide freely how to use, receive benefits from and dispose of the resources necessary for their livelihood, and may thus freely exchange such resources with other persons. Article 15 of the Constitution guarantees the people the protection of their property rights, thereby entitling owners of property with the capacity to exercise their freedom to use, dispose of and receive benefits from their property to the extent of the condition in which the property exists, so that the resources of livelihood on which the people rely for their daily living as well as free development of their personality may be safely protected. Article 22 of the Constitution guarantees the people the freedom of contract, which enables contractual parties to choose freely the manner to make contracts and the provisions thereof, thereby ensuring the freedom to exchange

基於個人之人格發展自由，個人得自由決定其生活資源之使用、收益及處分，因而得自由與他人為生活資源之交換。憲法第十五條保障人民之財產權，使財產所有人得依財產之存續狀態行使其自由使用、收益及處分之權能，以確保人民所賴以維繫個人生存及自由發展其人格之生活資源；憲法第二十二條保障人民之契約自由，使契約當事人得自由決定其締約方式及締約內容，以確保與他人交換生活資源之自由。惟因個人生活技能強弱有別，可能導致整體社會生活資源分配過度不均，為求資源之合理分配，國家自得於不違反憲法第二十三條比例原則之範圍內，以法律限制人民締約之自由，進而限制人民之財產權。

with others the resources of livelihood. However, the skills required for living being varied in degree of competency from person to person, with the possibility of resulting in excessively disproportionate distribution of the overall resources of social life, the State may certainly impose restrictions on the freedom of contract and furthermore the property right of the people by enacting laws within the scope defined by the principle of proportionality under Article 23 of the Constitution for the purpose of reasonable distribution of resources.

Article 143, Paragraph 4, of the Constitution requiring that in the distribution and readjustment of land the State shall in principle assist land-holding farmers and those who make use of the land by themselves and shall also regulate the adequate acreage for their operation, and Article 153, Paragraph 1, providing that in order to improve the livelihood of farmers and to enhance their production skills the State shall enact laws and carry out policies for their protection are intended to effect reasonable distribution of agricultural re-

憲法第一百四十三條第四項規定，國家對於土地之分配與整理，應以扶植自耕農及自行使用土地人為原則，並規定其適當經營之面積；憲法第一百五十三條第一項規定，國家為改良農民生活，增進其生活技能，應制定保護農民之法律，實施保護農民之政策，均係為合理分配農業資源而設之規定。依據主管機關相關文獻之記載，推行耕地減租政策，係鑒於當時台灣經濟倚重農業生產，農業人口佔就業人口半數以上，大多數之農業生產者為雇農、佃農及半自耕農，農地資源集中於少數地主手

sources. According to relevant materials kept in the archives of competent government agencies, the policy to reduce the farmland rent was launched in view of the then existing situation that, while the economy in Taiwan was relying on agricultural production and over one half of the total employed population were farmers, a great majority of the agricultural producers were employed farmers, tenant farmers and semi land-holding farmers, whereas the farmland resources were controlled by a small number of landlords who would either terminate the tenancy or raise the rent as they wished, although the rent for some acres was already rather high and the term of the lease was generally unfixed, thereby giving rise to frequent disputes in connection with leases. (See The Annual Report on Statistics of Land Administration in the Taiwan Provinces, Volume 15, P. 3, edited and published May 1997 by The Land Administration Department, Taiwan Provincial Government; and Facts Book of the Land Reform Program in the Early Years after the Recovery of Taiwan, P. 282 et seq., edited and published June 1992 by the

中，而部分佃租偏高，租期並不固定，地主任意撤佃升租者有之，以致租權糾紛經常出現（參照台灣省政府地政處編印，台灣省地政統計年報第十五期，八十六年五月出版，頁三；內政部編印，台灣光復初期土地改革實錄專輯，八十一年六月出版，頁二八二以下）。政府乃於三十六年三月二十日以從字第一〇〇五〇號訓令規定佃農應繳之耕地地租，依正產物千分之三百七十五計算，惟因當時之土地法未有明文規定，各級政府推行法令不力，上開訓令形同具文；三十八年四月十四日公布實施「臺灣省私有耕地租用辦法」，並陸續訂定「臺灣省私有耕地租用辦法施行細則」、「臺灣省辦理私有耕地租約登記注意事項」、「臺灣省推行三七五減租督導委員會組織規程」及「臺灣省各縣市推行三七五減租督導委員會組織規程」等法規，進行全省租約總檢查、糾正違約收租及違法撤佃事件、辦理換約及補訂租約，以貫徹三七五減租政策。因仍有地主以減租後收益降低，強迫撤佃，司法機關沿用土地法及相關法令無法解決訟爭，為確保推行三七五減租已獲得之初步成果，即於四十年六月七日制定公布耕地三七五減租條例，作為法律依據（參照立法院公報第二期及第三

Ministry of Interior). Consequently, on March 20, 1947, the government issued the decree No. Chung-Tze-10050 to set a limit on the farmland rent to be paid by all tenant farmers at the rate of 37.5 percent of the yield of the principal product. This executive order, however, was not fully enforced by governments at all levels due to the lack of specific provisions in the Land Act, with the result that the decree turned out to be virtually meaningless. On April 14, 1949, the Regulation on the Lease of Private Farmland in the Taiwan Provinces were promulgated, followed by the issue of the Enforcement Rules of the Regulation on the Lease of Private Farmland in the Taiwan Provinces, Instructions on the Recordation of Private Farmland Lease Contracts in the Taiwan Provinces, the Organic Regulation of the Commission for the Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Taiwan Provinces, and the Organic Regulation of the Commissions for Supervision over the Implementation of the 37.5 Percent Farmland Rent Reduction Program in the Counties and Cities of the Taiwan Prov-

期合訂本，四十年九月三十日出版，頁四十以下）。減租條例為保障佃農權益，藉由限制地租、嚴格限制耕地出租人終止耕地租約及收回耕地之條件，重新建構耕地承租人與出租人之農業產業關係，俾合理分配農業資源並奠定國家經濟發展之方向，立法目的尚屬正當。雖未設置保護出租人既有契約利益之過渡條款，惟因減租條例本在實現憲法規定國家對於土地之分配與整理暨保護佃農之意旨，且於條例制定之前，減租政策業已積極推行數年，出租人得先行於過渡時期熟悉減租制度，減租條例對出租人契約自由及財產權之限制，要非出租人所不能預期，衡諸特殊之歷史背景及合理分配農業資源之非常重大公共利益，尚非憲法上之信賴保護原則所不許。

inces to carry through the 37.5% rent reduction policy by way of overall review of all lease agreements, demanding corrective actions with respect to collection of rent in violation of agreements and illegal cancellation of leases, and assistance in the signing of new contracts in place of and supplementary to existing contracts. Despite such efforts, some landlords had forcibly terminated leases by using the excuse of decreased earnings after reduction of rent. Because the resulting litigations were found difficult to resolve by courts of justice invoking provisions of the Land Act and other relevant laws and regulations, the Act Governing the Reduction of Farm Rent to 37.5 Percent was enacted and promulgated on June 7, 1951, to provide a legal basis for resolving such disputes, so as to uphold the initial success achieved in the implementation of the 37.5% rent reduction program. (See Legislative Yuan Gazette, Vols. 2 & 3 combined edition, p. 40 et seq., published September 30, 1951). To protect the interest of tenant farmers, the Rent Reduction Act, which has rebuilt the agricultural industrial relationship between lessors and les-

sees of farmland by way of setting a limit on the rent and stringent restrictive conditions on which lessors of farmland may terminate the lease and demand return of the land, for the purpose of reasonable distribution of agricultural resources and laying a foundation for the development of the national economy, is appropriate in terms of its legislative purposes. While no interim clauses are incorporated into the Act to protect the vested contractual interest of lessor, the restrictions imposed thereby on the lessor's freedom of contract and property right are not beyond the expectation of lessors as the government policy to reduce farm rent had been in progress for several years before the Rent Reduction Act was enacted, allowing lessors the opportunity to familiarize themselves with the rent reduction mechanism, and the very purpose of the Act is to put into practice the constitutional provisions requiring the State to assist land-holding farmers in the distribution and readjustment of land. Hence the Act, considering the special historical background and the distinct significance to the public interest attainable through reasonable distribution

of agricultural resources, is not in conflict with the constitutional principle of reliance protection.

The Rent Reduction Act, Article 5, the first sentence, which provides for a minimum period of lease to prevent the lessor from arbitrarily repossessing his land, is designed to encourage the lessee to engage in activities for improvements of the land and agricultural production techniques for the purpose of increasing the productivity of farmland and developing the lessee's ability to operate and acquire land. Article 6, Paragraph 1, requiring that all lease agreements must be made in writing and recorded upon application to be submitted jointly by both the lessor and the lessee is intended to prevent disputes often arising out of oral agreements. The provision of Article 16, Paragraph 1, prohibiting sub-lease of farmland, aims to further maintain a stabilized relationship of lease, where the lessee will keep his promise to engage in farming, so that the farmland will not become a tool with which intermediate exploitation may be undertaken. The statutory reasons for

減租條例第五條前段規定最低之租賃期限，藉由防止耕地出租人任意收回土地，提高承租人改良土地與改進農業生產技術之意願，以增加農地之生產力，並培植承租人經營及取得土地之能力；同條例第六條第一項規定租約以書面定之，租佃雙方應會同申請登記，用以杜絕口頭約定所經常導致之租權糾紛；同條例第十六條第一項關於轉租禁止之規定，乃為進一步穩定租賃關係，使承租人履行耕作約定，避免耕地成為中間剝削之工具；同條例第十七條第一項第一款規定之法定終止租約事由，僅適用於租賃期限內，承租人死亡而無人繼承耕作之情形，如承租人之繼承人不能自任耕作，出租人自得收回耕地，已保留出租人收回自耕之彈性。上開規定皆有利於實現扶植自耕農及改善農民生活之基本國策，縱於出租人之契約自由及財產權有所限制，衡諸立法目的，其手段仍屬必要而且適當，亦兼顧承租人與出租人雙方之利益，與憲法第二十三條比例原則、第二十二條契約自由、第十五條財產權及第七條平等權之保障並

termination of lease specified by Article 17, Paragraph 1, Subparagraph 1, of the Act, applicable only to the circumstance where the lessee dies during the term of the lease, leaving no heir to continue farming the land, make it possible for the lessor to repossess the land if the lessee's heir is incapable of self-tilling, and thus allow the option for the lessors to repossess the land for farming by themselves. Such provisions are helpful in carrying out the nation's fundamental policies designed to assist land-holding farmers and to improve the livelihood of farmers. While the freedom of contract and the property right of lessors are subject to certain restraints, the approach is necessary and appropriate in light of the purpose of the legislation, and the interest of both lessors and lessees is likewise being ensured. The provisions are thus consistent with the Constitution insofar as the principle of proportionality under Article 23, the safeguard of the freedom of contract under Article 22, the property right under Article 15 and the right of equality under Article 7 are concerned.

無違背。

The Rent Reduction Act provides in Article 19, Paragraph 1, Subparagraph 1, that a lessor incapable of self-tilling is not entitled to demand return of his land, whereby a lessee capable of farming will not be caught in the situation of losing the land to work on. It reflects the essential means to put into practice the provision of Article 143, Paragraph 4, for assisting land-holding farmers. However, to deal with the situation of worldwide agricultural competition and encourage the development of agricultural technologies and new diversified industrial patterns, the meaning of the expression "self-tilling by the lessor" therein is not limited to the situation of personal farming by manual labor in light of the purpose of Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution for the industrialization and modernization of agriculture. Within the meaning is also included self-farming or contracting someone else to do the farming by way of agricultural technology and in the manner of a businesslike operation. Under the Rent Reduction Act, Article 19, Paragraph 1, Subparagraph 2, the lessor

減租條例第十九條第一項第一款規定租約期滿，出租人如無自任耕作之能力，不得收回耕地，使有耕作能力之承租人，不致無地可耕，乃實現憲法第一百四十三條第四項扶植自耕農之必要手段；惟另依憲法第一百四十六條及憲法增修條文第十條第一項發展農業工業化及現代化之意旨，為因應全球化之農業競爭環境、獎勵農業科技及多元化新產業型態之發展，所謂出租人之自任耕作，不以人力親自實施耕作為限，為農業科技化及企業化經營之自行耕作或委託代耕者亦屬之。減租條例第十九條第一項第二款規定出租人於所有收益足以維持一家生活者不得收回自耕，使租約變相無限期延長，可能降低承租人成為自耕農之意願，而偏離憲法第一百四十三條第四項規定扶植自耕農之本旨。惟立法機關嗣於七十二年十二月二十三日增訂第二項，規定為擴大家庭農場經營規模，得收回與其自耕地同一或鄰近地段內之耕地自耕，放寬對於出租人財產權之限制，使耕地之出租不致形同剝奪耕地出租人之土地所有權。減租條例第十九條第一項第三款規定，如出租人收回耕地，承租人將失其家庭生活依據者，亦不得收回耕地，乃為保障耕地承租人之基本生活，以實現憲法第一百五

has no right to repossess the land for his own cultivation if the total income of the lessor is sufficient to support his family. This provision has virtually made the lease renewal for an indefinite term of duration, thereby weakening the desire of the lessee to make himself a land-holding farmer and representing a departure from the purpose of Article 143, Paragraph 4, to support land-holding farmers. However, in consequence of the amendment made by the Legislature on December 23, 1983, by adding to the article the second paragraph allowing the lessor to repossess for his own cultivation the farmland situated in the same sector as or in a sector adjacent to his self-cultivated land for the purpose of expanding the business of his family farm, the restraint on the property right of lessors is thus eased and thereby the lease of farmland would not deprive the lessor of his ownership of the land. Subparagraph 3 of the same article, which prohibits the lessor from repossessing his land if the lessee will be deprived of the subsistence for his family, is an essential measure to protect the fundamental means of livelihood of farmland lessees for car-

十三條第一項規定改善農民生活之必要手段；且如出租人亦不能維持其一家生活，尚得依本條第四項規定，申請鄉（鎮、市、區）公所耕地租佃委員會調處之，以兼顧出租人與承租人之實際需要。衡諸憲法第一百四十三條第四項扶植自耕農、第一百四十六條與憲法增修條文第十條第一項發展農業工業化及現代化，以及憲法第一百五十三條第一項改善農民生活之意旨，上開三款限制耕地出租人收回耕地之規定，對於耕地所有權之限制，尚屬必要，與憲法第二十三條比例原則及第十五條保障人民財產權規定之意旨無違。至耕地出租人收回耕地後，是否得另行出租予他人，乃法律適用之問題。

rying out the policy to improve farmers' livelihood as declared in Article 153, Paragraph 1, of the Constitution; and if the lessor is likewise devoid of the means to support his family s/he may request that the farmland lease and tenancy committee mediate, so that the actual needs of both lessor and lessee can be ensured. In light of the policies to assist land-holding farmers under Article 143, Paragraph 4, of the Constitution, to promote the industrialization and modernization of agriculture under Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution, and to improve the livelihood of farmers under Article 153, Paragraph 1, of the Constitution, the provisions of the three subparagraphs cited above, placing constraint on ownership to farmland by setting forth restrictive conditions on which lessors of farmland may repossess the land, appear to be necessary and are found consistent with the principle of proportionality under Article 23 of the Constitution and the provision of Article 15 of the Constitution with respect to the protection of the property right of the people. As regards the ques-

tion of whether or not the lessor may lease the repossessed farmland to another person, it is a question of application of law.

Article 17, Paragraph 2, Subparagraph 3, of the Rent Reduction Act, as added thereto by amendment on December 23, 1983, whereby the lessor of a farmland that is classified as or changed into land for non-cultivation use before the expiration of the lease shall give the lessee a compensation equal to one-third of the remaining amount of the government-declared current land value after deducting therefrom the amount of land value increment tax payable therefor, is applicable only to such land that may continue to be utilized for its original purpose pending the time when such specified use begins under Article 83 of the Land Act. The period of continued use of the land under the Land Act represents an interim provision designed to protect the established legal status of the land user. Because the lease of the farmland has not yet expired, the land may of course be used continuously for its original purpose for a specific period of time. In such circum-

另七十二年十二月二十三日增訂之減租條例第十七條第二項第三款關於租約期限尚未屆滿而農地因土地編定或變更為非耕地時，耕地出租人應以土地公告現值扣除土地增值稅後餘額之三分之一補償承租人之規定，乃限於依土地法第八十三條所規定之編定使用地於其所定使用期限前得繼續為從來之使用者，方有其適用。土地法所規定之繼續使用期限，係為保護土地使用人既有之法律地位而設之過渡條款，耕地租約既未屆滿，耕地於一定期限內，復尚得為從來之使用，如耕地出租人欲於期前終止租約，依減租條例第十七條第二項第三款之規定，即應承擔補償耕地承租人之義務，乃為彌補耕地承租人喪失耕地租賃權之損失，以平衡雙方權利義務關係，而對出租人耕地所有權所為之合理限制，尚無悖於憲法第十五條保障財產權之本旨。惟不問情狀如何，補償額度一概為三分之一之規定，有關機關應衡酌憲法第二十二條保障契約自由之意旨及社會經濟條件之變遷等情事，儘速予以檢討修正。

stance, if the lessor of the farmland desires to terminate the lease before the expiration of its term, the Rent Reduction Act imposes upon him, by Article 17, Paragraph 2, Subparagraph 3, the obligation to give the lessee a compensation, in order to indemnify the lessee for the damage suffered as a result of loss of his right to the lease and to balance the jural relationship between them. The restraint so imposed on the ownership of the lessor to the farmland constitutes no contravention of the intention of Article 15 of the Constitution in protecting the property right. Nevertheless, the inflexible rule of compensation in one-third of the amount regardless of the actual circumstances must be reviewed and modified at the earliest possible date by the government agency concerned by taking into account factors such as the protection of the freedom of contract contemplated by Article 22 of the Constitution and changes in socio-economic conditions.

Under Article 19, Paragraph 3, of the Rent Reduction Act as added thereto by amendment on December 23, 1983, the

七十二年十二月二十三日增訂之減租條例第十九條第三項規定，耕地租約期滿時，出租人為擴大家庭農場經營

lessor who repossesses his farmland upon expiration of the lease for the purpose of expanding the operation of his family farm and enhancing the efficient utilization of the land shall, by mutatis mutandis application of Article 17, Paragraph 2, Subparagraph 3, of the Act, give the lessee a compensation equal to one-third of the remaining amount of the land value declared by the government for the period during which the lease is terminated, after deducting therefrom the amount of land value increment tax payable therefor. But, the relationship of lease being automatically extinguished upon expiration of the lease, the imposition on the lessor of a further obligation to compensate the lessee constitutes an unnecessary burden on the farmland owner, which is similar by nature to a barrier set up to prevent the lessor from taking back his farmland, and is thus contrary to the legislative purpose of encouraging the expanded operation of family farms to promote the modernization of agriculture. A fortiori, to repossess the farmland after expiration of the lease, albeit for expansion of his family farm, the lessor must satisfy the requirement

規模、提升土地利用效率而收回耕地時，準用同條例第十七條第二項第三款之規定，應以終止租約當期土地公告現值扣除土地增值稅餘額後之三分之一補償承租人。然契約期滿後，當事人之租賃關係當然消滅，猶另行課予出租人補償承租人之義務，乃增加耕地所有權人不必要之負擔，形同設置出租人收回耕地之障礙，與鼓勵出租人收回自耕、擴大家庭農場經營規模，以促進農業現代化之立法目的顯有牴觸。況耕地租約期滿後，出租人縱為擴大家庭農場經營規模，仍須具備自耕能力，且於承租人不致失其家庭生活依據時，方得收回耕地。準此，承租人之家庭生活既非無依，竟復令出租人負擔承租人之生活照顧義務，難謂有正當理由。是上開規定準用同條例第十七條第二項第三款部分，以補償承租人作為收回耕地之附加條件，不當限制耕地出租人之財產權，與憲法第一百四十六條、憲法增修條文第十條第一項發展農業之意旨不符，並違背憲法第二十三條比例原則之規定及第十五條對人民財產權之保障，應自本解釋公布日起，至遲於屆滿二年時，失其效力。

that he is capable of self-tilling and that the lessee is not deprived thereby of the subsistence for his family. Inasmuch as the lessee's family is not devoid of means of livelihood, the requirement that the lessor must assume the further obligation to take care of the lessee's livelihood can hardly be deemed reasonable and justifiable. Consequently, the above provision, whereby Article 17, Paragraph 2, Subparagraph 3, of the Act is made applicable mutatis mutandis to require that compensation be given to the lessee as an additional condition on which the lessor may repossess his farmland, is imposing an undue restraint on the property right of the lessor of farmland and is inconsistent with the purpose for the development of agriculture as embodied in Article 146 of the Constitution and Article 10, Paragraph 1, of the Amendments to the Constitution. The provision is further in conflict with the principle of proportionality under Article 23 of the Constitution and the provision set forth in Article 15 of the Constitution for the protection of the property right of the people, and must therefore be rendered ineffective as of the date not later

than the last day of the second year from the issuance of this Interpretation.

Article 20 of the Rent Reduction Act provides that, if the lessee desires to renew the lease upon expiration thereof, the lessor is bound to renew the lease unless the lessor has a statutory reason to repossess the land. It limits the right of the lessee to have the lease renewed to the situation where the lessor is not legally permitted to repossess the farmland. In the situation where the lessor is not legally permitted to repossess the farmland, the provision to restrain the lessor's freedom of contract and to impose on him the obligation to renew the lease is intended to prevent the lease and tenancy contract from falling into an uncertain condition, rather than imposing on the lessor an additional burden other than the situations where the lessor is prohibited from demanding return of the farmland, and is therefore consistent with the principle of proportionality under Article 23 of the Constitution and the provision set forth in Article 15 of the Constitution for the protection of the property right of the people.

減租條例第二十條規定租約屆滿時，除法定收回耕地事由外，承租人如有續約意願，出租人即有續約義務，對於承租人續約權利之保障，限於出租人依法不得收回耕地之情形，出租人依法既不得收回耕地，限制出租人之締約自由，而賦予續約義務，乃為避免租佃契約陷於不確定之狀態，並未於不得收回耕地之諸種事由之外，另行增加耕地出租人不必要之負擔，與憲法第二十三條規定之比例原則及第十五條保障財產權之規定尚無不符。

Justice Tzu-Yi Lin filed concurring opinion in part and dissenting opinion in part.

Justice Yu-hsiu Hsu filed concurring opinion in part and dissenting opinion in part.

Justice Jen-Shou Yang filed dissenting opinion in part and concurring opinion in part.

本號解釋林大法官子儀提出部分協同及部分不同意見書；許大法官玉秀提出一部協同暨一部不同意見書；楊大法官仁壽提出部分不同暨協同意見書。

J. Y. Interpretational No.581（July 16, 2004）*

ISSUE: Does Clause 4 of the Precautionary Matters on the Submission of Application and Issuance of Self-tilling Certificates issued by the Ministry of the Interior, which makes certain classes of persons ineligible to apply for such certificates, jeopardize the right of those who are in reality capable of self-tilling and is it thus contrary to Articles 15 and 23 of the Constitution?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）; J. Y. Interpretations Nos. 347 and 580（司法院釋字第三四七號、第五八〇號解釋）; Articles 6 and 30 of the Land Act（土地法第六條、第三十條）; Article 19, Paragraph 1, Subparagraph 1 of the Act Governing the Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第十九條第一項第一款）; Clauses 4 and 6, Paragraph 1, Subparagraph 2 of the Precautionary Matters on the Submission of Application and Issuance of Self-Tilling Certificates（「自耕能力證明書之申請及核發注意事項」第四點、第六點第一項第二款）.

KEYWORDS:

certificate of self-tilling ability（自耕能力證明書）, resident students（在學之學生）, reclaim leasehold farmland（收回出租農地）, transferee of farmland（農地承受人）, mechanization of agriculture（農業機械化）, motorization of transportation means（交通工具機動化）.**

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* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: The Precautionary Matters on the Submission of Application and Issuance of Self-Tilling Certificates (hereinafter the "Precautionary Matters") were issued by the Ministry of Interior on January 26, 1976, to bring into operation Article 30 of the Land Act (deleted on January 26, 2000). Clause 4 of the Precautionary Matters amended on June 22, 1990, which makes private and public corporate bodies, natural persons under 16 or over 70 years of age, persons in occupations other than farming, and resident students (except for students of evening schools) ineligible to apply for the certificate of self-tilling ability, thereby jeopardizing the right of those who are in reality capable of self-tilling to reclaim their farmland and imposing on lessors a restriction on their property right that is not prescribed by law, is inconsistent with the principle of reservation of law as contemplated by Article 23 of the Constitution and the purpose of Article 15 thereof in protecting the property right of the people. Accordingly, the abovementioned clause of the Precautionary Matters must be rendered inoperative, and the relevant part of

解釋文：「自耕能力證明書之申請及核發注意事項」（以下稱注意事項）係中華民國六十五年一月二十六日內政部為執行土地法第三十條之規定（八十九年一月二十六日刪除）所訂定。七十九年六月二十二日修正之注意事項第四點規定，公私法人、未滿十六歲或年逾七十歲之自然人、專任農耕以外之職業者及在學之學生（夜間部學生不在此限），皆不得申請自耕能力證明書，致影響實質上具有自任耕作能力者收回耕地之權利，對出租人財產權增加法律所無之限制，與憲法第二十三條法律保留原則以及第十五條保障人民財產權之意旨不符，上開注意事項之規定，應不予適用。本院釋字第三四七號解釋相關部分應予變更。

the text in our Interpretation No. 347 must be modified.

REASONING: It must be pointed out at the outset that the regulation at issue here as applied by the court in its final judgment is Clause 4 of the Precautionary Matters on the Submission of Application and Issuance of Self-Tilling Certificates issued by the Ministry of Interior and amended on June 22, 1990, and that, while said Precautionary Matters were made inoperative on January 28, 2000, and finally repealed on February 18, 2000, we find it appropriate to take up this case under the Constitutional Interpretations Procedure Act, Article 5, Paragraph 1, Subparagraph 2, as it gives practical advantage in the protection of the fundamental rights of the Petitioner.

解釋理由書：內政部七十九年六月二十二日修正之自耕能力證明書之申請及核發注意事項第四點，乃系爭終局判決所適用之法令，雖該注意事項已於八十九年一月二十八日停止適用，並於八十九年二月十八日廢止，因有保護聲請人基本權利之實益，依司法院大法官審理案件法第五條第一項第二款之規定，應予受理，合先敘明。

That the transfer of private farmland may be made only to a transferee with the ability to farm the land by himself/herself and that a lessor who desires to reclaim leasehold farmland for the purpose of farming by himself must possess the self-tilling ability are clearly prescribed by the

私有農地所有權之移轉，其承受人以能自耕者為限，又收回出租農地自耕，出租人須有自任耕作之能力，分別為土地法第三十條（八十九年一月二十六日刪除）、耕地三七五減租條例第十九條第一項第一款所明定。內政部基於主管機關之權限，為執行上述法律及農

Land Act, Article 30 (deleted on January 26, 2000) and the Act Governing the Reduction of Farm Rent to 37.5 Percent, Article 19, Paragraph 1, Subparagraph 1. To bring into operation such statutes and the Agricultural Development Act as well, the Ministry of Interior, based on the power granted to it as the relevant authority, issued on January 26, 1976, the Precautionary Matters on the Submission of Application and Issuance of Self-Tilling Certificates (rendered inoperative on January 28, 2000, and then repealed on February 18, 2000). Clause 4 of the Precautionary Matters amended on June 22, 1990, which makes private and public corporate bodies, natural persons under 16 or over 70 years of age, persons in occupations other than farming, and resident students (except for students of evening schools) ineligible to apply for the certificate of self-tilling ability, thereby increasing difficulties for a transferee of farmland and a lessor of farmland who desires to reclaim the land to prove their self-tilling ability and jeopardizing the right of those who are in reality capable of self-tilling to accept the transfer of farm land or to reclaim their

業發展條例等規定，於六十五年一月二十六日訂定自耕能力證明書之申請及核發注意事項（八十九年一月二十八日停止適用、八十九年二月十八日廢止）。七十九年六月二十二日修正之注意事項第四點規定，公私法人、未滿十六歲或年逾七十歲之自然人、專任農耕以外之職業者及在學之學生（夜間部學生不在此限），皆不得申請自耕能力證明書，增加農地承受人及欲收回出租農地之出租人證明其具有自任耕作能力之困難，致影響實質上具有自任耕作能力者承受農地或收回耕地之權利，對人民財產權增加法律所無之限制，尚非僅對人民產生不便或輕微影響之執行法律之細節性、技術性次要事項，與憲法第二十三條法律保留原則以及第十五條保障人民財產權之意旨不符，上開注意事項之規定，應不予適用。

farmland and imposing on lessors a restriction on their property right that is not prescribed by law, causes more than mere inconvenience and minor consequence to the people as secondary regulations concerning detail and technical matters in connection with the enforcement of act would do and is thus inconsistent with the principle of reservation of law as contemplated by Article 23 of the Constitution and the purpose of Article 15 thereof in protecting the property right of the people. Accordingly, the abovementioned clause of the Precautionary Matters be rendered inoperative.

Furthermore, Clause 3, Subparagraph 4, of said Precautionary Matters as amended on November 25, 1986, provided: "An applicant whose domicile is not in the same or adjacent hsiang (township, city or district) as the location of the farmland transferred to him/her shall not be deemed to be able to till by himself/herself and shall not be issued a certificate therefor, unless the distance of the traffic route is not more than fifteen kilometers." This provision was subsequently

七十五年十一月二十五日修正發布之上開注意事項第三點第四款規定：申請人之住所與其承受農地非在同一或毗鄰鄉（鎮、市、區）者，視為不能自耕，不准核發證明書，但交通路線距離在十五公里以內者，不在此限。此項規定嗣於七十九年六月二十二日修正為第六點第一項第二款，其內容為：承受農地與申請人之住所應在同一縣市或不同縣市毗鄰鄉（鎮、市、區）範圍內者，始得核發證明書，未考慮現代農業機械化及交通工具機動化之因素，致影響實

amended on June 22, 1990, and renumbered Clause 6, Paragraph 1, Subparagraph 2, which reads: "A certificate may be issued only if the applicant's domicile and the farmland transferred to him/her are located in the same county or city or adjacent hsiang (township, city or district) within the boundaries of different counties or cities." As said provision fails to take into consideration factors such as the mechanization of agriculture and motorization of transportation means, it constitutes jeopardy to the right of those who are in reality capable of self-tilling to accept transfer of farmland or reclaim their farmland and is inconsistent with the purpose of Article 15 and Article 23 of the Constitution. Thus, the relevant part of the text in our Interpretation No. 347 must be modified. Apropos, the provision of the Act Governing the Reduction of Farm Rent to 37.5 Percent, Article 19, Paragraph 1, Subparagraph 1, is not contrary to the provision of Article 15 of the Constitution for the protection of property rights as we have so held in our Interpretation No. 580.

質上具有自任耕作能力者承受農地或收回耕地之權利，與憲法第二十三條及第十五條意旨不符，本院釋字第三四七號解釋相關部分應予變更。至減租條例第十九條第一項第一款規定，與憲法第十五條保障財產權之規定並無違背，業經本院釋字第五八〇號解釋在案，併此指明。

J. Y. Interpretation No.582（July 23, 2004）*

ISSUE: Are the relevant precedents holding that a statement made by a criminal co-defendant against another co-defendant may be admissible unconstitutional?

RELEVANT LAWS:

Articles 8-I and 16 of the Constitution（憲法第八條第一項、第十六條）; J. Y. Interpretation Nos. 154, 271, 374, 384, 396, 399, 442, 482, 512 and 569（司法院釋字第一五四號、第二七一號、第三七四號、第三八四號、第三九六號、第三九九號、第四四二號、第四八二號、第五一二號、第五六九號解釋）; Article 5-I (ii), -III of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）; Articles 97, 154, 155, 156, 158-3, 159, 181,186,270,273 and 299 of the Code of Criminal Procedure（刑事訴訟法第九十七條、第一百五十四條、第一百五十五條、第一百五十六條、第一百五十八條之三、第一百五十九條、第一百八十一條、第一百八十六條、第二百七十條、第二百七十三條、第二百九十九條）; Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases（法務部審核死刑案件執行實施要點）; Supreme Court Precedent T.F.T. No. 10 (Sup. Ct., 1985), Precedent T.S.T. No. 5638 (Sup. Ct., 1984), Precedent T.S.T. No.

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

1578 (Sup. Ct., 1958), Precedent T.S.T. No. 809 (Sup. Ct., 1957), Precedent T.S.T. No. 419 (Sup. Ct., 1957), Precedent T.S.T. No. 170 (Sup. Ct., 1957), Precedent S.T.F.T. No. 29 (Sup. Ct., 1949), Precedent S.T. No. 824 (Sup. Ct., 1945), Precedent S.T. No. 2423 (Sup. Ct., 1942), Precedent S.T. No. 3038 (Sup. Ct., 1941), Precedent S.T. No. 1648 (Sup. Ct., 1940); Precedent S.T. No. 1875 (Sup. Ct., 1931), Precedent S.T. No. 1087 (Sup. Ct., 1929)（最高法院七十四年台覆字第一〇號、七十三年台上字第五六三八號、四十七年台上字第一五七八號、四十六年台上字第八〇九號、四十六年台上字第四一九號、四十六年台上字第一七〇號、三十八年穗特覆第二九號、三十四年上字第八二四號、三十一年上字第二四二三號、三十年上字第三〇三八號、二十九年上字第一六四八號、二十年上字第一八七五號、十八年上字第一〇八七號判例）.

KEYWORDS:

right to sue（訴訟權）, right to defend（防禦權）, examination（詰問）, due process of law（正當法律程序）, witness（證人）, admissibility of evidence（證據能力）, probative value（證明力）, enter into recognizance（具結）, statutory investigative procedure（法定調查程序）, confession（自白）, corroborative evidence（補強證據）, death penalty（死刑）, right to remain silent（緘默權）, principle of judgment per evidence（證據裁判原則）, doctrine of strict proof（嚴格證明法則）, fair trial（公平審判）, statutory evidentiary methods（法定證據方法）, principle of reservation of law（法律保留原則）, voluntary confession（任意性自白）, involuntary confession（非任意性自白）.**

HOLDING: Article 16 of the Constitution guarantees the people's right to sue. As far as a criminal defendant is concerned, such guarantee should also include his right to adequately defend himself in a legal action brought against him. A criminal defendant's right to examine a witness is a corollary of such right, which is also protected by the due process of law concept embodied under Article 8-I of the Constitution, providing, among other things, that "no person shall be tried and punished otherwise than by a court of law in accordance with the procedure prescribed by law." In order to ensure the defendant's right to examine any witness during a trial, a witness should appear in court and enter into recognizance in accordance with the statutory procedures. And, it is not until the witness is confronted and examined by the defendant that the witness' statement may be used as a basis upon which decisions as to the defendant's crime can be made. A criminal co-defendant exists only for reasons like economy of lawsuits, which results either from the merger or addition of complaints filed by a public or private

解釋文：憲法第十六條保障人民之訴訟權，就刑事被告而言，包含其在訴訟上應享有充分之防禦權。刑事被告詰問證人之權利，即屬該等權利之一，且屬憲法第八條第一項規定「非由法院依法定程序不得審問處罰」之正當法律程序所保障之權利。為確保被告對證人之詰問權，證人於審判中，應依法定程序，到場具結陳述，並接受被告之詰問，其陳述始得作為認定被告犯罪事實之判斷依據。刑事審判上之共同被告，係為訴訟經濟等原因，由檢察官或自訴人合併或追加起訴，或由法院合併審判所形成，其間各別被告及犯罪事實仍獨立存在。故共同被告對其他共同被告之案件而言，為被告以外之第三人，本質上屬於證人，自不能因案件合併關係而影響其他共同被告原享有之上開憲法上權利。最高法院三十一年上字第二四二三號及四十六年台上字第四一九號判例所稱共同被告不利於己之陳述得採為其他共同被告犯罪（事實認定）之證據一節，對其他共同被告案件之審判而言，未使該共同被告立於證人之地位而為陳述，逕以其依共同被告身分所為陳述採為不利於其他共同被告之證據，乃否定共同被告於其他共同被告案件之證人適格，排除人證之法定調查程序，與

prosecutor, or from the merger of trials initiated by a court of law. The respective defendants and the facts related to their respective crimes, however, still exist independently of each other. Therefore, a co-defendant is, in essence, a third-party witness in the case concerning another co-defendant. Thus, the merger of cases should not affect the aforesaid constitutional rights of such other co-defendant. It is held by the Supreme Court in Precedent S.T. No. 2423 (Sup. Ct., 1942) and Precedent T.S.T. No. 419 (Sup. Ct., 1957) that a statement made by a co-defendant against himself may be admitted into evidence supporting the crime (determination of facts) related to another co-defendant. Such holding has failed to treat a co-defendant as a witness in making a statement during the trial against another co-defendant, but instead has admitted the co-defendant's statement into evidence against such other co-defendant merely because of his status as a co-defendant. In doing so, the holding has denied a co-defendant the standing as a witness in the trial for another co-defendant, and thus excluded the statutory investigative pro-

當時有效施行中之中華民國二十四年一月一日修正公布之刑事訴訟法第二百七十三條規定牴觸，並已不當剝奪其他共同被告對該實具證人適格之共同被告詰問之權利，核與首開憲法意旨不符。該二判例及其他相同意旨判例，與上開解釋意旨不符部分，應不再援用。

cedure as to witnesses. Hence, it is in breach of Article 273 of the Code of Criminal Procedure as amended and promulgated on January 1, 1935, and has unjustly deprived such other co-defendant of the right to examine the co-defendant who should have had the standing as a witness. We, therefore, are of the opinion that such holding is inconsistent with the constitutional intent first described above. Those portions of the opinions as given in the aforesaid two precedents, as well as in other precedents with the same holding, which are not in line with the intent described above, should no longer be cited and applied.

Under the constitutional principle of due process of law, the principles of judgment per evidence and voluntary confession have been adopted as to the determination of criminal facts in a criminal trial. Accordingly, the Code of Criminal Procedure has adopted the doctrine of strict proof, under which no defendant shall be pronounced guilty until a court of law has legally investigated admissible evidence and achieved firm belief that

刑事審判基於憲法正當法律程序原則，對於犯罪事實之認定，採證據裁判及自白任意性等原則。刑事訴訟法據以規定嚴格證明法則，必須具證據能力之證據，經合法調查，使法院形成該等證據已足證明被告犯罪之確信心證，始能判決被告有罪；為避免過分偏重自白，有害於真實發見及人權保障，並規定被告之自白，不得作為有罪判決之唯一證據，仍應調查其他必要之證據，以察其是否與事實相符。基於上開嚴格證

such evidence is sufficient to prove the defendant's guilt. And, in order not to give undue emphasis to confession, thus negatively impacting the discovery of truth and protection of human rights, the said Code also provides that the confession of an accused person shall not be used as the sole basis of conviction, and that other necessary evidence shall still be investigated to see if the confession is consistent with the facts. In light of the foregoing doctrine of strict proof and restrictions on the probative value of confessions, such "other necessary evidence" must also be admissible evidence that should be legally investigated. Besides, as far as the probative value is concerned, the weight of confessions is not necessarily stronger than that of such other necessary evidence, which should not be considered only secondary or supplemental to confessions and hence flimsier. Instead, the confessions and other necessary evidence should be mutually probative of each other, leading to a firm belief after a thorough judgment that the confessed crime is confirmed by such other necessary evidence. Precedent S.T. No. 3038

明法則及對自白證明力之限制規定，所謂「其他必要之證據」，自亦須具備證據能力，經合法調查，且就其證明力之程度，非謂自白為主要證據，其證明力當然較為強大，其他必要之證據為次要或補充性之證據，證明力當然較為薄弱，而應依其他必要證據之質量，與自白相互印證，綜合判斷，足以確信自白犯罪事實之真實性，始足當之。最高法院三十年上字第三〇三八號、七十三年台上字第五六三八號及七十四年台覆字第一〇號三判例，旨在闡釋「其他必要之證據」之意涵、性質、證明範圍及程度，暨其與自白之相互關係，且強調該等證據須能擔保自白之真實性，俾自白之犯罪事實臻於確信無疑，核其及其他判例相同意旨部分，與前揭憲法意旨，尚無牴觸。

(Sup. Ct., 1941), Precedent T.S.T. No. 5638 (Sup. Ct., 1984) and Precedent T.F.T. No. 10 (Sup. Ct., 1985) were intended to elaborate on the meaning, nature, scope and the degree of proof for such "other necessary evidence," as well as its relationship with confessions. Furthermore, these precedents also stressed that such evidence should corroborate the truth of confessions so that the confessed crime is beyond any doubt. We, therefore, are of the opinion that these precedents, as well as other precedents with the same gist, do not run afoul of the constitutional intent first described above.

REASONING: This Yuan has repeatedly issued interpretations to the effect that a final and conclusive judgment should be deemed as an order and thus subjected to judicial review if any precedent is cited and invoked in reaching the judgment. (See J.Y. Interpretations Nos. 154, 271, 374, 569, etc.) The petition at issue concerns a final and conclusive criminal judgment, namely, Judgment T.S.T. No. 2196 (Sup. Ct., 2000). Though the judgment did not formally specify the

解釋理由書：按確定終局裁判援用判例以為裁判之依據，而該判例經人民指摘為違憲者，應視同命令予以審查，迭經本院解釋在案（釋字第一五四號、第二七一號、第三七四號、第五六九號等解釋參照）。本聲請案之確定終局判決最高法院八十九年度台上字第二一九六號刑事判決，於形式上雖未明載聲請人聲請解釋之前揭該法院五判例之字號，但已於其理由內敘明其所維持之第二審判決（臺灣高等法院八十八年度上更五字第一四五號）認定聲請人之犯

reference numbers of the aforesaid five interpretations, it did describe in the reasoning that the criminal facts regarding the Petitioner as determined by the judgment rendered by the court of the second instance (Judgment S.G.W.T. No. 145 (H.Ct., 1999)) and sustained by it were drawn from all the confessions given by the co-defendants of the Petitioner at the time of interrogations conducted by the police and prosecution, as well as parts of the confessions given at the appellate trial; that such confessions were consistent with the circumstances surrounding the kidnapping and ransom and stolen car as alleged by the parents of the victim to the offense of kidnapping for ransom and the victim to the offense of theft; that other witnesses also testified unambiguously as to the course of the crime committed by the Petitioner and the co-defendants; that the judgment was also based on additional material evidence and documentary evidence attached to the case file; and that the court of the second instance, in addition to hearing the foregoing confessions of the co-defendants, had also done everything in its power to investigate any other

罪事實，係依據聲請人之共同被告分別於警檢偵查中之自白及於警訊之自白、於第二審之部分自白，核與擄人罪被害人之父母及竊盜罪被害人指證受勒贖及失竊汽車等情節相符，並經其他證人證述聲請人及共同被告共涉本件犯罪經過情形甚明，且有物證及書證扣案及附卷足資佐證，為其所憑之證據及認定之理由，該第二審法院，除上開共同被告之自白外，對於其他與聲請人被訴犯罪事實有關而應調查之證據，已盡其調查之能事等語；核與本件聲請書所引系爭五判例要旨之形式及內容，俱相符合，顯見上開判決實質上已經援用系爭判例，以為判決之依據。該等判例既經聲請人認有違憲疑義，自得為解釋之客體。依司法院大法官審理案件法第五條第一項第二款規定，應予受理（本院釋字第三九九號解釋參照）。

essential evidence related to the offenses allegedly committed by the Petitioner. The foregoing, in our opinion, is in line with the five precedents cited in the petition at issue both in form and in substance, which apparently signifies that the aforesaid judgment has cited and invoked the precedents at issue as the basis for its decision. Since the Petitioner has considered such precedents as unconstitutional, they are unquestionably subject to review by this Council. Therefore, under Article 5-I (ii) of the Act of Constitutional Interpretation Procedure Act, this petition should be accepted. (See J.Y. Interpretation No. 399).

Article 16 of the Constitution provides for the people's right to sue. As far as a criminal defendant is concerned, he should enjoy the right to adequately defend himself under a confrontational system, according to adversarial rules, so as to ensure a fair trial. (See J.Y. Interpretations Nos. 396 and 482). The right of an accused to examine a witness is a corollary of such right. As early as July 28, 1928, Article 286 of the then effective

憲法第十六條規定人民有訴訟之權，就刑事審判上之被告而言，應使其在對審制度下，依當事人對等原則，享有充分之防禦權，俾受公平審判之保障（本院釋字第三九六號、第四八二號解釋參照）。刑事被告對證人有詰問之權，即屬該等權利之一。早於十七年七月二十八日公布之刑事訴訟法第二百八十六條、二十四年一月一日修正公布同法第二百七十三條即已規定「證人、鑑定人由審判長訊問後，當事人及辯護人

Code of Criminal Procedure, as well as the subsequent amendment to Article 273 of the same Code promulgated on January 1, 1935, already provided, "Upon the conclusion of questioning of a witness or an expert witness by the presiding judge, the party concerned or his defense attorney may file a motion with the court to have the presiding judge examine such witness or expert witness or to examine the same directly. (Paragraph I) If a witness or an expert witness is called to testify by means of motion, he shall first be examined by the party calling him or the party's defense attorney, then cross-examined by the counter-party or the counter-party's defense attorney, and then re-examined by the party calling him or the party's defense attorney; provided that the re-direct examination shall be limited in scope to the matters revealed during the cross examination. (Paragraph II)" Subsequently, Article 166 of the Code of Criminal Procedure as amended and promulgated on January 28, 1967, preserved the same provision. And, more detailed provisions were added to the said Code when it was amended on February

得聲請審判長或直接詰問之。（第一項）如證人、鑑定人係聲請傳喚者，先由該當事人或辯護人詰問，次由他造之當事人或辯護人詰問，再次由聲請傳喚之當事人或辯護人覆問。但覆問以關於因他造詰問所發見之事項為限。（第二項）」嗣後五十六年一月二十八日修正公布之刑事訴訟法第一百六十六條，仍為相同之規定，九十二年二月六日修正及增定同法第一百六十六條至第一百六十七條之七，進而為更周詳之規定。刑事被告享有此項權利，不論於英美法系或大陸法系國家，其刑事審判制度，不論係採當事人進行模式或職權進行模式，皆有規定（如美國憲法增補條款第六條、日本憲法第三十七條第二項、日本刑事訴訟法第三百零四條、德國刑事訴訟法第二百三十九條）。西元一九五〇年十一月四日簽署、一九五三年九月三日生效之歐洲人權及基本自由保障公約（European Convention for the Protection of Human Rights and Fundamental Freedoms）第六條第三項第四款及聯合國於一九六六年十二月十六日通過、一九七六年三月二十三日生效之公民及政治權利國際公約（International Covenant on Civil and Political Rights）第十四條第三項第五款，亦均規定：凡受刑

6, 2003, namely, Article166 through Article 167-7 thereof. Such right of a criminal defendant is universally provided—whether in a civil law country or a common law jurisdiction, and whether an adversarial system or an inquisitorial setting is adopted in administering a state's criminal justice. (See, e.g., 6th Amendment to the United States Constitution, Article 37-II of the Japanese Constitution, Article 304 of the Code of Criminal Procedure of Japan, and Article 239 of the Code of Criminal Procedure of Germany) Article 6-III(iv) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, effective on November 4, 1950, and Article 14-III(v) of the International Covenant on Civil and Political Rights, passed by the United Nations on December 16, 1966 and put into force on March 23, 1976, both provide, "everyone charged with a crime shall be entitled to the following minimum guarantees:…to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him…"

事控訴者，均享有詰問對其不利之證人的最低限度保障。足見刑事被告享有詰問證人之權利，乃具普世價值之基本人權。在我國憲法上，不但為第十六條之訴訟基本權所保障，且屬第八條第一項規定「非由法院依法定程序不得審問處罰」、對人民身體自由所保障之正當法律程序之一種權利（本院釋字第三八四號解釋參照）。

Apparently, it is the universal and fundamental right of an accused to examine a witness. Under the Constitution of this nation, such right is not only covered by the fundamental right to sue as safeguarded by Article 16 of the Constitution, but is a right concerning the people's body and freedom, which is also protected by the due process of law concept embodied under Article 8-I of the Constitution, providing, among other things, that "no person shall be tried and punished otherwise than by a court of law in accordance with the procedure prescribed by law." (See J.Y. Interpretation No. 384).

Under the principle of due process of law, the facts related to a criminal should be determined pursuant to evidence during a criminal trial. (See J.Y. Interpretation No. 384, Article 282 of the Code of Criminal Procedure promulgated on July 28, 1928, Article 268 of the said Code amended and promulgated on January 1, 1935, the 1st half of Article 154 of the said Code amended and promulgated on January 28, 1967 and the 1st half of Paragraph II of the identical Article of the said

在正當法律程序下之刑事審判，犯罪事實應依證據認定之，即採證據裁判原則（本院釋字第三八四號解釋、十七年七月二十八日公布之刑事訴訟法第二百八十二條、二十四年一月一日修正公布之同法第二百六十八條、五十六年一月二十八日修正公布之同法第一百五十四條前段及九十二年二月六日修正公布同法條第二項前段參照）。證據裁判原則以嚴格證明法則為核心，亦即認定犯罪事實所憑之證據，須具證據能力，且經合法調查，否則不得作為判斷之依

Code amended and promulgated on February 6, 2003). The doctrine of strict proof is the core of the principle of judgment per evidence. In other words, any evidence that is inadmissible or has not been lawfully investigated shall not form the basis of a decision as to criminal facts. (See Article 155-II of the Code of Criminal Procedure, amended and promulgated on January 28, 1967 and amended again on February 6, 2003). Admissibility refers to the capacity of any evidence that may be admitted in a court of law for purposes of investigation and determination of criminal facts. Such capacity will not be achieved unless the evidence and the facts to be proved are naturally related to each other; in conformity with statutory formalities; and not subject to legal prohibitions or exclusions. For instance, a witness should enter into recognizance or his testimony will not be admitted into evidence. (See Precedent F.T. No. 10 (ex-Grand Review Yuan, 1915); Precedent S.T. No. 824 (Sup. Ct., 1945); and Article 158-3 of the existing Code of Criminal Procedure). In addition, the confession of an accused shall not be induced by unjust

據（五十六年一月二十八日及九十二年二月六日修正公布之刑事訴訟法第一百五十五條第二項參照）。所謂證據能力，係指證據得提出於法庭調查，以供作認定犯罪事實之用，所應具備之資格；此項資格必須證據與待證事實具有自然關聯性，符合法定程式，且未受法律之禁止或排除，始能具備。如證人須依法具結，其證言始具證據能力（前大理院四年非字第十號判決例、最高法院三十四年上字第八二四號判例、現行本法第一百五十八條之三參照）；被告之自白，須非出於不正之方法，始具證據資格（十七年七月二十八日公布之刑事訴訟法第二百八十條第一項、二十四年一月一日修正公布同法第二百七十條第一項、五十六年一月二十八日修正公布後同法第一百五十六條第一項參照）。所謂合法調查，係指事實審法院依刑事訴訟相關法律所規定之審理原則（如直接審理、言詞辯論、公開審判等原則）及法律所定各種證據之調查方式，踐行調查之程序；如對於證人之調查，應依法使其到場，告以具結之義務及偽證之處罰，命其具結，接受當事人詰問或審判長訊問，據實陳述，並由當事人及辯護人等就詰、訊問之結果，互為辯論，使法院形成心證〔五十六年一月二十八

means or it will not be admissible in court. (See Article 280-I of the Code of Criminal Procedure promulgated on July 28, 1928; Article 270-I of the said Code amended and promulgated on January 1, 1935; and Article 156-I of the said Code amended and promulgated on January 28, 1967). A lawful investigation should denote the procedure implemented by a trial court in accordance with the principles prescribed by the Code of Criminal Procedure and other applicable laws (such as direct hearing, oral argument, open trial, etc.), as well as various means of investigation prescribed by law. Moreover, if a witness is under investigation, his presence should be made available pursuant to law, and his entering into recognizance and making truthful statements should be ordered after informing him of his obligation to enter into such recognizance and of the punishment for perjury. The witness should then be examined by the parties concerned or be questioned by the presiding judge. Upon conclusion of arguments between the parties, defense attorneys and other relevant people regarding the examination and/or questioning, the court

日修正公布前之刑事訴訟法第一編第十三章（人證）、第二編第一章第三節（第一審審判）及該次修正公布後同法第一編第十二章第一節（證據通則）、第二節（人證）及第二編第一章第三節（第一審審判）等規定參照〕。

would come up with its own belief as to the evidence. [Refer to the provisions contained in Part I, Chapter 13 (Witnesses) and Part II, Chapter 1, Section 3 (Trial of the First Instance) of the Code of Criminal Procedure prior to its amendment and promulgation on January 28, 1967; and Part I, Chapter 12, Section 1 (Evidence--General), Section 2 (Witnesses) and Part II, Chapter 1, Section 3 (Trial of the First Instance) of the said Code subsequent to said amendment and promulgation].

In light of the above, a defendant's right to examine a witness is not only a right to defend himself in a legal action brought against him, but also a right guaranteed under the constitutional due process of law. Such institutional safeguard for a constitutional right is conducive to the fulfillment of a fair trial (See J.Y. Interpretations Nos. 442, 482 and 512) and the discovery of truth, so as to achieve the purposes of criminal procedure. In order to ensure the defendant's right to examine any witness during a trial, a witness (or any other person eligible to testify) should appear in court and enter into recogni-

依上述說明，被告詰問證人之權利既係訴訟上之防禦權，又屬憲法正當法律程序所保障之權利。此等憲法上權利之制度性保障，有助於公平審判（本院釋字第四四二號、第四八二號、第五一二號解釋參照）及發見真實之實現，以達成刑事訴訟之目的。為確保被告對證人之詰問權，證人（含其他具證人適格之人）於審判中，應依人證之法定程序，到場具結陳述，並接受被告之詰問，其陳述始得作為認定被告犯罪事實之判斷依據。至於被告以外之人（含證人、共同被告等）於審判外之陳述，依法律特別規定得作為證據者（刑事訴訟法第一百五十九條第一項參照），除客

zance in accordance with the statutory procedure as to witnesses. And, it is not until the witness is confronted and examined by the defendant that the witness' statement may be used as a basis upon which decisions as to the defendant's crime can be made. As for the statements of anyone other than an accused (including a witness or co-defendant) made outside the court, if admissible under any special provision of law (See Article 159-I of the Code of Criminal Procedure), the examining procedure should still be carried out during the trial unless examination is not feasible under the circumstances. In order both to discover the truth and protect human rights, proper criminal procedure requires that, unless otherwise provided by law, anyone be under an obligation to testify in a trial against another. A criminal co-defendant exists only for reasons like economy of lawsuits, which results either from the merger or addition of complaints filed by a public or private prosecutor, or from the merger of trials initiated by a court of law. The respective defendants and the facts related to their respective crimes, however, still exist in-

觀上不能受詰問者外，於審判中，仍應依法踐行詰問程序。刑事訴訟為發見真實，並保障人權，除法律另有規定者外，不問何人，於他人之案件，有為證人之義務。刑事審判上之共同被告，係為訴訟經濟等原因，由檢察官或自訴人合併或追加起訴，或由法院合併審判所形成，其間各別被告及犯罪事實仍獨立存在，故共同被告對其他共同被告之案件而言，為被告以外之第三人，本質上屬於證人，其於該案件審判中或審判外之陳述，是否得作為其他共同被告之不利證據，自應適用上開法則，不能因案件合併之關係而影響其他共同被告原享有之上開憲法上權利。至於十七年七月二十八日公布之刑事訴訟法第一百零六條第三款、二十四年一月一日及三十四年十二月十六日修正公布之同法第一百七十三條第一項第三款、五十六年一月二十八日修正公布之同法第一百八十六條第三款雖均規定：「證人與本案有共犯關係或嫌疑者，不得令其具結」，考其立法目的，無非在於避免與被告本人有共犯關係或嫌疑之證人，為被告本人案件作證時，因具結陳述而自陷於罪或涉入偽證罪；惟以未經具結之他人陳述逕採為被告之不利證據，不僅有害於真實發現，更有害於被告詰問證人之權利

dependently of each other. Therefore, a co-defendant is, in essence, a third-party witness in the case concerning another co-defendant. Whether a co-defendant's in-court or out-of-court statement may be admitted into evidence against another co-defendant should be determined by applying the aforesaid principle. And, the merger of cases should not affect the aforesaid constitutional rights of such other co-defendant. Article 106 (iii) of the Code of Criminal Procedure promulgated on July 28, 1928, Article 173-I (iii) of the said Code as amended and promulgated on January 1, 1935 and December 16, 1945, and Article 186 (iii) of the said Code amended and promulgated on January 28, 1967, provided, "A witness shall not be ordered to enter into recognizance if he is a co-defendant or suspect in the case at issue." The legislative intent thereof is nothing other than to prevent a witness who is a co-defendant or suspect in a case from incriminating himself or involving himself with the offense of perjury while testifying at the trial for the accused after entering into recognizance. This provision, however, was deleted on

的有效行使，故已於九十二年二月六日刪除；但於刪除前，法院為發現案件之真實，保障被告對證人之詰問權，仍應依人證之法定程序，對該共犯證人加以調查。又共同被告就其自己之案件，因仍具被告身分，而享有一般被告應有之憲法權利，如自由陳述權等。當被告與共同被告行使權利而有衝突時，應儘可能求其兩全，不得為保護一方之權利，而恣意犧牲或侵害他方之權利。被告於其本人案件之審判，固享有對具證人適格之共同被告詰問之權利，然此權利並不影響共同被告自由陳述權之行使，如該共同被告恐因陳述致自己受刑事追訴或處罰者，自有權拒絕陳述。刑事訴訟法賦予證人（含具證人適格之共同被告）恐因陳述受追訴或處罰之拒絕證言權（十七年七月二十八日公布之刑事訴訟法第一百條、二十四年一月一日修正公布同法第一百六十八條、五十六年一月二十八日修正公布同法第一百八十一條參照），乃有效兼顧被告與證人（含具證人適格之共同被告）權利之制度設計。再刑事訴訟法雖規定被告有數人時，得命其對質，被告亦得請求對質（十七年七月二十八日公布之刑事訴訟法第六十一條、二十四年一月一日及五十六年一月二十八日修正公布同法第九

February 6, 2003, because the admission of a statement given by a person without entering into recognizance against an accused is not only detrimental to the discovery of truth, but also damaging to the effective exercise of the right of an accused to examine a witness. Nevertheless, prior to the deletion of the said provision, a court of law should still investigate such a co-defendant-witness in accordance with the statutory procedures as to witnesses for the purposes of discovering the truth and ensuring the right of an accused to examine the witness. In addition, a co-defendant is also an accused as far as his own case is concerned and, therefore, should enjoy the same constitutional rights afforded to an ordinary criminal defendant, e.g., the right to make voluntary statements. If and when an accused and a co-defendant have conflicting interests while exercising their respective rights, special efforts should be made to ensure that the rights of both sides are attended to without willfully protecting one party's right at the expense of the other. Although an accused is entitled to examine a co-defendant eligible to testify

十七條參照）；惟此種對質，僅係由數共同被告就同一或相關連事項之陳述有不同或矛盾時，使其等同時在場，分別輪流對疑點加以訊問或互相質問解答釋疑，既毋庸具結擔保所述確實，實效自不如詰問，無從取代詰問權之功能。如僅因共同被告已與其他共同被告互為對質，即將其陳述採為其他共同被告之不利證據，非但混淆詰問權與對質權之本質差異，更將有害於被告訴訟上之充分防禦權及法院發見真實之實現。

in his own case, such right does not affect the co-defendant's exercise of his right to make voluntary statements. Thus, if the co-defendant fears that his testimony may tend to result in criminal prosecution or punishment against himself, he is entitled to refuse to give any statement. The Code of Criminal Procedure has given a witness (including a co-defendant eligible to testify as a witness) the right to refuse to testify for fear of prosecution or punishment after giving any statement (See Article 100 of the Code of Criminal Procedure promulgated on July 28, 1928, Article 168 of the said Code amended and promulgated on January 1, 1935 and Article 181 of the said Code amended and promulgated on January 28, 1967), which is an effective institutional design to ensure the rights and interests of an accused and a witness (including a co-defendant eligible to testify as a witness). Furthermore, although the Code of Criminal Procedure has provided that, where there are multiple defendants, one defendant may be ordered to confront another ex officio or upon request made by the accused (See Article 61 of the Code of Criminal Proce-

dure promulgated on July 28, 1928, and Article 97 of the said Code amended and promulgated on January 1, 1935 and January 28, 1967), such confrontation, however, merely requires that several co-defendants, in the presence of each other, take turns raising questions as to suspicious points or questioning each other for answers when they have different or contradictory stories regarding the same or related facts. No recognizance should be entered into for such statements, thus making such confrontation less effective than examination and, therefore, making it impossible to replace the right to examine. If one co-defendant's statement is adopted and admitted into evidence against another co-defendant simply because the co-defendants concerned have confronted each other, it would not only confuse the nature of the right to examine and the right to confront, but also jeopardize both the right of an accused to adequately defend himself in a legal action brought against him and the fulfillment of the court's discovery of the truth.

It is held by the Supreme Court in 最高法院三十一年上字第二四二

Precedent S.T. No. 2423 (Sup. Ct., 1942) that a statement made by a co-defendant against himself may be admitted into evidence supporting criminal facts related to another co-defendant, but under Article 270-II of the Code of Criminal Procedure, other necessary evidence must also be investigated to determine whether such statement is in line with the facts; and that such statement alone may not be used as the sole basis of determining the guilt of another co-defendant. It is also held in Precedent T.S.T. No. 419 (Sup. Ct., 1957) that a statement made by a co-defendant against himself may be admitted into evidence supporting criminal facts related to another co-defendant; provided that such statement should not be used as the basis of determining the guilt of another co-defendant unless it is flawless and consistent with the facts discovered upon making investigation into other relevant evidence. The aforesaid precedents held that a statement made by a co-defendant against himself may be admitted into evidence supporting the crime (determination of facts) related to another co-defendant, but also held that, according to Article

三號判例稱「共同被告所為不利於己之供述，固得採為其他共同被告犯罪之證據，惟此項不利之供述，依刑事訴訟法第二百七十條第二項之規定，仍應調查其他必要之證據，以察其是否與事實相符，自難專憑此項供述，為其他共同被告犯罪事實之認定。」四十六年台上字第四一九號判例稱「共同被告不利於己之陳述，固得採為其他共同被告犯罪之證據，惟此項不利之陳述，須無瑕疵可指，而就其他方面調查，又與事實相符，始得採為其他共同被告犯罪事實之認定。」其既稱共同被告不利於己之陳述得採為其他共同被告犯罪（事實認定）之證據，惟依當時有效施行中之刑事訴訟法第二百七十條第二項（按即嗣後五十六年修正公布之同法第一百五十六條第二項）規定，仍應調查其他必要證據等語，顯係將共同被告不利於己之陳述，虛擬為被告本人（即上開判例所稱其他共同被告）之自白，逕以該共同被告之陳述作為其他共同被告之不利證據，對其他共同被告案件而言，既不分該項陳述係於審判中或審判外所為，且否定共同被告於其他共同被告案件之證人適格，排除共同被告立於證人地位而為陳述之法定程序之適用，與當時有效施行中之二十四年一月一日修正公布之

270-II of the then effective Code of Criminal Procedure (i.e., Article 156-II of the said Code as amended and promulgated in 1967), other necessary evidence should still be investigated. Such holding clearly has treated the statement made by a co-defendant against himself as the confession made by an accused (namely, the so-called "another co-defendant" referred to in the aforesaid precedents). It has admitted a co-defendant's statement into evidence against another co-defendant merely because of his status as a co-defendant. As far as the case for another co-defendant is concerned, such holding not only has failed to differentiate an in-court statement from an out-of-court statement, but has also denied a co-defendant the standing as a witness in the trial for another co-defendant, thus excluding the statutory investigative procedure pursuant to which a co-defendant may testify as a witness. Hence it is in breach of Article 273 of the Code of Criminal Procedure as amended and promulgated on January 1, 1935 and has unjustly deprived such other co-defendant of the right to examine the co-defendant

刑事訴訟法第二百七十三條規定牴觸，並已不當剝奪其他共同被告對該實具證人適格之共同被告詰問之權利，核與首開憲法意旨不符。該二判例及其他相同意旨之判例（如最高法院二十年上字第一八七五號、三十八年穗特覆字第二九號、四十七年台上字第一五七八號等），與上開解釋意旨不符部分，應不再援用。

who should have had the standing as a witness. We, therefore, are of the opinion that such holding is inconsistent with the constitutional intent first described above. Those portions of the opinions as given in the aforesaid two precedents, as well as in other precedents with the same holding (e.g., Precedent S.T. No. 1875 [Sup. Ct., 1931]; Precedent S.T.F.T. No. 29 [Sup. Ct., 1949]; Precedent T.S.T. No. 1578 [Sup. Ct., 1958], etc.), which are not in line with the intent described above, should no longer be cited and applied.

As was already elaborated earlier, under the constitutional principle of due process of law, the principles of judgment per evidence and voluntary confession were adopted as to the determination of criminal facts in a criminal trial. (See J.Y. Interpretation No. 384). Accordingly, the Code of Criminal Procedure has adopted the doctrine of strict proof, under which no defendant shall be pronounced guilty until a court of law has legally investigated admissible evidence and achieved firm belief that such evidence is sufficient to prove the defendant's guilt. (See Arti-

如前所述，刑事審判基於憲法正當法律程序原則，對於犯罪事實之認定，採證據裁判及自白任意性等原則（本院釋字第三八四號解釋參照）。刑事訴訟法爰規定嚴格證明法則，必須具證據能力之證據，經合法調查，使法院形成該等證據已足證明被告犯罪之確信心證，始能判決被告有罪（十七年七月二十八日公布之刑事訴訟法第二百八十二條、第三百十五條、二十四年一月一日修正公布同法第二百六十八條、第二百九十一條、五十六年一月二十八日修正公布同法第一百五十四條、第一百五十五條第二項、第二百九十九條第一

cles 282 and 315 of the Code of Criminal Procedure promulgated on July 28, 1928; Articles 268 and 291 of the said Code as amended and promulgated on January 1, 1935; Articles 154, 155-II and 299-I of the said Code as amended and promulgated on January 28, 1967; and Articles 154-II, 155-II and 299-I of the said Code now in force.) Although a voluntary confession made by an accused may also be admitted into evidence, the said Code, nevertheless, provides that the confession of an accused shall not be used as the sole basis of conviction, and that other necessary evidence shall still be investigated to see if the confession is consistent with the facts, so as not to give undue emphasis to confession, thus negatively impacting the discovery of truth and protection of human rights. (See Article 156-II of the Code of Criminal Procedure as amended and promulgated on January 28, 1967; both Article 280-II of the said Code as amended and promulgated on July 28, 1928 and Article 270-II of the said Code as amended and promulgated on January 1, 1935 provided, "In spite of confession made by an accused, other necessary evi-

項、現行同法第一百五十四條第二項、第一百五十五條第二項、第二百九十九條第一項參照）。被告之任意性自白，雖亦得為證據，但為避免過分偏重自白，有害於真實發見及人權保障，刑事訴訟法乃規定：被告之自白，不得作為有罪判決之唯一證據，仍應調查其他必要之證據，以察其是否與事實相符（五十六年一月二十八日修正公布之刑事訴訟法第一百五十六條第二項參照；十七年七月二十八日公布之刑事訴訟法第二百八十條第二項及二十四年一月一日修正公布同法第二百七十條第二項均規定：「被告雖經自白，仍應調查其他必要之證據，以察其是否與事實相符。」）基於上開嚴格證明法則及對自白證明力之限制規定，所謂「其他必要之證據」，自亦須具備證據能力，經合法調查；且就證明力之程度，非謂自白為主要證據，其證明力當然較為強大，其他必要之證據為次要或補充性之證據，證明力當然相對薄弱，而應依其他必要證據之質量，與自白相互印證，綜合判斷，足以確信自白犯罪事實之真實性者，始足當之。最高法院三十年上字第三〇三八號、七十三年台上字第五六三八號及七十四年台覆字第一〇號三判例，依序稱「所謂必要之證據，自係指

dence shall still be investigated to determine if the confession is consistent with the facts.") In light of the foregoing doctrine of strict proof and restrictions on the probative value of confessions, such "other necessary evidence" must also be admissible evidence that should be legally investigated. Besides, as far as the probative value is concerned, the weight of confessions is not necessarily stronger than that of such other necessary evidence, which should not be considered only secondary or supplemental to confessions and hence flimsier. Instead, the confessions and other necessary evidence should be mutually probative of each other, leading to a firm belief after thorough judgment that the confessed crime is confirmed by such other necessary evidence. Precedent S.T. No. 3038 (Sup. Ct., 1941), Precedent T.S.T. No. 5638 (Sup. Ct., 1984) and Precedent T.F.T. No. 10 (Sup. Ct., 1985) have held, respectively, that: "The term 'other necessary evidence' should, as a matter of course, refer to such evidence as is relevant to the criminal facts. If the confession of an accused should be abruptly overturned merely be-

與犯罪事實有關係者而言，如僅以無關重要之點，遽然推翻被告之自白，則其判決即難謂為適法。」「被告之自白固不得作為認定犯罪之唯一證據，而須以補強證據證明其確與事實相符，然茲所謂之補強證據，並非以證明犯罪構成要件之全部事實為必要，倘其得以佐證自白之犯罪非屬虛構，能予保障所自白事實之真實性，即已充分。又得據以佐證者，雖非直接可以推斷該被告之實施犯罪，但以此項證據與被告之自白為綜合判斷，若足以認定犯罪事實者，仍不得謂其非屬補強證據。」「刑事訴訟法第一百五十六條第二項規定，被告雖經自白，仍應調查其他必要之證據，以察其是否與事實相符。立法目的乃欲以補強證據擔保自白之真實性；亦即以補強證據之存在，藉之限制自白在證據上之價值。而所謂補強證據，則指除該自白本身外，其他足資以證明自白之犯罪事實確具有相當程度真實性之證據而言。雖其所補強者，非以事實之全部為必要，但亦須因補強證據與自白之相互利用，而足使犯罪事實獲得確信者，始足當之。」旨在闡釋「其他必要之證據」之意涵、性質、證明範圍及程度，暨其與自白之相互關係，且強調該等證據須能擔保自白之真實性，俾自白之犯罪事實

cause of some pointless issues, the judgment at issue could then hardly be considered to stand on legitimate ground." "Even though the mere confession of an accused may not be used as the sole basis of conviction, and corroborative evidence is required to confirm such confession's consistency with the facts, it is not necessary that the 'corroborative evidence' tend to prove each and every fact of the requisite elements of the crime. It would be sufficient if such corroborative evidence would support the non-fabrication of the confessed crime, and thus guarantee the truth of the confession. Additionally, the 'corroborative evidence' is admissible as long as it is sufficient to determine the facts related to the crime upon a thorough judgment and comparison with the confession even if it may not directly prove that the accused carried out the crime." "Article 156-II provides, 'In spite of confession made by an accused, other necessary evidence shall still be investigated to determine if the confession is consistent with the facts.' The legislative intent thereof is to endorse the truth of a confession with corroborative evidence. In other

臻於確信無疑，核其及其他判例（如最高法院十八年上字第一〇八七號、二十九年上字第一六四八號、四十六年台上字第一七〇號、第八〇九號等）相同意旨部分，與前揭憲法意旨，尚無牴觸。

words, the existence of corroborative evidence is used to limit the probative value of confessions. And, the term 'corroborative evidence' should refer to any evidence, other than confessions, that is sufficient to prove, to some extent, that the confessed crime has indeed been committed. Though it is not necessary that such corroborative evidence tends to support the facts in their entirety, the corroborative evidence and confession must be mutually probative of each other, resulting in a firm belief that the confessed crime is committed." The foregoing precedents were intended to elaborate on the meaning, nature, scope and degree of proof for such "other necessary evidence," as well as its relationship with confessions. Furthermore, these precedents also stressed that such evidence should corroborate the truth of confessions so that the confessed crime is beyond any doubt. We, therefore, are of the opinion that these precedents, as well as other precedents with the same gist (See, e.g., Precedent S.T. No. 1087 (Sup. Ct., 1929); Precedent S.T. No. 1648 (Sup. Ct., 1940); Precedent T.S.T. No. 170 (Sup. Ct., 1957) and Precedent T.S.T.

No. 809 (Sup. Ct., 1957)), do not run afoul of the constitutional intent first described above.

The Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases are not a law or regulation applied in reaching the final and conclusive judgment at issue. To the extent that the Petitioner's petition concerns the said Directions, we have found it inconsistent with Article 5-I (ii) of the Constitutional Interpretation Procedure Act. Therefore, under Article 5-III of the said Act, it shall be dismissed accordingly.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Feng-Zhi Peng filed dissenting opinion in part.

法務部審核死刑案件執行實施要點，並非本案確定終局判決所適用之法令，聲請人就該要點聲請解釋部分，核與司法院大法官審理案件法第五條第一項第二款規定不符，依同條第三項之規定，應不受理。

本號解釋許大法官玉秀提出協同意見書；彭大法官鳳至提出部分不同意見書。

J. Y. Interpretation No.583（September 17, 2004）*

ISSUE: The Public Functionaries Merit Evaluation Act fails to specify the statute of limitations in respect of the exercise of corrective measures of removal as to merits for a special case, whereas the Public Functionaries Discipline Act generally sets a ten-year statute of limitations for the exercise of disciplinary power. Are the foregoing provision and lack of provision, respectively, in line with the Constitution?

RELEVANT LAWS:

Articles 18 and 23 of the Constitution（憲法第十八條、第二十三條）; J. Y. Interpretation No. 491（司法院釋字第四九一號解釋）; Article 25, Subparagraph 3 of the Public Functionaries Discipline Act（公務員懲戒法第二十五條第三款）; Article 12, Paragraph 1, Subparagraph 2 of the Public Functionaries Merit Evaluation Act (as amended and promulgated on December 28, 1990)（公務人員考績法第十二條第一項第二款）（七十九年十二月二十八日修正公布）; Article 14, Paragraph 1, Subparagraph 2, Item 7 of the Enforcement Rules of the Public Functionaries Merit Evaluation Act (as prescribed and published on January 14, 1987)（公務人員考績法施行細則第十四條第一項第二款第七目（七十六年一月十四日訂定發布））.

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

KEYWORDS:

merit evaluation（考績）, removal（免職）, corrective measure（懲處處分）, disciplinary measure（懲戒處分）, power to correct（懲處權）, power to discipline（懲戒權）, statute of limitations for exercising the power to correct（懲處權行使期間）, statute of limitations for exercising the power to discipline（懲戒權行使期間）, application by analogy（類推適用）, principle of proportionality（比例原則）, principle of reservation of law（法律保留原則）.**

HOLDING: Article 18 of the Constitution provides for the people's right to hold public office, which is intended to guarantee that the people may serve in certain offices to perform public functions. Therefore, the State should establish relevant systems to regulate such affairs. The State shall punish a public functionary for his or her illegal or delinquent behavior. Nevertheless, in order to avoid the extended uncertainty as to whether a public functionary involved in illegality or delinquency will be subject to discipline, the power to discipline should no longer be exercised if not exercised within a due period of time so that

解釋文：憲法第十八條規定人民有服公職之權，旨在保障人民得依法擔任一定職務從事公務，國家自應建立相關制度予以規範。國家對公務員違法失職行為應予懲罰，惟為避免對涉有違失之公務員應否予以懲戒，長期處於不確定狀態，懲戒權於經過相當期間不行使者，即不應再予追究，以維護公務員權益及法秩序之安定。公務員懲戒法第二十五條第三款規定，懲戒案件自違法失職行為終了之日起，至移送公務員懲戒委員會之日止，已逾十年者，公務員懲戒委員會應為免議之議決，即本此意旨而制定。公務人員經其服務機關依中華民國七十九年十二月二十八日修正公布之公務人員考績法第十二條第一項第

the rights and interests of the public functionary concerned and the stability of legal order may be preserved. Based on the aforesaid intent, Article 25 (iii) of the Public Functionaries Discipline Act provides that the Commission on the Disciplinary Sanctions of Functionaries shall resolve to dismiss a discipline case if more than ten (10) years have passed from the day when the illegal or delinquent act came to an end to the day when the case was handed over to the Commission on the Disciplinary Sanctions of Functionaries. A corrective measure that is taken by the governmental agency in which a public functionary serves to remove him or her from office according to Article 12-I (ii) of the Public Functionaries Merit Evaluation Act, as amended and promulgated on December 28, 1990, is, in essence, a disciplinary measure. The said measure, which has imposed restrictions on a person's right to hold public office, is contrary to the aforesaid intent for failure to specify the statute of limitations for exercising the power to correct. In order to carry out the constitutional guarantee of the rights and interests of a public func-

二款規定所為免職之懲處處分，實質上屬於懲戒處分，為限制人民服公職之權利，未設懲處權行使期間，有違前開意旨。為貫徹憲法上對公務員權益之保障，有關公務員懲處權之行使期間，應類推適用公務員懲戒法相關規定。又查公務員懲戒法概以十年為懲戒權行使期間，未分別對公務員違法失職行為及其懲戒處分種類之不同，而設合理之規定，與比例原則未盡相符，有關機關應就公務員懲戒構成要件、懲戒權行使期間之限制通盤檢討修正。公務人員考績法有關懲處之規定亦應一併及之，附此指明。

tionary, the applicable provisions of the Public Functionaries Discipline Act shall apply by analogy to the statute of limitations for exercising the power to correct a public functionary. As an additional note, the Public Functionaries Discipline Act has prescribed a uniform ten (10)-year statute of limitations for the exercise of the power to discipline, failing to formulate reasonable provisions by differentiating the varieties of illegal or delinquent acts of a public functionary, as well as the types of disciplinary measures. Thus the said provision is not exactly in line with the principle of proportionality. The agencies concerned should conduct a comprehensive review and revision of the requirements for the discipline of a public functionary, as well as the statute of limitations for exercising the power to discipline. It should be noted that the same review and revision ought to also extend to the applicable provisions of the Public Functionaries Merit Evaluation Act in respect of corrective measures.

REASONING: Article 18 of the Constitution provides for the people's

解釋理由書：憲法第十八條規定人民有服公職之權，旨在保障人民得

right to hold public office, which is intended to guarantee that the people may serve in certain offices to perform public functions. Therefore, the State should establish relevant systems to regulate such affairs. The State shall punish a public functionary for his or her illegal or delinquent behavior. Nevertheless, in order to avoid the extended uncertainty as to whether a public functionary involved in illegality or delinquency will be subject to discipline, which may indeed have an adverse impact on the stability of legal order and make it difficult to achieve fair results, the power to discipline should no longer be exercised if not exercised within a due period of time so that the rights and interests of the public functionary concerned and the stability of legal order may be preserved. Where a public functionary who violated the provision of Article 14-I (ii) (7) of the Enforcement Rules of the Public Functionaries Merit Evaluation Act as prescribed and published on January 14, 1987, in respect of serious fomentation of dissension or breach of discipline may be removed from his or her office after two major demerits are recorded at a

依法擔任一定職務從事公務，國家自應建立相關制度予以規範。國家對公務員違法失職行為固應予懲罰，惟為避免對涉有違失之公務員應否予以懲戒，長期處於不確定狀態，實不利於維持法秩序之安定，亦不易獲致公平之結果，故懲戒權於經過相當期間不行使者，即不應再予追究，以維護公務員之權益及法秩序之安定。公務員違反七十六年一月十四日訂定發布之公務人員考績法施行細則第十四條第一項第二款第七目關於挑撥離間或破壞紀律，情節重大者，一次記二大過免職之規定，其服務機關依七十九年十二月二十八日修正公布之公務人員考績法第十二條第一項第二款規定所為免職之懲處處分，為限制人民服公職之權利，實質上屬於懲戒處分（本院釋字第四九一號解釋參照），同法未設懲處權行使期間之規定，是公務人員應受免職懲處之違法失職行為，自行為終了之日起經過一定繼續期間未受懲處，服務機關仍得據此行為追溯究問考評公務人員，而予免職處分，有違前開意旨，為貫徹憲法上對公務員權益之保障，有關公務員懲處權之行使期間，應類推適用公務員懲戒法相關規定。又查對公務員違法失職之行為，公務員懲戒法設有申誡、記過、減俸、降級、休職

time, a corrective measure taken by the governmental agency where such functionary served to remove him or her from office according to Article 12-I (ii) of the Public Functionaries Merit Evaluation Act, as amended and promulgated on December 28, 1990, is, in essence, a disciplinary measure. (See J.Y. Interpretation No. 491) The said Act has failed to specify the statute of limitations for the exercise of the power to correct a public functionary whose illegal or delinquent act that would subject him or her to removal may still be used retroactively by the agency in which he or she served as the basis for merit evaluation even if a certain period of time has passed from the day when the illegal or delinquent act came to an end. The said measure is contrary to the aforesaid intent for failure to specify the statute of limitations for exercising the power to correct. In order to carry out the constitutional guarantee of the rights and interests of a public functionary, the applicable provisions of the Public Functionaries Discipline Act shall apply by analogy to the statute of limitations for exercising the power to correct a public

與撤職輕重不同之懲戒處分，其概以十年為懲戒權行使期間，未分別違法之失職行為性質及其懲戒之種類而設合理之規定，與比例原則未盡相符，有關機關應就公務員懲戒構成要件、懲戒權行使期間之限制通盤檢討修正。公務人員考績法有關懲處之規定亦應一併及之。再有如前述，公務人員考績法規定所為免職之懲處處分，實質上屬於懲戒處分，是以本件之解釋乃先就公務員懲戒法立論，於後始及於公務人員考績法，均附此指明。

functionary. As an additional note, the Public Functionaries Discipline Act has prescribed a uniform ten (10)-year statute of limitations for the exercise of the power to discipline a public functionary who has committed an illegal or delinquent act, irrespective of the various degrees of disciplinary measures, i.e., admonition, recording of demerits, salary cut, demotion, suspension and removal. The said provision is not exactly in line with the principle of proportionality because of failure to formulate reasonable provisions by differentiating the varieties of illegal or delinquent acts of a public functionary, as well as the types of disciplinary measures. The agencies concerned should conduct a comprehensive review and revision of the requirements for the discipline of a public functionary, as well as the statute of limitations for the exercise of the power to discipline. It should be noted that the same review and revision ought also to extend to the applicable provisions of the Public Functionaries Merit Evaluation Act in respect of corrective measures. Additionally, as described above, the corrective measure taken to

remove a public functionary under the Public Functionaries Merit Evaluation Act is, in essence, a disciplinary measure. Therefore, it ought to be noted that this Interpretation has first presented its argumentation on the issues concerning the Public Functionaries Discipline Act before treating the issues regarding the Public Functionaries Merit Evaluation Act.

Justice Tzong-Li Hsu filed dissenting opinion in part.

Justice Yih-Nan Liaw filed dissenting opinion.

本號解釋許大法官宗力提出部分不同意見書；廖大法官義男提出不同意見書。

J. Y. Interpretation No.584（September 17, 2004）*

ISSUE: Is Article 37-I of the Act Governing the Punishment for Violation of Road Traffic Regulations, Article 37, Paragraph 1, constitutional in disqualifying persons who were convicted of any of the offenses as specified for the occupation of taxicab drivers?

RELEVANT LAWS:

Articles 7, 15 and 23 of the Constitution（憲法第七條、第十五條、第二十三條）; J. Y. Interpretations Nos. 404, 485 and 510（司法院釋字第四〇四號、第四八五號、第五一〇號解釋）; Article 37, Paragraph 1 of the Act Governing the Punishment for Violation of Road Traffic Regulations（道路交通管理處罰條例第三十七條第一項）.

KEYWORDS:

right to work（工作權）, freedom to choose an occupation（選擇職業之自由）, freedom of occupation（職業自由）, occupational trustworthiness（職業信賴）, subjective eligibility（主觀條件）, manslaughter（故意殺人）, snatching（搶奪）, forcible seizing of another person's belongings（搶劫）, robbery（強盜）, intimidation for the purpose of gaining property（恐嚇取財）, kidnapping for ransom（擄人勒贖）, interference with sexual freedom（妨害性自主）, small

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

passenger car（營業小客車）, equality in substance before the law（法律上地位之實質平等）, equality in form（形式上平等）, recidivism（累犯）, repeated perpetration（再犯）, convicted by confirmed and irrevocable judgment（確定判決有罪）, placed under surveillance（列管）, parolees（假釋出獄人）, quantitative method in criminology（刑事計量學）, immediate relevance（直接關聯性）.**

HOLDING: The people's right to work is protected by Article 15 of the Constitution. It includes within its meaning the people's freedom to choose their occupation. As the people's occupation is closely related with the public welfare, the qualifications or other requirements for engagement in specific occupations may be defined by law or by ordinances issued by specific authorization of law to the extent prescribed by Article 23 of the Constitution. Under the Act Governing the Punishment for Violation of Road Traffic Regulations as amended on April 21, 1999, Article 37, Paragraph 1, "a person who committed an offense of manslaughter, snatching, forcible seizing of another person's belongings, robbery, in timida-

解釋文：人民之工作權為憲法第十五條規定所保障，其內涵包括人民選擇職業之自由。人民之職業與公共福祉有密切關係，故對於從事一定職業應具備之資格或其他要件，於符合憲法第二十三條規定之限度內，得以法律或法律明確授權之命令加以限制。中華民國八十八年四月二十一日修正公布之道路交通管理處罰條例第三十七條第一項規定：「曾犯故意殺人、搶劫、搶奪、強盜、恐嚇取財、擄人勒贖或刑法第二百二十一條至第二百二十九條妨害性自主之罪，經判決罪刑確定者，不准辦理營業小客車駕駛人執業登記。」乃基於營業小客車營運及其駕駛人工作之特性，就駕駛人個人應具備之主觀條件，對人民職業選擇自由所為之限制，旨在保障乘客之安全，確保社會之治安，及增進

tion for the purpose of gaining property, kidnapping for ransom or an offence of interference with sexual freedom specified under Articles 221 through 229, inclusive, of the Criminal Code, and was convicted by a confirmed and irrevocable judgment, shall be ineligible for registration as a professional driver of small passenger cars." This provision, which defines the subjective eligibility required of drivers personally in light of the characteristics of the work and operation of drivers of small passenger cars, with the result that their freedom to chose their occupation is restrained, is intended to protect the safety of passengers, ensure the security of the society and promote the occupational trustworthiness of small passenger car drivers, and is thus consistent with the constitutional intent set out in the first sentences hereof, with no conflict with Article 23 of the Constitution. Moreover, the measures for control over the operation of small passenger cars differ from one country to another depending on the national conditions and the situation of public security in the particular country. In view of the high tendency of a person

營業小客車之職業信賴，與首開憲法意旨相符，於憲法第二十三條之規定，尚無牴觸。又營業小客車營運之管理，因各國國情與治安狀況而有不同。相關機關審酌曾犯上述之罪者，其累再犯比率偏高，及其對乘客安全可能之威脅，衡量乘客生命、身體安全等重要公益之維護，與人民選擇職業應具備主觀條件之限制，而就其選擇職業之自由為合理之不同規定，與憲法第七條之平等原則，亦屬無違。惟以限制營業小客車駕駛人選擇職業之自由，作為保障乘客安全、預防犯罪之方法，乃基於現階段營業小客車管理制度所採取之不得已措施，但究屬人民職業選擇自由之限制，自應隨營業小客車管理，犯罪預防制度之發展或其他制度之健全，就其他較小限制替代措施之建立，隨時檢討改進；且若已有方法證明曾犯此等犯罪之人對乘客安全不具特別危險時，即應適時解除其駕駛營業小客車執業之限制，俾於維護公共福祉之範圍內，更能貫徹憲法人民工作權之保障及平等原則之意旨，併此指明。

who was convicted of any of the above offences to perpetrate again, with potential threat to the safety of passengers, the safeguard of major public interest such as the safety of lives and well-being of passengers and the restraints that must be imposed on the subjective eligibility of the people in choosing their occupations, the relevant authority has not contravened the principle of equality contemplated by Article 7 of the Constitution by providing for reasonable and different requirements for the choice of occupations. However, the imposition of restraints on the freedom to choose an occupation of drivers of small passenger cars for the purpose of protecting the safety of passengers and preventing crimes reflects in effect a measure that is taken without better alternative under the current small passenger car administration system and does constitute after all a restraint on the freedom to choose an occupation. Thus, such restraints ought to be reviewed and modified from time to time in light of the development of the small passenger car administration system and the crime prevention mechanism as well as the improve-

ments of other systems so that alternative measures with fewer restraints may be adopted to replace the current system. In the case of availability of a method by which it can be established that persons convicted of such offenses will pose no special threat to the safety of passengers, they should be promptly released in due time from the ban on their eligibility to engage in the occupation of driving small passenger cars, so that the constitutional intent with respect to the protection of the people's right to work and the principle of equality may be more thoroughly exercised to the extent of safeguarding the public well-being.

REASONING: The people's right to work is protected by Article 15 of the Constitution. It includes within its meaning the people's freedom to choose their occupation. As the people's occupation is closely related with the public welfare, the qualifications or other requirements for engagement in specific occupations may be defined by law or by ordinances issued by specific authorization of law to the extent prescribed by Article 23

解釋理由書：人民之工作權為憲法第十五條規定所保障，其內涵包括人民選擇職業之自由。人民之職業與公共福祉有密切關係，故對於從事一定職業應具備之資格或其他要件，於符合憲法第二十三條規定之限度內，得以法律或法律明確授權之命令加以限制（本院釋字第四〇四號、第五一〇號解釋參照）。然對職業自由之限制，因其內容之差異，在憲法上有寬嚴不同之容許標準。關於從事職業之方法、時間、地

of the Constitution (See J.Y. Interpretations Nos. 404 and 510). The Constitution permits, however, different degrees of liberalness and strictness with respect to restraints to be imposed on the freedom of occupation, depending on the nature of the occupation in question, and the legislators are not prevented from imposing appropriate restraints as may be necessary for the public interest, on the exercise of the freedom of occupation in respect of the method, time or place where an occupation may be undertaken or the persons who may engage in an occupation or the activities that may be carried out. Where the legislature intends to regulate the subjective eligibility of the people in the choice of their occupation, such as knowledge and competency, age, physical conditions, and moral standards, there must exist concerns of more important public interest than the mere imposition of restraints on the exercise of the freedom of occupation, and such restraints may be imposed only if and when it is necessary to do so. Furthermore, in the exercise of its public powers in respect of the people, the State must treat all people equally as

點、對象或內容等執行職業之自由，立法者為公共利益之必要，即非不得予以適當之限制。至人民選擇職業應具備之主觀條件，例如知識能力、年齡、體能、道德標準等，立法者若欲加以規範，則須有較諸執行職業自由之限制，更為重要之公共利益存在，且屬必要時，方得為適當之限制。再者，國家對人民行使公權力時，均應依據憲法第七條之意旨平等對待，固不得有不合理之差別待遇；惟憲法第七條平等原則並非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，立法機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理之不同規定（本院釋字第四八五號解釋參照）。

required under Article 7 of the Constitution, with no unreasonable discrimination. But the principle of equality under Article 7 of the Constitution is not intended to be an absolute and mechanical equality in form. Rather, it is designed to guarantee the people equality in substance before the law, and the legislature, taking into consideration the differences in the nature of the matters to be regulated, may certainly make different statutes to a reasonable extent based on the value system contemplated by the Constitution and the legislative purposes of such statutes (See J.Y. Interpretation No. 485).

Small passenger cars are important public transportation means in urban areas. Because they differ from other motor vehicles in the way of business operation, the work of their drivers is characterized by being closely connected with the safety of passengers and the social security. Therefore, to ensure the safety of lives, well-being and property of passengers as well as the social security and to create a healthy environment for the safety of taxicab operation for the purpose of enhanc-

營業小客車為都會地區社會大眾之重要公共交通工具，因其營運與其他機動車輛有異，其駕駛人工作與乘客安危、社會治安具有密切關聯之特性。為維護乘客生命、身體及財產之安全，確保社會治安，建立計程車安全營運之優質環境，增進營業小客車之職業信賴，相關機關就營業小客車駕駛人主觀資格，設一定之限制，避免對於乘客具有特別侵害危險性者，利用駕駛小客車營業之機會從事犯罪行為，實屬防止妨礙他人之自由，維持社會秩序，增進公共

ing the occupational trustworthiness of small passenger car drivers, the imposition by the relevant authority of certain restraints on the subjective eligibility of drivers of small passenger cars is essential for the prevention of the commission of crimes by those with particularly dangerous inclination to cause harm to passengers by taking opportunities to do so while driving small passenger cars for business and is necessary for the prevention of interference with the personal liberty of others, the maintenance of the social order and the promotion of the public interest. Under the Act Governing the Punishment for Violation of Road Traffic Regulations as amended on April 21, 1999, Article 37, Paragraph 1, "a person who committed an offense of manslaughter, snatching, forcible seizing of another person's belongings, robbery, intimidation for the purpose of gaining property, kidnapping for ransom or an offence of interference with sexual freedom specified under Articles 221 through 229, inclusive, of the Criminal Code, and was convicted by a confirmed and irrevocable judgment, shall be ineligible for registration as a pro-

利益所必要。八十八年四月二十一日修正公布之道路交通管理處罰條例第三十七條第一項規定：「曾犯故意殺人、搶劫、搶奪、強盜、恐嚇取財、擄人勒贖或刑法第二百二十一條至第二百二十九條妨害性自主之罪，經判決罪刑確定者，不准辦理營業小客車駕駛人執業登記。」係鑒於營業小客車之營運及其駕駛人工作之特性，人身及財產安全保護之重要性，對於曾犯上述之罪者，規定終身不准其申請營業小客車之執業登記，就其選擇從事營業小客車為業之主觀條件加以限制，乃為實現上述目的而設，其立法目的自屬正當，亦屬達成目的之有效手段。此觀道路交通管理處罰條例第三十七條第一項規定於八十六年一月間，首度修正為永久禁止曾犯上述之罪者駕駛營業小客車前，據內政部警政署所作計程車駕駛人曾犯上述之罪者八十六年之列管人數統計，就同一罪名之累再犯率為百分之四點二四，若將犯其他罪名者一併計入，則其累再犯率高達百分之二十二點二二（依法務部八十六年各地方法院檢察署執行案件確定判決有罪被告之犯罪次數統計，其同一罪名之累再犯率為百分之二十二點三，將犯其他罪名者一併計入，則其累再犯率為百分之四十三）。於修法後，計程車

fessional driver of small passenger cars." This provision which, in light of the characteristics of the work and business operation of drivers of small passenger cars and the importance of the protection of personal and property safety, imposes restraints on the subjective eligibility to choose the occupation of small passenger car driver by forbidding a person who was convicted of any of the offenses mentioned above to apply for registration as such a driver for life is intended to realize the objectives described above with justified legislative purposes, and represents an effective measure for the achievement of such objectives. This can be proven by statistics from the National Police Agency, Ministry of the Interior, which show that, before the Act Governing the Punishment for Violation of Road Traffic Regulations, Article 37, Paragraph 1, was amended on April 21, 1999, to forbid for life the persons who were convicted of any of the abovementioned crimes to drive small passenger cars, the percentage of recidivism and repeated perpetration of the same offenses by taxicab drivers who were convicted of any of the abovemen-

駕駛人犯上述之罪者人數已呈現下降之趨勢，足資參照。又為實現上揭目的，究須採取何種措施方屬侵害人民職業自由之最小手段，乃應由相關機關依目前之社會狀況，衡酌乘客人身安全確保之重要性、目的達成之有效性、刑事累再犯之可能性及有無累再犯之虞之區分可能性（法務部就受刑人之假釋，雖已就假釋後累再犯之危險性有所評估，然九十二年當期撤銷假釋人數對當期假釋出獄人數比率在百分之二十七點二，八十六年者，則為百分之三十，仍然偏高；又依刑事計量學方法所作之再犯預測，其預測方法及可信度，亦有待商榷。見法務部於本院九十三年二月十日調查會之報告），及各種管制措施之社會成本，與是否會根本改變受刑人出獄後依從來技能謀生之途徑或阻礙其再社會化等情事綜合予以考量，為專業之判斷。永久禁止曾犯上述之罪者駕駛營業小客車對人民選擇職業之自由，固屬嚴格之限制，惟衡諸維護搭乘營業小客車之不特定多數人生命、身體、自由、財產等公益之重要性與急迫性，並參以本院上開調查會時，主管機關及業者表示對於如何有效維護營業小客車之安全性，例如以衛星定位營業小客車之行進路線、全面實施定點無線電叫車並加強其追蹤

tioned crimes and were placed under surveillance in 1997 was 4.24%, or as high as 22.22% if commission of other crimes was also taken into account. (According to statistics from the public prosecutors' offices of all district courts on the number of criminal offenses committed in 1997 by defendants convicted by confirmed and irrevocable judgments and executed, the percentage of recidivism and repeated perpetration of the same offenses was 22.3%, or as high as 43% if commission of other crimes was also taken into account.) After the law was amended, the number of taxicab drivers who committed the abovementioned crimes showed a tendency to decrease. Moreover, as regards the measures that should be taken for the objectives described above, but with the least interference with the people's freedom of occupation, the problem must be left to the professional judgment of the relevant authority to be made by taking into consideration the present social conditions, with weight to be given to overall factors such as the importance of safeguarding the personal safety of passengers, the effectiveness in achievement of

管理，或改裝車輛結構為前後隔離空間並加強從業人員之職前訓練等，得有效達成目的而侵害較小之具體措施，客觀上目前並無實現之可能以觀，相關機關選擇上述永久禁止之手段，以維護乘客人身、財產安全，於現階段尚屬合理及符合限制人民職業自由較小手段之要求。從而上揭法律規定，核與首開憲法意旨相符，於憲法第二十三條之規定尚無牴觸。再者，營業小客車營運之管理，因各國國情與治安狀況而有不同。相關機關審酌曾犯上述之罪者其累再犯比率偏高，相較於未犯罪者，或其他犯罪者，對營業小客車乘客人身安全之威脅性較重，衡量乘客生命、身體安全及確保社會治安等重要公益之維護，與人民選擇職業應具備主觀條件之限制，而就其職業選擇之自由為合理之不同規定，與憲法第七條之平等原則，亦屬無違。惟上述營業小客車駕駛人消極資格之終身限制規定，係基於現階段營業小客車管理制度所採取保障乘客安全之不得已措施，但究屬人民職業選擇自由之限制，自應隨社會治安之改進，犯罪預防制度之發展，駕駛人素質之提昇，營業小客車管理或其他營運制度之健全，就各該犯罪類型與乘客安全確保之直接關連性，消極資格限制範圍之大小，及

the objectives, the probability of recidivism and repeated perpetration, and the possibility of making a distinction between situations of likelihood and no likelihood of recidivism and repeated perpetration (The Ministry of Justice made an assessment of the risks of recidivism and repeated perpetration by parolees and the ratio of the number of ex-prisoners who had their parole orders revoked in 2003 in relation to the number of ex-prisoners released on parole in that year was 27.2%, whereas the ratio was 30% in 1997. The figures are still rather high, and the predictions of repeated criminal offenses made by the quantitative method in criminology and the reliability of such predictions are both doubtful. See the Ministry of Justice report to the investigation conference held by this Yuan on February 10, 2004.), the social cost of each regulatory measure, and whether the measures taken will result in complete reform of the ex-prisoners so that they will be able to make a living with the skills they had before or they will otherwise be barred from being resocialized. While a lifetime ban from driving small passenger cars against the

有無其他侵害職業自由之較小替代措施等，隨時檢討改進；且此等犯罪行為人於一定年限後（法務部提供之八十一年至九十一年間各監獄出獄後再犯比率，於出獄第七年，平均降至百分之一點五，至第十年即降至百分之一以下），若經由個別審查之機制或其他方法，已足認其對乘客安全不具特別危險時，即應適時解除其選擇駕駛營業小客車執業之限制，俾於維護公共福祉之範圍內，更能貫徹憲法人民工作權之保障及平等原則之意旨，併此指明。

persons who were convicted of any of the abovementioned crimes constitutes a rather severe restraint on their freedom of choice of occupation, we believe that such a measure of lifetime proscription adopted by the relevant authority for the purpose of protecting the safety of the passengers and their property is reasonable and consistent with the requirement of relatively moderate restraint on the freedom of choice of occupation of the people in view of the fact that it is important and imperative to protect the safety of lives, well-being, freedom and property of countless unidentifiable persons who may pay to ride in small passenger cars and other public interests in the circumstance where, as reported by the relevant authorities and representatives of the trade during the aforesaid investigation conference held by this Yuan on the issue of how to effectively ensure the safety of those who ride in small passenger cars, it is objectively impracticable today to take other alternative concrete actions that would effectively achieve the goals with relatively less detriment to the freedom of occupation such as monitoring the course of

small passenger cars by a satellite positioning device, implementation of a system of overall radio-telephone calling of taxicabs from ranks coupled with intensive tracking control, or modifying the car to make a separation between the driver and passenger seats and intensifying the pre-job training of drivers. Hence, the statutory provision quoted above is consistent with the constitutional intent as set out in the first paragraph hereof and is not in conflict with Article 23 of the Constitution. Moreover, the measures for control over the operation of small passenger cars differ from one country to another depending on the national conditions and the situation of public security in the particular country. In view of the high tendency of a person who was convicted of any of the above offences to perpetrate again, with potentially more serious threat to the personal safety of passengers of small passenger cars compared to those who have never committed any offense or have been convicted of other offenses, the safeguard of major public interest such as the safety of lives and well-being of passengers and the restraints that must be im-

posed on the subjective eligibility of the people to choose their occupations, the relevant authority has not contravened the principle of equality under by Article 7 of the Constitution by providing for reasonable and different requirements for the choice of occupations. Even so, the aforesaid provision with respect to a lifetime ban on eligibility to drive small passenger cars represents a measure that is taken without better alternative for safeguarding the safety of passengers under the current small passenger car administration system. As it constitutes, after all, a restraint on the people's freedom to choose their occupation, it must be reviewed and modified from time to time in light of such factors as improvement of the social security, development of the crime prevention mechanism, upgrading of the quality of drivers, the degree of soundness of the system of administration of small passengers cars and their operation, in respect of the immediate relevance of each category of such offenses to the safeguarding of passenger safety, the extent of the restraints on the eligibility, and the availability of other alternative meas-

ures with less degree of detriment to the freedom of occupation. Furthermore, an offender of such a crime should be promptly released in due time from the ban on choosing the occupation of driving a small passenger car if it is found after a certain number of years by way of a case-by-case examination mechanism or otherwise that he will pose no special threat to the safety of passengers (According to the Ministry of Justice report on the percentage of recidivism of all ex-prisoners in the period of 1992 through 2002, the average rate was reduced to 1.5% in the seventh year, and less than 1% in the tenth year, after their release from prison.), so that the people's right to work and the principle of equality embodied in the Constitution may be better exercised to the extent of maintaining the public interest.

Justice Tzong-Li Hsu filed concurring opinion.

Justice Tzu-Yi Lin filed dissenting opinion.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋許大法官宗力提出協同意見書；林大法官子儀、許大法官玉秀分別提出不同意見書。

J. Y. Interpretation No.585（December 15, 2004）*

ISSUE: Has the Legislative Yuan, by enacting the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting, gone beyond the scope of its legislative authorities? Are any of the relevant provisions contained therein unconstitutional?

RELEVANT LAWS:

Articles 8, 10, 11, 12, 15, 22, 23, 37, 41, 52, 58-II, 62, 63, 70, 78,79-II, 80, 95 and 96 of the Constitution（憲法第八條、第十條、第十一條、第十二條、第十五條、第二十二條、第二十三條、第三十七條、第四十一條、第五十二條、第五十八條第二項、第六十二條、第六十三條、第七十條、第七十八條、第七十九條第二項、第八十條、第九十五條、第九十六條）; Article 5-IV of the Amendment to the Constitution（憲法增修條文第五條第四項）; J. Y. Interpretation Nos. 264, 325, 391, 461, 509, 535 and 577（司法院釋字第二六四號、第三二五號、第三九一號、第四六一號、第五〇九號、第五三五號、第五七七號解釋）; Article 1-I, 2-I, II & IV, 4, 6, 7, 8, 9, 10, 11, 12-I, 13, 15, 16, 17 and 18 of the Act for the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting（三一九槍擊事件真相調查特別委員會條例第一條第一項、第二條第一項、第二

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

項、第四項、第四條、第六條、第七條、第八條、第九條、第十條、第十一條、第十二條第一項、第十三條、第十五條、第十六條、第十七條、第十八條）; Articles 5-I (iii) and 13-I of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第三款、第十三條第一項）; Articles 165 and 214 of the Criminal Code（刑法第一百六十五條、第二百十四條）; Article 70 (iii) of the Budget Act（預算法第七十條第三款）; Article 152 of the Administrative Procedure Act（行政程序法第一百五十二條）.

KEYWORDS:

preliminary injunction（暫時處分）, preventive system（保全制度）, principle of separation of powers and checks and balances（權力分立與制衡原則）, principle of rule of law（法治原則）, representative politics（民意政治）, principle of democracy（民主原則）, parliamentary autonomy（議會自治）, principle of non-continuance upon expiry of term（屆期不連續原則）, principle of equality（平等原則）, principle of proportionality（比例原則）, due process of law（正當法律程序）, executive privilege（行政特權）, principle of clarity and definiteness of law（法律明確性原則）, Legislative Yuan's power to investigate（立法院調查權）, important affairs of the State（國家重要事項）, power to request production of files（文件調閱權）, Control Yuan（監察院）, budget（預算）, retrial（再審）, property right（財產權）, right of privacy（隱私權）, freedom of passive non-

representation（消極不表意自由）, freedom of confidential communications（秘密通訊自由）, pecuniary fines（罰鍰）, right to sue（訴訟權）.**

HOLDING: For the purpose of effectively exercising its constitutional powers, the Legislative Yuan may exercise certain power of investigation, which is inherent in its legislative powers, to take the initiative in obtaining all relevant information necessary to exercise its powers so that it can fulfill its duties as an elected body of representatives and bring its functions of separation of powers and checks and balances into full play by making informed and prudent decisions after adequate and sufficient deliberations. The Legislative Yuan's investigation power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authorities. Under the principles of separation of powers and checks and balances, the scope of the targets or matters subject to the Legislative Yuan's investigation power does not grow unchecked. The matters to be investigated

解釋文：立法院為有效行使憲法所賦予之立法職權，本其固有之權能自得享有一定之調查權，主動獲取行使職權所需之相關資訊，俾能充分思辯，審慎決定，以善盡民意機關之職責，發揮權力分立與制衡之機能。立法院調查權乃立法院行使其憲法職權所必要之輔助性權力，基於權力分立與制衡原則，立法院調查權所得調查之對象或事項，並非毫無限制。除所欲調查之事項必須與其行使憲法所賦予之職權有重大關聯者外，凡國家機關獨立行使職權受憲法之保障者，即非立法院所得調查之事物範圍。又如行政首長依其行政權固有之權能，對於可能影響或干預行政部門有效運作之資訊，均有決定不予公開之權力，乃屬行政權本質所具有之行政特權。立法院行使調查權如涉及此類事項，即應予以適當之尊重。如於具體案件，就所調查事項是否屬於國家機關獨立行使職權或行政特權之範疇，或就屬於行政特權之資訊應否接受調查或公開

by the Legislative Yuan must be substantially related to the exercise of its powers under the Constitution. And, in addition, whenever a matter is related to the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, the Legislative Yuan may not extend its investigation power to such a matter. Furthermore, an executive chief, by the authority inherent in his or her executive powers, is entitled to decide not to make public any information that may affect or interfere with the effective operation of the executive branch. This is an executive privilege intrinsic to the executive powers. The Legislative Yuan, in exercising its investigation power, should give due respect to such privilege if the matter subject to investigation involves such information. In a specific case, should there exist any dispute as to whether a particular matter to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privileges, or whether any information subject to the executive privilege should be under investigation or made public, the

而有爭執時，立法院與其他國家機關宜循合理之途徑協商解決，或以法律明定相關要件與程序，由司法機關審理解決之。

Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute.

The manner in which the Legislative Yuan may exercise its investigation power is not limited to the power to request the production files, under which it may request the agencies concerned to provide reference materials in respect of the matters involving the exercise of the Legislative Yuan's powers or request such agencies to produce the original documents in respect thereof. If and when necessary, the Legislative Yuan may also, by resolution of its plenary session, request the presence of a civilian or government official related to the matter under investigation to give testimonies or express opinions, and may impose reasonably compulsory measures upon those who refuse to fulfill their obligations to assist in the investigation within the scope of pecuniary fines. (The aforesaid should serve as a supplement to J.Y.

立法院調查權行使之方式，並不以要求有關機關就立法院行使職權所涉及事項提供參考資料或向有關機關調閱文件原本之文件調閱權為限，必要時並得經院會決議，要求與調查事項相關之人民或政府人員，陳述證言或表示意見，並得對違反協助調查義務者，於科處罰鍰之範圍內，施以合理之強制手段，本院釋字第三二五號解釋應予補充。惟其程序，如調查權之發動及行使調查權之組織、個案調查事項之範圍、各項調查方法所應遵守之程序與司法救濟程序等，應以法律為適當之規範。於特殊例外情形，就特定事項之調查有委任非立法委員之人士協助調查之必要時，則須制定特別法，就委任之目的、委任調查之範圍、受委任人之資格、選任、任期等人事組織事項、特別調查權限、方法與程序等妥為詳細之規定，並藉以為監督之基礎。各該法律規定之組

Interpretation No. 325.) Nevertheless, the relevant procedures, e.g., the initiation of the investigation power and the organization responsible for the exercise of such power, the scope of the matters subject to investigation in a particular case, the procedures to be followed under various methods of investigation, as well as the judicial relief procedures, should all be adequately prescribed by law. In extraordinary cases, should there exist any necessity of mandating those other than members of the Legislative Yuan to assist in the investigation as to any particular matters, special laws must be enacted, setting forth in detail the purposes of the mandate, the scope of the investigation, the matters relating to personnel and organization, including, without limitation, the qualifications, appointment, term of the mandated persons, the authorities, methods and procedures for the special investigation, which would also serve as the basis of supervision. The organizations and meeting procedures prescribed under the respective laws must conform to the principle of democracy. The scope of the investigation in a specific case shall not be

織及議事程序，必須符合民主原則。其個案調查事項之範圍，不能違反權力分立與制衡原則，亦不得侵害其他憲法機關之權力核心範圍，或對其他憲法機關權力之行使造成實質妨礙。如就各項調查方法所規定之程序，有涉及限制人民權利者，必須符合憲法上比例原則、法律明確性原則及正當法律程序之要求。

in violation of the principles of separation of powers and checks and balances, nor can it infringe upon the core authority of another constitutional organ or cause material harm to the exercise of powers by another constitutional organ. In respect of the procedures prescribed for the investigation methods, the constitutional principles of proportionality, clarity and definiteness of law, as well as due process of law, must all be complied with where such procedures may involve any restrictions imposed on the rights of the people.

Hence, this Court hereby renders its opinions as to whether the various provisions of the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004 (hereinafter the "SCITA") regarding the organization, authorities, methods of investigation, procedures and compulsory measures for the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (hereinafter the "SCIT") are in line with the constitutional intents set forth above.

茲就中華民國九十三年九月二十四日公布施行之「三一九槍擊事件真相調查特別委員會條例」（以下稱真調會條例），有關三一九槍擊事件真相調查特別委員會（以下稱真調會）之組織、職權範圍、行使調查權之方法、程序與強制手段等相關規定，是否符合上開憲法意旨，分別指明如下：

1. The first half of Article 2-I of the SCITA provides, "This Commission shall consist of seventeen (17) members who shall be fair and impartial with professional knowledge and outstanding reputation, and shall be recommended by the various political parties (groups) of the fifth Legislative Yuan for appointment by the President within five (5) days of the promulgation hereof." The second half of Article 2-II thereof provides, "The various political parties (groups) shall submit their respective lists of recommended persons within five (5) days of the promulgation hereof; failure to submit such list within the specified time limit shall be deemed as renouncement of such recommendation and any and all resulting vacancies shall be filled within five (5) days by selection of the convening member of the Commission who is elected by the existing members for appointment by the President." Article 15-II thereof provides, "The vacant seat of any member of this Commission who is expelled or any seat that falls vacant for any reason shall be filled by another person recommended by the political party (group) making the original

一、真調會條例第二條第一項前段「本會置委員十七人，由第五屆立法院各政黨（團）推薦具有專業知識、聲譽卓著之公正人士組成之，並由總統於五日內任命」、第二項後段「各政黨（團）應於本條例公布後五日內提出推薦人選，逾期未提出者，視為放棄推薦，其缺額由現額委員選出之召集委員於五日內逕行遴選後，由總統任命」、第十五條第二項「本會委員除名或因故出缺時，由原推薦之政黨（團）於五日內推薦其他人選遞補之；其逾期未提出推薦人選者，由召集委員逕行遴選後，總統於五日內任命之」暨第十六條「第二條及第十五條應由總統任命者，總統應於期限內任命；逾期未任命，視為自動生效」等規定有關真調會委員之任命，應經立法院院會決議並由立法院院長為之，方為憲法之所許。

recommendation within five (5) days; failure to so recommend any person within the specified time limit shall entitle the convening member of the Commission to select a person sua sponte for appointment by the President within five (5) days." And, finally, Article 16 thereof provides, "Where appointments shall be made by the President under Articles 2 and 15 hereof, the President shall make such appointments within the specified time limit; failure to make such appointments within the specified time limit shall render such appointments effective automatically." The foregoing provisions regarding the appointments of members of the SCIT will not be allowed under the Constitution unless the appointments were passed by a resolution of the Legislative Yuan and made by the President of the Legislative Yuan.

2. The SCITA fails to specify the term for the members of the SCIT. However, to the extent that the principle of non-continuance upon expiry of term for the Legislative Yuan is followed, there is no violation of the Constitution. Further-

二、同條例雖未規定真調會委員之任期，惟於符合立法院屆期不連續原則之範圍內，尚不生違憲問題。第十一條第二項規定「本會所需經費由行政院第二預備金項下支應，行政院不得拒絕」，於符合預算法令規定範圍內，亦

more, Article 11-II thereof provides, “The funds required by this Commission shall be appropriated from the second reserves of the Executive Yuan, and the Executive Yuan shall not reject such appropriation.” As long as all applicable laws and regulations concerning budgets are complied with, there would be no violation of the Constitution.

不生違憲問題。

3. Article 4 of the SCITA provides, “This Commission and its members shall be above partisanship and shall, in accordance with laws, exercise its and their respective authorities and answer to the entire nation without being subject to any instruction or supervision by any other agency or any interference.” The phrase “without being subject to any instruction or supervision by any other agency” is intended to mean “without being subject to any instruction or supervision by any agency other than the Legislative Yuan.” Article 15-I thereof provides, “Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or has made inappropriate statements or committed inappropriate acts

三、同條例第四條規定「本會及本會委員須超出黨派以外，依法公正獨立行使職權，對全國人民負責，不受其他機關之指揮監督，亦不受任何干涉」，其中「不受其他機關之指揮監督」係指「不受立法院以外機關之指揮監督」之意；第十五條第一項「本會委員有喪失行為能力、違反法令或其他不當言行者，得經本會全體委員三分之二以上同意，予以除名」，關於真調會委員除名之規定，並非排除立法院對真調會委員之免職權，於此範圍內，核與憲法尚無違背。

may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission." In respect of the provisions governing the expulsion of members of the SCIT, the Legislative Yuan's power to remove such members is not precluded thereby. There is no violation of the Constitution in this regard.

4. Article 15-I of the SCITA provides, "Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or has made inappropriate statements or committed inappropriate acts may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission." The said provision, in making "violation of laws and/or regulations or has made inappropriate statements or committed inappropriate acts" a cause for expulsion, may not be in line with the principle of clarity and definiteness of law and thus should be reconsidered and revised accordingly.

四、同條例第十五條第一項「本會委員有喪失行為能力、違反法令或其他不當言行者，得經本會全體委員三分之二以上同意，予以除名」之規定，以「違反法令或其他不當言行」為除名事由，與法律明確性原則不盡相符，應予檢討修正。

5. The first half of Article 8-I of the

五、同條例第八條第一項前段

SCITA provides, “This Commission shall have exclusive jurisdiction over the investigation of any and all cases involving criminal liabilities in relation to the 319 Shooting.” Furthermore, Article 8-II thereof provides, “This Commission, in exercising the aforesaid authorities, shall have any and all powers and authorities exercisable by a prosecutor or military prosecutor pursuant to law.” In addition, Article 13-I thereof provides, “In the event that the outcome of the investigation conducted by this Commission reveals any case involving criminal liabilities, the prosecutor or military prosecutor transferred pro tempore to this Commission shall sua sponte prosecute for such a case.” The foregoing provisions have gone beyond the scope of the investigation power exercisable by the Legislative Yuan and thus are contrary to the principles of separation of powers and checks and balances.

「三一九槍擊事件所涉及之刑事責任案件，其偵查專屬本會管轄」、同條第二項「本會於行使前項職權，有檢察官、軍事檢察官依據法律所得行使之權限」；第十三條第一項「本會調查結果，如有涉及刑事責任者，由調用之檢察官或軍事檢察官逕行起訴」等規定，逾越立法院調查權所得行使之範圍，違反權力分立與制衡原則。

6. Article 13-III of the SCITA provides, “In the event that the outcome of the investigation conducted by this Commission differs from the facts as deter-

六、同條例第十三條第三項規定「本會調查結果，與法院確定判決之事實歧異者，得為再審之理由」，違反法律平等適用之法治基本原則，並逾越立

mined by a court in its final and conclusive judgment, it shall be a ground for retrial." The said provision is in violation of the fundamental principle of rule of law whereby a law shall be equally applied to all, and is also beyond the scope of the investigation power exercisable by the Legislative Yuan.

法院調查權所得行使之範圍。

7. Article 12-I of the SCITA provides, "In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three (3) months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan and Control Yuan every three (3) months and the same shall be published." As far as the report to the Control Yuan is concerned, the said provision should be reconsidered and revised since it is not in line with the constitutional intent that each organ shall attend to its own business.

七、同條例第十二條第一項規定「本會對於調查之事件，應於三個月內向立法院提出書面調查報告，並公布之。如真相仍未查明，應繼續調查，每三個月向立法院及監察院提出報告，並公布之」，其中關於向監察院報告部分，與憲法機關各有所司之意旨不盡相符，應予檢討修正。

8. Article 8-III of the SCITA pro vides, "On the date of promulgation

八、同條例第八條第三項規定「本條例公布之日，各機關所辦理專屬

hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission." Article 8-IV thereof provides, "In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws. Any agency requested to provide information to this Commission shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground." Article 8-VI thereof provides, "This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other

本會管轄案件，應即檢齊全部案卷及證物移交本會」、同條第四項規定「本會行使職權，不受國家機密保護法、營業秘密法、刑事訴訟法及其他法律規定之限制。受請求之機關、團體或人員不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」、同條第六項規定「本會或本會委員行使職權，得指定事項，要求有關機關、團體或個人提出說明或提供協助。受請求者不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」，其中關於專屬管轄、移交卷證與涉及國家機關獨立行使職權而受憲法保障者之部分，有違權力分立與制衡原則，並逾越立法院調查權所得行使之範圍。

ground.” With respect to the parts of the provisions concerning exclusive jurisdiction, transfer of files and exhibits, as well as the provisions concerning the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, they are contrary to the principles of separation of powers and checks and balances and have gone beyond the scope of the investigation power exercisable by the Legislative Yuan.

9. Article 8-VI of the SCITA provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” With respect to the provisions to the effect that no rejection may be made whatsoever as to matters involving national secrets or investigation secrets, appropriate amend-

九、同條例第八條第六項規定「本會或本會委員行使職權，得指定事項，要求有關機關、團體或個人提出說明或提供協助。受請求者不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」，其中規定涉及國家機密或偵查保密事項，一概不得拒絕之部分，應予適當修正。

ments should be made.

10. The first half of Article 8-IV of the SCITA provides, “In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws.” Furthermore, Article 8-VI thereof provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” With respect to the provisions concerning the fundamental rights of the people, the principle of due process of law and the principle of clarity and definiteness of law have been violated.

十、同條例第八條第四項前段規定「本會行使職權，不受國家機密保護法、營業秘密法、刑事訴訟法及其他法律規定之限制」、同條第六項規定「本會或本會委員行使職權，得指定事項，要求有關機關、團體或個人提出說明或提供協助。受請求者不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」，其中規定涉及人民基本權利者，有違正當法律程序、法律明確性原則。

11. Article 8-VII of the SCITA provides, “In case of violation of the provi-

十一、同條例第八條第七項「違反第一項、第二項、第三項、第四項或

sions of Paragraphs I, II, III, IV or VI hereof, the head of the agency and individual in violation shall be subject to a fine of not less than NT$100,000 but not more than NT$1,000,000; in case of any continuous violation subsequent to any fine already imposed hereby, successive fines may be imposed." In addition, the first half of Article 8-VIII thereof provides, "Any head of agency, responsible person of any group or any individual concerned who rejects the investigation conducted by this Commission or any of its members and, in so rejecting, causes material impact, or who makes false statements,……shall be subject to punishment pursuant to Paragraph VII hereof." The foregoing provisions are contrary to the principle of due process of law and the principle of clarity and definiteness of law.

第六項規定者，處機關首長及行為人新臺幣十萬元以上一百萬元以下罰鍰，經處罰後仍繼續違反者，得連續處罰之」及第八項前段：機關首長、團體負責人或有關人員拒絕真調會或其委員調查，影響重大，或為虛偽陳述者，依同條第七項之規定處罰等規定，有違正當法律程序及法律明確性原則。

12. The second half of Article 8-VIII of the SCITA provides, "Any head of agency, responsible person of any group or any individual concerned who rejects the investigation conducted by this Commission or any of its members and, in

十二、同條例第八條第八項後段規定「機關首長、團體負責人或有關人員拒絕本會或本會委員調查，影響重大，或為虛偽陳述者……並依刑法第一百六十五條、第二百十四條等相關規定追訴處罰」，係指上開人員若因受調查

so rejecting, causes material impact, or who makes false statements,……shall also be subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code." The foregoing provision should mean that the prosecutorial agencies shall carry out investigations and prosecutions and the courts shall hold trials according to law, respectively, if any of the aforesaid persons is suspected of any crime after the investigation is conducted. The said provision should be reconsidered and revised accordingly.

而涉有犯罪嫌疑者，應由檢察機關依法偵查追訴，由法院依法審判而言；上開規定應本此意旨檢討修正。

13. Article 8-IX of the SCITA provides, "This Commission and its members, in exercising its or their respective authorities, may prohibit any person under investigation or any other person related to such person from exiting the country." The said provision is found to go beyond the scope of the investigation power of the Legislative Yuan and is in violation of the principle of proportionality.

十三、同條例第八條第九項規定「本會或本會委員行使職權，認有必要時，得禁止被調查人或與其有關人員出境」，逾越立法院之調查權限，並違反比例原則。

The provisions of the SCITA as covered by Items 5, 6, 8, 10, 11 and 13 above, which are found to be contrary to the con-

上開五、六、八、十、十一、十三項有違憲法意旨部分，均自本解釋公布之日起失其效力。

stitutional intents, shall become null and void as of the date of the promulgation hereof.

The Council of Grand Justices is empowered by the Constitution to exercise its authority independently to interpret the Constitution and hold constitutional trials. The preventive system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or trials, or civil, criminal or administrative litigations. Although the petition for preliminary injunction at issue is not in conflict with the Constitution, it nevertheless is no longer necessary to examine the issue now that an interpretation has been given for the case at issue.

REASONING: This matter has been brought to the attention of this Court because ninety-three members of the Legislative Yuan, including Ke Jian-ming, were of the opinion that the Act of the Special Commission on the Investigation

司法院大法官依憲法規定獨立行使憲法解釋及憲法審判權，為確保其解釋或裁判結果實效性之保全制度，乃司法權核心機能之一，不因憲法解釋、審判或民事、刑事、行政訴訟之審判而有異。本件暫時處分之聲請，雖非憲法所不許，惟本案業經作成解釋，已無須予以審酌。

解釋理由書：本件係因立法委員柯建銘等九十三人，認中華民國九十三年九月二十四日公布施行之「三一九槍擊事件真相調查特別委員會條例」（以下稱真調會條例），逾越憲法賦予立法院權限，爰就其行使職權適用憲法

of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004 (hereinafter the "SCITA") had transgressed the authorities granted to the Legislative Yuan by the Constitution. They have, therefore, by more than one third of the incumbent members of the Legislative Yuan, duly initiated a petition for constitutional interpretation in respect of the questions about the meanings of the constitutional provisions governing their functions and duties, as well as of the question as to the constitutionality of the SCITA. Simultaneously, they have petitioned this Court for a preliminary injunction (referred to by the Petitioners and hereinafter as "expeditious disposition") before an interpretation is delivered for this matter, declaring to the effect that the application of the SCITA be suspended for the time being. In respect of the petition for the preliminary injunction, this Court, pursuant to Article 13-I of the Constitutional Interpretation Procedure Act, ordered that the representatives of the Petitioners, their agents ad litem, as well as the representatives appointed by the agency concerned, namely,

發生之疑義，並就真調會條例是否牴觸憲法之疑義，依立法委員現有總額三分之一以上聲請解釋憲法，同時聲請於本案作成解釋前為暫時處分（聲請人稱急速處分，下同），宣告真調會條例暫時停止適用。本件就聲請為暫時處分部分，依司法院大法官審理案件法第十三條第一項規定，通知聲請人代表及訴訟代理人暨關係機關三一九槍擊事件真相調查特別委員會（以下稱真調會）指派代表，於九十三年十月十四日到場，在憲法法庭行言詞辯論，同時邀請法律學者到庭陳述意見；就聲請解釋憲法部分，通知聲請人代表及訴訟代理人，暨關係機關立法院指派代表及訴訟代理人，於九十三年十月二十七日及二十九日到場，在憲法法庭行言詞辯論，同時邀請關係機關監察院、法務部、內政部指派代表，並邀請法律學者到庭陳述意見，合先說明。

the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (hereinafter the "SCIT"), appear before the Constitutional Court for oral arguments on October 14, 2004. In addition, legal scholars were also invited to appear before this Court to present their opinions as amicus curiae. Whereas, in respect of the petition for the constitutional interpretation, this Court ordered that the representatives of the Petitioners, their agents ad litem, as well as the representatives and agents ad litem appointed by the agency concerned, namely, the Legislative Yuan, appear before the Constitutional Court for oral arguments on October 27 and 29, 2004. In addition, representatives of the other agencies concerned, namely, the Control Yuan, Ministry of Justice and Ministry of the Interior, as well as legal scholars, were also invited to appear before this Court to present their opinions.

The Petitioners have argued summarily that: (1) The SCIT, by its nature, is an unconstitutional organ: The SCIT not only replaces the prosecutorial agencies in re-

本件聲請人主張略稱：一、真調會之機關屬性違憲：真調會不僅完全取代檢察機關之偵查（第八條第一、二、三項），可以借調檢察官（第九條第一

spect of the conducting of investigations (See Article 8-I, II and III), transferring prosecutors pro tempore (See Article 9-I), instructing prosecutors as to the prosecution (See Article 13-I), but also interferes with the courts in holding trials (See Article 13-III), as well as with the investigation power of the Control Yuan (See Article 8-III). And, additionally, the SCIT may possess the power to organize itself, prepare offices, administer affairs and hire staff on its own initiative (See Article 11-I), and the funds required by the SCIT shall be appropriated from the second reserves of the Executive Yuan, which shall not reject such appropriation (See Article 11-II). As such, the SCIT is a centralized special organ whose powers are simply unchecked by any other agency, which does not fit in with the constitutional order of freedom and democracy. The SCIT, which does not belong to any constitutional organ as provided for under the Constitution, nor is restricted by the Five-Yuan system, may nonetheless exercise the judicial powers, control powers and power of the Legislative Yuan to request production of files, as well as the execu-

項），指揮檢察官起訴（第十三條第一項），甚至干預法院獨立審判（第十三條第三項），干預監察院之調查權（第八條第三項），並擁有內部組織權，得自行籌辦辦公處所、行政事務與進用人員（第十一條第一項），且預算由行政院第二預備金項下支應，行政院不得拒絕（第十一條第二項），此種權力集中之特設機關，不受其他機關制衡，與自由民主憲政秩序完全不容。真調會無法歸屬於憲法規定之任何憲法機關，亦不受五院體制之限制，卻可同時行使司法權、監察權、立法院文件調閱權及行政權，是違憲之混合機關。二、制定真調會條例逾越立法權限：立法院透過真調會條例創設違憲之混合機關，已逾越立法權之權限範圍，牴觸民主正當性要求。三、制定真調會條例違反權力分立原則：真調會條例係針對三一九槍擊事件之個案立法，造成立法與執行的融合，違反權力分立，應認為無效。四、真調會所行使之職權已侵犯其他憲法機關權力，違反權力分立原則：(一)侵犯總統豁免權及人事任命權：依真調會條例第八條規定，真調會之調查對象包括總統，且總統亦不得以國家機密為由，拒絕真調會或真調會委員之調查，顯然違反憲法第五十二條規定而無效；真調

tive powers. It, therefore, is an unconstitutional hybrid organ. (2) The enactment of the SCITA has transgressed the legislative powers: The Legislative Yuan, by creating an unconstitutional hybrid organ through the enactment of the SCITA, has trespassed the boundary of the legislative powers, thus contradicting the demands of equitable democracy. (3) The enactment of the SCITA is contrary to the principle of separation of powers: The SCITA, as a legislation aiming at a specific case, namely, the 319 Shooting, should be deemed as null and void because it results in the combination of legislation and execution, which is contrary to the separation of powers. (4) The authorities exercisable by the SCIT have infringed upon the powers of other constitutional organs, which is contrary to the principle of separation of powers: (i) Invasion of the President's powers of immunity, as well as appointment and removal of personnel: Under Article 8 of the SCITA, the targets subject to the investigation conducted by the SCIT shall include the President, who may not reject the investigation conducted by the SCIT or its members on the ground

會委員任命方式完全剝奪總統之人事任命權，違反憲法第四十一條而無效。(二)侵犯檢察官偵查權之核心領域：1、依真調會條例第八條第一、二、三項及第九條規定，真調會已取代檢察機關。2、依真調會條例第十三條第一、三項規定，真調會不僅掌握個案之刑事偵查權，甚至可以指揮檢察官起訴，使立法權與執行權合而為一，嚴重破壞刑事訴訟上之權力分立與法治國原則。(三)侵犯司法權之核心領域：真調會條例第十三條第三項規定法院確定判決所認定之事實與真調會所認定之事實有所不同時，必須以真調會之認定為準，已經侵犯審判獨立之核心，明顯違反憲法第八十條。(四)侵犯監察院調查權之核心領域：1、真調會條例第八條第三、四、五及六項規定，將原本不屬於立法院之國會調查權，賦予真調會，逾越司法院釋字第三二五號解釋對監察院行使調查權所設定之範圍。五、真調會經費支應之規定，牴觸憲法：立法院不得要求行政院為特定預算科目之支出，否則即屬違憲。真調會條例第十一條第二項規定，嚴重混淆立法與行政之界限，紊亂責任政治體制，與憲法第七十條及司法院釋字第二六四號、第三九一號解釋牴觸。六、真調會之組成方式，牴觸憲

of national secrets, which provision is clearly void for violation of Article 52 of the Constitution. In addition, the appointment of members of the SCIT totally deprives the President of his power to appoint and remove personnel, which is also void for violation of Article 41 of the Constitution. (ii) Invasion of the core areas of the investigation power of the prosecutors: (a) Under Article 8-I, II & III and Article 9 of the SCITA, the prosecutorial agencies have been replaced by the SCIT; and (b) Under Article 13-I and III, the SCIT not only has the jurisdiction over a specific criminal case, but also may instruct a prosecutor in carrying out prosecution, thus combining the legislative power with the executive power and weakening the principle of separation of powers as to criminal procedure and *Rechtsstaat* (a state governed by rule of law). (iii) Invasion of the core areas of the judicial power: Article 13-III of the SCITA provides that, if the outcome of the investigation conducted by the SCITA differs from the facts as determined by a court in its final and conclusive judgment, the determination of the SCITA shall con-

法：(一)真調會以政黨取代人民：真調會條例第二條第二項規定真調會委員由各政黨（團）推薦，而政黨並不能代表全體人民，因此真調會委員之推薦已違反人員與組織之正當性，使中國國民黨與親民黨可推薦之委員共計九人，可以完全掌控真調會之運作。(二)真調會委員無任期規定：依真調會條例第十五條第一項規定，少數黨「推薦」的委員，隨時有被多數黨委員以「言行不當」予以除名之可能；而多數黨「推薦」之委員違憲任職後，便無人可將之解職，亦違反權力有限付託之民主原則。七、真調會條例侵害人民基本權利，不符比例原則及正當法律程序：(一)不符比例原則：真調會條例第八條第七項規定，違反同條第一、二、三、四、六項規定者，處機關首長及行為人新臺幣十萬元以上一百萬元以下罰鍰，並得連續處罰之。其所追求的目的並不合憲，因此通不過目的合憲性審查。又真調會條例第一條第一項明定以平息選舉爭議、安定政局為其立法目的，惟在手段上，就強制處分權之行使，空白、概括授權真調會委員行使，嚴重侵犯人民自由、隱私等基本權，手段既非侵害最小，手段與目的相比更屬欠缺平衡，顯與憲法第二十三條規定之比例原則不合。(二)不符

trol. Thus it has infringed upon the core of independent trials, which is in violation of Article 80 of the Constitution. (iv) Invasion of the core areas of the investigation power of the Control Yuan: (a) Article 8-III, IV, V and VI of the SCITA have granted the SCIT the congressional power of investigation, which should not have belonged to the Legislative Yuan. Thus it has gone beyond the boundaries set by J.Y. Interpretation No. 325 as to the investigation power of the Control Yuan. (5) The provisions regarding the appropriation of funds for the SCIT are in violation of the Constitution: The Legislative Yuan may not request the Executive Yuan to make budgetary spending as to any specific items or it will be in violation of the Constitution. The provisions of Article 11-II of the SCITA have obscured the boundaries between the legislative and executive powers and rendered the system of accountability of politics chaotic, which is contrary to Article 70 of the Constitution, as well as J.Y. Interpretations Nos. 264 and 391. (6) The organization of the SCIT is in violation of the Constitution: (i) The SCIT has replaced

正當法律程序：真調會條例第八條第四、八項規定，排除刑事訴訟法等各項限制，空白、概括授權真調會及其委員得任意行使強制處分權；對於機關首長等有關人員拒受調查，或為虛偽陳述者，除依同條第七項處罰外，並逕依刑法第一百六十五條、第二百十四條等相關規定追訴處罰，顯已違反正當法律程序等語。

the people with political parties: Article 2-II of the SCITA provides that various political parties (groups) shall recommend candidates for membership of the SCITA. However, since political parties cannot represent the people, the recommendation of the members of the SCIT has destroyed the legitimacy of the members and the organization by enabling the Chinese Nationalist Party and the People First Party to recommend a total of nine members, giving the said parties outright control over the operation of the SCIT. (ii) Members of the SCIT do not have any term of office: According to Article 15-I of the SCITA, any member "recommended" by the minority party is likely to be expelled from his or her office at any time by the members of the majority party for "inappropriate statements or acts," whereas a member "recommended" by the majority party may not be removed from office once he or she assumes the office unconstitutionally, which is in violation of the principle of democracy of limited mandate of powers. (7) The SCITA is in violation of the fundamental rights of the people, and is inconsistent with the principles

of proportionality and due process of law: (i) Inconsistency with the principle of proportionality: Article 8-VII of the SCITA provides that, in case of violation of the provisions of Paragraphs I, II, III, IV or VI hereof, the head of the agency and individual in violation shall be subject to a fine of not less than NT$100,000 but not more than NT$1,000,000 and successive fines may be imposed. Since the purpose of the said provision is unconstitutional, it shall not pass the review for the constitutionality of the purpose. Furthermore, Article 1-I of the SCITA provides that the legislative objectives of the SCITA shall be to settle the disputes arising from the election and to stabilize the political situations. When it comes to the means employed, however, the SCITA not only has failed to use the least intrusive means, but also has used disproportional means in comparison with the desired objectives in terms of the blanket, generalized authorization granted to members of the SCIT to exercise compulsory measures, thus infringing upon such fundamental rights of the people as freedom, privacy, etc. (ii) Inconsistency with due process of law.

The provisions of Article 8-IV and VIII have precluded the various restrictions imposed by the Code of Criminal Procedure, etc., by granting blanket and generalized authorization to the SCIT and its members to exercise compulsory measures at will. For any head of agency or other person who rejects the investigation or makes false statements shall, in addition to the punishment set forth in Article 8-VII thereof, also be subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code, which is obviously in violation of due process of law.

The agency concerned, namely, the Legislative Yuan has argued summarily that: (1) The petition at issue fails to meet the requirements for filing such a petition and thus should be dismissed because it does not involve the questions about the meanings of constitutional provisions governing the functions and duties of the legislators, nor does it concern any question as to the constitutionality of the application of any law. (2) Under the principle of constitutional interpretation of law,

關係機關立法院主張略稱：一、本件聲請無關立法委員行使職權適用憲法發生疑義，或適用法律發生有牴觸憲法之疑義，不合聲請要件，不應受理解釋。二、依法律合憲性解釋原則，真調會條例整體或部分內容均未違憲：(一)真調會之機關屬性：基於權力分立與機關功能最適原則、機關任務功能分配原則，權力之配置，應配置於功能上最適當、追求效能之機關擔當。我國憲法無行政保留領域，未明文禁止類似真調會之機構，立法院有權為此種立法。在憲

the SCITA, whether in whole or in part, does not violate the Constitution: (i) The nature of the SCIT: Under the principle of separation of powers, most suitable agency and distribution of agency functions, the pertinent powers shall be allocated to the most suitable, efficient agency available. The ROC Constitution does not provide for any area for executive reservation, nor does it clearly prohibit the creation of any similar agency like the SCIT. Thus the Legislative Yuan shall have the power to make such legislation. Since a public legal entity may exist between the State and a private person apart from the five Yuans provided for under the Constitution, and the State may entrust public authority to a private person, the SCIT, which is created ad hoc for a specific mission, should in principle be allowed. (ii) The enactment of the SCITA falls within the legislative powers: The Legislative Yuan, under Article 63 of the Constitution, shall have the power to legislate as to any important affairs of the State. Since the creation of the SCIT is intended to settle the political disputes arising from the undiscovered truth of the

法五院之外，介於國家與私人間之公法人既能夠存在，國家公權力能委託私人行使，則原則上應容許因特定任務，暫時性成立之真調會。(二)真調會條例之制定屬於立法權之範圍：立法院依憲法第六十三條對國家重要事項可以行使立法權。真調會之創設目的既在解決三一九槍擊事件真相未明所引發的政治爭議，為國家重要事項，在未侵害人民基本權利之範圍內，屬於立法權之範圍。(三)真調會所行使之職權未侵犯其他憲法機關權力，其行使職權之方式亦未違背權力分立與制衡原則：真調會條例所涵蓋之機制包含兩個：一是依真調會條例成立之真調會，專責「事實真相之調查」；二是真調會依真調會條例借調之檢察官，專責「刑事案件偵查權」之行使。真調會條例第一條至第七條係規範關於真調會「調查權限及方式」，第八條以後規範真調會借調檢察官之「刑事偵查」，第九條與第十八條則是「真調會」與「借調檢察官」之間關係的連結條款，要求真調會與借調檢察官相互協助。二機關分別行使調查權及檢察權並相互合作，均未侵犯行政與檢察機關之權力，故未違反權力分立原則。又真調會條例並未賦予真調會裁判權，自無侵害司法權（審判權）之可言。(四)真調

319 Shooting, which is an important affair of the State, it falls within the legislative power as long as no fundamental rights of the people are infringed. (3) The authorities exercisable by the SCIT have not infringed upon the powers of other constitutional organs, nor is the manner in which the SCIT exercises its authorities contrary to the principles of separation of powers and checks and balances: There are two mechanisms covered by the SCITA. One is the SCIT, which is created under the SCITA and in charge of the "investigation of the truth;" the other is the prosecutor(s) borrowed pro tempore by the SCIT pursuant to the SCITA, who shall be solely in charge of the exercise of the "investigation power regarding criminal cases." Articles 1 through 7 of the SCITA govern the "authorities and methods of investigation" for the SCIT; Article 8 et seq. govern the "criminal investigation" conducted by the prosecutors borrowed pro tempore by the SCIT; and Articles 9 and 18 thereof serve as the linking clauses for the SCIT and the prosecutors borrowed pro tempore, requiring mutual cooperation between the SCIT and the prosecutors bor-

會經費支應之規定不牴觸憲法：真調會條例第十一條第二項規定真調會所需經費得動支第二預備金，有預算法第七十條第三款及本條例第十一條第二項為法源依據，具有其合法性，且預算動支方式既未增加支出，不違反憲法第七十條；又第二預備金之動支並非行政院專屬權，立法權並非不能介入，於此並未侵害行政固有權。(五)真調會委員之任命及真調會之組成方式不牴觸憲法：真調會條例第二條規定真調會委員以政黨比例推薦之方式早存在於其他組織，並不會造成政黨的操控，合乎公正性、專業性，類似情形，如中央選舉委員會委員之推薦。真調會條例第十六條並未侵犯總統人事任命權。(六)真調會條例未侵害人民基本權利及正當法律程序：真調會條例第八條第四、六、九項及第十條等規定，必須與第八條、第九條併為整體解釋，則該等強制處分權實均屬於「借調檢察官」之既有職權，並非法律授與真調會限制人身自由之特殊權限。另真調會條例賦予真調會必要之調查權，依該條例第一條第二項、第八條第二項規定，均必須依據法律行使權限。且法律規定概括不必然違憲，可準用行政程序法第一百五十二條以下法規命令之訂定程序，訂定發布行政規則，真調

rowed pro tempore. The two agencies exercise the investigation power and prosecutorial power, respectively, and cooperate with each other. As a result, the SCIT does not infringe upon any executive power or prosecutorial power and thus does not violate the principle of separation of powers. In addition, since the SCITA does not endow the SCIT with any judicial power, there is no infringement of any judicial power (court jurisdiction). (4) The provisions regarding the appropriation of funds for the SCIT are in line with the Constitution: Article 11-II of the SCITA provides that the funds required by the SCIT may be appropriated from the second reserves, which is legally supported by Article 70 (iii) of the Budget Act and Article 11-II. And, Article 70 of the Constitution is not violated since such spending does not increase the expenditures. In addition, since the appropriation of the second reserves is not an exclusive power of the Executive Yuan, the Legislative Yuan is not precluded from making use of such funds. Therefore, no inherent executive power is infringed. (5) The appointment of members of the SCIT and the or-

會工作要點合乎此法理。且人民權利受侵害，可依情況分別提起訴願、行政訴訟或請求國家賠償等，本已提供權利保護與救濟管道，與人民基本權利保護之要求，並無牴觸等語。

ganization of the SCIT are both in line with the Constitution: Article 2 of the SCITA provides that the members of the SCIT shall be recommended by means of proportionality of various political parties. Similar methods are seen in other organizations, e.g., the recommendation of members of the Central Election Commission. And no party manipulation is seen in such organizations, which is therefore in line with fairness and professionalism. Article 16 of the SCITA does not infringe upon the presidential power to appoint and remove personnel. (6) The SCITA is not in violation of the fundamental rights of the people or due process of law: Article 8-IV, VI and IX and Article 10 of the SCITA must be read altogether with Articles 8 and 9 thereof. As a result, the "prosecutors borrowed pro tempore," who are already entrusted with such power, shall still exercise the power of compulsory measures, and thus the SCIT is not authorized by the law in an extraordinary manner to impose any restrictions on personal freedom. In addition, the SCITA has granted the SCIT necessary investigation power. Under Article 1-II and Article 8-II,

the SCIT must exercise its authorities pursuant to law. Moreover, a generalized provision of law is not necessarily unconstitutional. Articles 152 et seq. of the Administrative Procedure Act, which prescribe the procedure for formulating regulations, may be applied mutatis mutandis by making and publishing administrative regulations. The working rules for the SCITA are in line with the said legal principle. As for the infringement of the people's fundamental rights, depending upon the circumstances, administrative appeals, administrative litigations or state compensation, claims may be initiated or brought by the aggrieved person. The protections and remedies for rights are already in place. Therefore, there is no infringement of the demand for the protection of the people's fundamental rights.

Having taken into consideration all the intents of the arguments, this Court has delivered this interpretation. The reasons are as follows:

本院斟酌全辯論意旨，作成本解釋，其理由如下：

The Petitioners, in exercising the legislative power provided for under Article

本件聲請人行使憲法第六十二條所規定之立法權，對於真調會條例是否

62 of the Constitution, question the constitutionality of the SCITA, i.e., whether the SCITA is consistent with the constitutional principle of separation of powers. Furthermore, Under the SCITA, the members of the SCIT shall be recommended by the various political parties (groups) (See Article 2-I and II thereof); the SCIT shall be created by the Legislative Yuan (See Article 17 thereof); and the SCIT shall submit investigative reports to the Legislative Yuan periodically (See Article 12). All of the foregoing matters concern the legislators' exercise of their authorities and the exercise of such authorities in respect of the SCITA has generated doubt as to the constitutionality of the SCITA. Besides, more than one third of the incumbent members of the Legislative Yuan have initiated a petition for constitutional interpretation in respect of the said doubt. We, therefore, are of the opinion that this matter should be heard since it is in line with the provisions of Article 5-I (iii) of the Constitutional Interpretation Procedure Act.

符合憲法上權力分立之原則，發生適用憲法之疑義；又依真調會條例規定，真調會之委員由立法院各政黨（團）推薦（第二條第一、二項），其成立由立法院籌備（第十七條），並應定期向立法院報告調查結果（第十二條），上開事項均與立法委員行使職權有關，而其行使職權適用真調會條例發生牴觸憲法之疑義。經立法委員現有總額三分之一以上聲請解釋，核與司法院大法官審理案件法第五條第一項第三款之規定相符，應予受理。

The Legislative Yuan, consisting of

立法院為國家最高立法機關，由

members elected by the people, is the highest legislative organ of the State and shall exercise the legislative power on behalf of the people. For the purpose of effectively exercising its constitutional powers, the Legislative Yuan may exercise certain power of investigation, which is inherent in its legislative powers, to take the initiative in obtaining all relevant information necessary to exercise its powers so that it can fulfill its duties as an elected body of representatives and bring its functions of separation of powers and checks and balances into full play by making informed and prudent decisions after adequate and sufficient deliberations.

人民選舉之立法委員組織之，代表人民行使立法權。立法院為能有效行使憲法所賦予之立法職權，本其固有之權能自得享有一定之調查權，主動獲取行使職權所需之相關資訊，俾能充分思辯，審慎決定，以善盡民意機關之職責，發揮權力分立與制衡之機能。

The Legislative Yuan's investigation power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authorities. Under the principles of separation of powers and checks and balances, the scope of the targets or matters subject to the Legislative Yuan's investigation power does not grow unchecked. The matters to be investigated by the Legislative Yuan must be substantially related to the exercise of its powers

立法院調查權乃立法院行使其憲法職權所必要之輔助性權力。基於權力分立與制衡原則，立法院調查權所得調查之對象或事項，並非毫無限制。除所欲調查之事項必須與其行使憲法所賦予之職權有重大關聯者外，凡國家機關獨立行使職權受憲法之保障者，即非立法院所得調查之事物範圍（本院釋字第三二五號、第四六一號解釋參照）。又如行政首長依其行政權固有之權能，對於可能影響或干預行政部門有效運作之資

under the Constitution. And, in addition, whenever a matter is related to the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, the Legislative Yuan may not extend its investigation power to such a matter. (See J.Y. Interpretation Nos. 325 and 461) Furthermore, an executive chief, by the authority inherent in his or her executive powers, is entitled to decide not to make public any information that may affect or interfere with the effective operation of the executive branch, e.g., matters relating to such national secrets as national security, defense or diplomacy; internal discussions in the process of policy-making; and information regarding existing criminal investigations. This is an executive privilege intrinsic to the executive powers. The Legislative Yuan, in exercising its investigation power, should give due respect to such privilege but not compel publication of such information or provision of relevant documents by the executive branch if the matter subject to investigation involves such information. In a specific case, should there exist any dispute as to whether a particular matter

訊，例如涉及國家安全、國防或外交之國家機密事項，有關政策形成過程之內部討論資訊，以及有關正在進行中之犯罪偵查之相關資訊等，均有決定不予公開之權力，乃屬行政權本質所具有之行政特權（executive privilege）。立法院行使調查權如涉及此類事項，即應予以適當之尊重，而不宜逕自強制行政部門必須公開此類資訊或提供相關文書。如於具體案件，就所調查事項是否屬於國家機關獨立行使職權或行政特權之範疇，或就屬於行政特權之資訊應否接受調查或公開而有爭執時，立法院與其他國家機關宜循合理之途徑協商解決，或以法律明定相關要件與程序，由司法機關審理解決之。

to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privileges, or whether any information subject to the executive privilege should be under investigation or made public, the Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute.

The manner in which the Legislative Yuan may exercise its investigation power is not limited to the power to request the production files, under which it may request the agencies concerned to provide reference materials in respect of the matters involving the exercise of the Legislative Yuan's powers or request such agencies to produce the original documents in respect thereof. If and when necessary, the Legislative Yuan may also, by resolution of its plenary session, request the presence of a civilian or government official related to the matter under investigation to give

立法院調查權行使之方式，並不以要求有關機關就立法院行使職權所涉及事項提供參考資料或向有關機關調閱文件原本之文件調閱權為限，必要時並得經院會決議，要求與調查事項相關之人民或政府人員，陳述證言或表示意見，並得對違反協助調查義務者，於科處罰鍰之範圍內，施以合理之強制手段，本院釋字第三二五號解釋應予補充。惟其程序，如調查權之發動及個案調查事項之範圍、行使調查權之組織、各項調查方法所應遵守之程序與司法救濟程序等，應以法律為適當之規範；如因特殊例外情形，就特定事項之調查有

testimonies or express opinions, and may impose reasonably compulsory measures upon those who refuse to fulfill their obligations to assist in the investigation within the scope of pecuniary fines. (The aforesaid should serve as a supplement to J.Y. Interpretation No. 325.) Nevertheless, the relevant procedures, e.g., the initiation of the investigation power and the organization responsible for the exercise of such power, the scope of the matters subject to investigation in a particular case, the procedures to be followed under various methods of investigation, as well as the judicial relief procedures, should all be adequately prescribed by law. In extraordinary cases, should there exist any necessity of mandating those other than members of the Legislative Yuan to assist in the investigation as to any particular matters, special laws must be enacted, setting forth in detail the purposes of the mandate, the scope of the investigation, the matters relating to personnel and organization, including, without limitation, the qualifications, appointment, term of the mandated persons, the authorities, methods and procedures for the special investi-

委任非立法委員之人士協助調查之必要時，則須制定特別法，就委任之目的、委任調查之範圍、受委任人之資格、選任、任期等人事組織事項、特別調查權限、方法與程序等妥為詳細之規定，並藉以為監督之基礎。各該法律規定之組織及議事程序，必須符合民主原則；其個案調查事項之範圍，不能違反權力分立與制衡原則，亦不得侵害其他憲法機關之權力核心範圍，或對其他憲法機關權力之行使造成實質妨礙；如就各項調查方法所規定之程序，有涉及限制人民權利者，必須符合憲法上比例原則、法律明確性原則及正當法律程序之要求。

gation, which would also serve as the basis of supervision. The organizations and meeting procedures prescribed under the respective laws must conform to the principle of democracy. The scope of the investigation in a specific case shall not be in violation of the principles of separation of powers and checks and balances, nor can it infringe upon the core authority of another constitutional organ or cause material harm to the exercise of powers by another constitutional organ. In respect of the procedures prescribed for the investigation methods, the constitutional principles of proportionality, clarity and definiteness of law, as well as due process of law, must all be complied with where such procedures may involve any restrictions imposed on the people.

1. The Nature of the SCIT

The SCITA is an extraordinary legislation passed by the Legislative Yuan for the purpose of creating the SCIT in an attempt to ascertain the truth of the 319 Shooting. Judging from the provisions of Article 2-I and II, Articles 16 and 17 of the SCITA, the formation of the SCIT is

一、真調會之屬性

真調會條例係立法院為調查三一九槍擊事件真相，專案設置真調會所為之特別立法。依真調會條例第二條第一項、第二項、第十六條與第十七條規定觀之，真調會係由立法院籌設組成。依組織與權限不應分離，以符責任政治原理之憲政常規，真調會應屬於協助立法

prepared by the Legislative Yuan. Based on the constitutional principle of accountability of politics, under which an organization and its authorities should not be separated, the SCIT should be categorized as a special commission designed to assist the Legislative Yuan in exercising the investigation power. This theory is also supported by Article 12-I thereof, which provides for the SCIT's obligation to submit reports to the Legislative Yuan. Therefore, the SCIT is not an organization that does not belong to any constitutional organ, nor is it a hybrid organ that exercises the legislative, executive, judicial and control powers simultaneously.

院行使調查權之特別委員會。同條例第十二條第一項規定真調會向立法院報告之義務，亦足資佐證。是真調會並非不屬任何憲法機關之組織，亦非同時行使立法權、行政權、司法權及監察權之混合機關。

The creation of the SCIT under the SCITA is intended to find out the truth of the 319 Shooting of the President and Vice President. (See Article 1-I thereof) This is an important affair of the State as to which the Legislative Yuan may conduct an investigation so that it may supervise the executive branch and satisfy the people's right to know, which is consistent with the requirement that the Legislative Yuan may exercise the investigation

真調會條例設置真調會，旨在查明槍擊總統、副總統候選人事件真相（同條例第一條第一項參照），乃立法院就國家重要事項進行調查，以監督行政部門，並滿足人民知之權利，合於立法院為有效行使其憲法所賦予職權，於必要時得行使調查權之要件。

power, if necessary, to exercise its constitutional authorities effectively.

Even though the Legislative Yuan has the power to enact the SCITA, the constitutionality of the SCITA should nevertheless be determined after taking into consideration whether the organization, authorities, meeting procedures, and the investigative methods and proceedings of the SCIT fit in with the constitutionally required principles of democracy, separation of powers and checks and balances, proportionality, clarity and definiteness of law, as well as due process of law. Hence, this Court hereby renders its opinions as to whether the relevant provisions of the SCITA are in line with the constitutional intents set forth above.

立法院雖有制定真調會條例之權，惟該條例是否合憲，仍須就真調會之組織、權限範圍、議事程序、調查方法與程序，是否符合憲法所要求之民主原則、權力分立與制衡原則、比例原則、法律明確性原則及正當法律程序以為斷，不可一概而論。茲就其相關規定，是否符合上開憲法意旨，分述之。

2. The Organization of the SCIT

The Legislative Yuan's investigation power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authorities. The exercise of such power should be carried out by the Legislative Yuan through establishing an investigation commission pursuant to law.

二、真調會之組織

立法院調查權係協助立法院行使憲法職權所需之輔助性權力，其權力之行使應由立法院依法設立調查委員會為之。僅於特殊例外情形，例如所欲調查之事項具高度專業性質，由立法委員組成之調查委員會無法進行有效之調查時，始得經院會決議就一定事項之調查

Only in extraordinary cases should the Legislative Yuan mandate non-members of the Legislative Yuan to assist in the investigation as to any particular matters by enacting special laws through resolutions in its plenary session. For instance, an investigation commission consisting of members of the Legislative Yuan cannot conduct effective investigations due to the highly specialized nature of the matters subject to investigation. Although the qualifications, appointment, and procedures for the selection of the members of such a commission fall within the confines of parliamentary autonomy, such matters should nonetheless be prescribed by law and the appointments should be made by the President of the Legislative Yuan upon resolution by the plenary session of the said Yuan. Article 41 of the Constitution is not relevant in such a situation.

制定特別法，委任不具立法委員身分之相關專業人士，協助立法院行使調查權。上開委員所應具備之能力、資格審查及選任所應遵循之程序，雖屬立法院議會自治之事項，惟仍應以法律明定，其任命則應經院會決議後由立法院院長為之，與憲法第四十一條規定無涉。

The first half of Article 2-I of the SCITA provides, “This Commission shall consist of seventeen (17) members who shall be fair and impartial with professional knowledge and outstanding reputa-

真調會條例第二條第一項前段規定「本會置委員十七人，由第五屆立法院各政黨（團）推薦具有專業知識、聲譽卓著之公正人士組成之，並由總統於五日內任命」，同條第二項後段規定

tions, and shall be recommended by the various political parties (groups) of the fifth Legislative Yuan for appointment by the President within five (5) days of the promulgation hereof." The second half of Article 2-II thereof provides, "The various political parties (groups) shall submit their respective lists of recommended persons within five (5) days of the promulgation hereof; failure to submit such list within the specified time limit shall be deemed as renouncement of such recommendation and any and all resulting vacancies shall be filled within five (5) days by selection of the convening member of the Commission who is elected by the existing members for appointment by the President." The foregoing provisions are meant to be part of a special law enacted by the Legislative Yuan, which, having taken into account that the matters subject to investigation are of a special nature, requiring highly specialized expertise, fairness and impartiality, has mandated those professionals other than members of the Legislative Yuan to form an investigation commission for the purpose of assisting the said Yuan in exercising the investigation

「各政黨（團）應於本條例公布後五日內提出推薦人選，逾期未提出者，視為放棄推薦，其缺額由現額委員選出之召集委員於五日內逕行遴選後，由總統任命」，係立法院考量其所欲調查事項有特殊、高度專業及公正之需求，須委任立法委員以外之專業人員組成調查委員會，協助立法院行使調查權，而制定特別法所作之規定。基於議會自治原則，相關人員之選任資格及程序，應尊重立法院之決定。如立法院決定接受各政黨（團）所推薦之人選，並經院會決議後由立法院院長予以任命，即應為憲法所許。立法院如為尊重國家元首，雖亦得依憲法第四十一條規定，提請總統依法任命之，惟此非謂總統對上開人員有實質選任權限，更毋庸依憲法第三十七條之規定經行政院院長副署之。總統基於對立法院憲法職權之尊重，對於立法院所提人選，亦應予以尊重。故上開真調會條例第二條第一項及第二項規定以及第十五條第二項規定「本會委員除名或因故出缺時，由原推薦之政黨（團）於五日內推薦其他人選遞補之；其逾期未提出推薦人選者，由召集委員逕行遴選後，總統於五日內任命之」，應係指立法院各政黨（團）推薦人選或召集委員逕行遴選人選後，經立法院院會決議通

power. Under the principle of parliamentary autonomy, the Legislative Yuan should decide on the qualifications, appointment, and procedures for the selection of the members of such a commission. If the Legislative Yuan has decided to accept the candidates recommended by the various political parties (groups), and the appointments of such candidates have been made by the President of the Legislative Yuan upon resolution by the plenary session of the said Yuan, there is no violation of the Constitution. Although the Legislative Yuan may, as a token of respect for the head of state, submit a list of the nominated candidates to the President for the latter to appoint under Article 41 of the Constitution, this, however, does not mean that the President has any substantive authority to select such members. Nor is the countersignature of the Premier as provided under Article 37 of the Constitution required. The President should also respect the candidates selected by the Legislative Yuan in order to show respect for the authorities of the said Yuan. Therefore, the foregoing provisions of Article 2-I and II of the SCITA, as well

過，再由立法院院長報請總統任命之意。本於上述相同意旨，同條例第十六條規定「第二條及第十五條應由總統任命者，總統應於期限內任命；逾期未任命，視為自動生效」，亦未牴觸憲法第四十一條及第三十七條之規定。

as Article 15-II thereof, which provide, "The vacant seat for any member of this Commission who is expelled or whose seat falls vacant for any reason shall be filled by another person recommended by the political party (group) making the original recommendation within five (5) days; failure to so recommend any person within the specified time limit shall entitle the convening member of the Commission to select a person sua sponte for appointment by the President within five (5) days," should mean that, upon recommendation of such members by the various political parties (groups) or selection of a candidate by the convening member of the SCIT, the appointment shall pass the Legislative Yuan by resolution of the plenary session before the President of the Legislative Yuan submits it to the President for appointment. By the same token, Article 16 of the SCIT, which provides, "where appointments shall be made by the President under Articles 2 and 15 hereof, the President shall make such appointments within the specified time limit; failure to make such appointments within the specified time limit shall render such ap-

pointments effective automatically," is also found not to contravene Articles 41 and 37 of the Constitution.

Since the investigation power of the Legislative Yuan is exercised by an investigation commission created by the plenary session of the said Yuan and composed of members thereof, the term of office for the members of the investigation commission shall end no later than the day when the specific term of the Legislative Yuan expires so that the principle of representative politics is followed. The principle of non-continuance upon expiry of term shall also apply to the situation where an investigation commission is composed of non-members of the Legislative Yuan who are mandated by the said Yuan by resolution of its plenary session. It should be noted that Article 12-I of the SCITA provides, "In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three (3) months and the same shall be published. If the truth remains unascertained, the investigation shall continue…"

立法院調查權既應由立法院院會決議設立並由立法委員組成之調查委員會行使之，該調查委員會委員之任期至遲應於該屆立法委員任期屆滿時終止，以符民意政治原則。該屆期不連續原則自應適用於由該屆立法委員經院會決議委任非立法委員擔任調查委員會委員之情形。是真調會條例第十二條第一項規定「本會對於調查之事件，應於三個月內向立法院提出書面調查報告，並公布之。如真相仍未查明，應繼續調查……」，對真調會委員之任期並未設有明確之限制，雖非憲法所不許，惟其既係依第五屆立法委員之授權而成立，其任期至遲亦應於第五屆立法委員任期屆滿之日終止，自不待言。再者，真調會既屬立法院之特別委員會，其所需經費自應由立法院編列預算支應。惟遇事實需要而合於預算法令規定之情形者，自得依法動支第二預備金，並未侵害行政權。真調會條例第十一條第二項「本會所需經費由行政院第二預備金項下支應，行政院不得拒絕」，與前揭第十二條第一項之規定，於符合上開意旨之範

Although the failure of the said provision to specify the term of office for the members of the SCIT is not unconstitutional in itself, the term of office for such members should, as a matter of course, end no later than the day when the term of the fifth Legislative Yuan expires as the SCIT is created by the authorization of the fifth Legislative Yuan. Furthermore, since the SCIT is a special commission subordinate to the Legislative Yuan, the funds required for its operations shall be allocated by the said Yuan. However, if dictated by the factual situations and consistent with applicable laws and regulations relating to budgets, the second reserves may also be appropriated without infringing upon the executive power. Article 11-II of the SCITA provides, "The funds required by this Commission shall be appropriated from the second reserves of the Executive Yuan, and the Executive Yuan shall not reject such appropriation." This provision, along with Article 12-I thereof mentioned above, is not unconstitutional as long as the constitutional intents mentioned above are complied with.

圍內，尚不生違憲問題。

Under the principles of representative politics and the accountability of politics, the Legislative Yuan shall, in exercising its investigation power, assume political responsibility and be subject to popular supervision as to whether it has abused its power and authority. Even under extraordinary circumstances when the Legislative Yuan deems it necessary to mandate those other than members of the Legislative Yuan to assist or substitute for the legislators in the investigation as to any particular matters, the Legislative Yuan shall still be obligated to supervise the performance of those mandated personnel in carrying out their duties under the principles of representative politics and the accountability of politics. By no means should such mandated personnel be exempt from any supervision by the Legislative Yuan and allowed to exercise the investigation power on their own initiative. Therefore, the SCIT is obligated to report to the Legislative Yuan under Article 12-I of the SCITA, which provides, "In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative

基於民意政治及責任政治原則，立法院就其行使調查權之成效，自應擔負政治責任，並就其有無濫用權限，受民意之監督。縱於特殊例外情形，立法院認有授權立法委員以外之人員輔助或代為行使調查權之必要，基於民意政治及責任政治原則，立法院仍負有監督受委任人員履行職務之義務，斷無令其獨立於立法院監督之外，逕自行使立法院調查權之理。是除真調會條例第十二條第一項「本會對於調查之事件，應於三個月內向立法院提出書面調查報告，並公布之。如真相仍未查明，應繼續調查，每三個月向立法院……提出報告，並公布之」，規定真調會向立法院報告之義務外，同條例第四條規定「本會及本會委員須超出黨派以外，依法公正獨立行使職權，對全國人民負責，不受其他機關之指揮監督，亦不受任何干涉」，其中所稱之「不受其他機關之指揮監督」應非排除立法院，而係指「不受立法院以外機關之指揮監督」之意。又基於指揮監督之職責，立法院對於不適任之真調會委員，自亦有經院會決議後予以免職之權；蓋人事免職權較諸人事任命權，具有持續存在、隨時得行使之性質，而為實質有效控制、指揮相關人員調查進行所必要，更為立法院依責

Yuan within three (3) months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan…every three (3) months and the same shall be published." Moreover, Article 4 thereof provides, "This Commission and its members shall be above partisanship and shall, in accordance with laws, exercise its and their respective authorities and answer to the entire nation without being subject to any instruction or supervision by any other agency or any interference." The phrase "without being subject to any instruction or supervision by any other agency" should not have meant to preclude the Legislative Yuan from exercising its supervision over the SCIT, but, instead, is intended to mean "without being subject to any instruction or supervision by any agency other than the Legislative Yuan." Additionally, in view of its duty to instruct and supervise the SCIT, the Legislative Yuan shall have the power to remove any member of the SCIT who is deemed incompetent by resolution of its plenary session. The power to remove

任政治原理履行其憲法上義務所由繫。是同條例第十五條第一項規定「本會委員有喪失行為能力、違反法令或其他不當言行者，得經本會全體委員三分之二以上同意，予以除名」，係賦予真調會對委員之除名權，惟仍須經院會決議，且不排除立法院對真調會委員之免職權。前開各項規定，於符合上述意旨範圍內，核與憲法亦無違背。惟上開規定以「違反法令或其他不當言行」為除名之事由，則與法律明確性之憲法意旨不盡相符，應一併檢討修正。又真調會職權之行使，應符合民主原則，是真調會委員開始行使調查權之最低人數，亦以明文規定為宜，併此指明。

personnel, when compared with the power to appoint personnel, is more permanent and exercisable at any time. Thus, it is not only a power necessary to control and supervise effectively those personnel who are conducting the investigation, but also is a key to the fulfillment of the Legislative Yuan's constitutional obligation under the principle of representative politics. Therefore, Article 15-I thereof provides, "Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or has made inappropriate statements or committed inappropriate acts may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission." The provision is intended to grant the SCIT the power to expel its members, but it should still be subject to the resolution of the plenary session of the Legislative Yuan whose power to remove members of the SCIT remains intact. The foregoing provisions are not unconstitutional as long as the constitutional intents mentioned above are complied with. However, part of the foregoing provisions, in making "violation of laws and/or regulations

or has made inappropriate statements or committed inappropriate acts" a cause for expulsion, may not be in line with the constitutional principle of clarity and definiteness of law and thus should be reconsidered and revised accordingly. As an additional note, the SCIT's exercise of its authorities shall comply with the principle of democracy. Hence the quorum for members of the SCIT to commence the exercise of the investigation power should also be clearly provided by law.

3. The Authorities of the SCIT

The Legislative Yuan's investigation power is a mere subsidiary power of the said Yuan to facilitate the exercise of its constitutionally mandated legislative powers and authorities. Naturally, such power is different from either the investigation power in respect of the prosecution for criminal offenses or the court jurisdictions. Under the principles of separation of powers and checks and balances, the Legislative Yuan may not, by legislation, grant itself or any committee subordinate to it the power to exercise the said investigation power or court jurisdiction. Since

三、真調會之職權範圍

立法院所得行使之調查權，僅係為輔助立法院行使其憲法所賦予之立法權限，自與追訴犯罪之偵查權及司法審判權有間。基於權力分立與制衡原則，立法院亦不得立法授與自身或所屬之委員會行使偵查權或審判權。真調會既為隸屬於立法院下行使立法院調查權之特別委員會，其所具有之權限，應只限於立法院調查權所得行使之權限，並僅止於三一九槍擊事件真相之調查而已，不得更進而行使檢察官或軍事檢察官依據法律所得行使之犯罪偵查權及法院之審判權。是真調會之職權應僅限於真調會條例第七條規定「本會就三一九槍擊事

the SCIT is a special commission subordinate to the Legislative Yuan that is designed to exercise the investigation power of the said Yuan, the authorities possessed by the SCIT should be no more than those exercisable by the Legislative Yuan under its investigation power. Furthermore, the authorities of the SCIT should be limited to the investigation of the 319 Shooting, but should not go so far as to exercise the investigation power as to crimes, which is exercisable by a prosecutor or military prosecutor pursuant to law, nor the court jurisdiction. Therefore, the authorities of the SCIT should be limited to the scope specified in Article 7 of the SCITA, which provides "This Commission shall conduct investigations into the events having occurred before and after the 319 Shooting, or into any and all relevant matters derived from such events so as to discover the truth relating to the mastermind, and the motives, objectives of any and all persons concerned, as well as the facts and effects of such events and matters." Nevertheless, such investigations should not exclude or interfere with the Control Yuan or any other agency concerned in conduct-

件，發生前、後其事件本身或衍生之相關事項均應進行調查，以查明主導人及有關人員之動機、目的、事實經過及其影響等之真相」，惟其調查亦不得排除或干預監察院或其他有權機關就同一事件，本於職權進行調查或偵查之權力。故同條例第八條第一項前段規定「三一九槍擊事件所涉及之刑事責任案件，其偵查專屬本會管轄」，同條第二項規定「本會於行使前項職權，有檢察官、軍事檢察官依據法律所得行使之權限」及第三項規定「本條例公布之日，各機關所辦理專屬本會管轄案件，應即檢齊全部案卷及證物移交本會」，因賦予真調會之權限逾越立法院所得行使之調查權範圍，已有未合。同條例第十三條第一項規定「本會調查結果，如有涉及刑事責任者，由調用之檢察官或軍事檢察官逕行起訴」，亦因賦予被借調之檢察官或軍事檢察官之權限逾越真調會所得行使之調查權範圍，併有未合；同條第二項關於管轄權之規定失所附麗。以上各該規定，均違反權力分立與制衡原則之憲法基本規範。至同條例第九條第一項規定「本會為行使職權，得借調檢察官或軍事檢察官至本會協助調查」，為尊重被借調人與其所屬機關，其借調應經被借調人與其所屬機關之同意；被借調

ing investigations into the same events or matters by their own authorities. Therefore, the first half of Article 8-I thereof provides, “This Commission shall have exclusive jurisdiction over the investigation of any and all cases involving criminal liabilities in relation to the 319 Shooting.” Furthermore, Article 8-II provides, “This Commission, in exercising the aforesaid authorities, shall have any and all powers and authorities exercisable by a prosecutor or military prosecutor pursuant to law.” In addition, Article 8-III thereof provides, “On the date of promulgation hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission.” The foregoing provisions have delegated to the SCIT more authority than the investigation power exercisable by the Legislative Yuan itself and therefore are not consistent with the Constitution. In addition, Article 13-I thereof provides, “In the event that the outcome of the investigation conducted by this Commission reveals any case involv-

至真調會協助調查之檢察官或軍事檢察官，於借調期間，雖仍具檢察官或軍事檢察官之身分，但基於立法院調查權之屬性，自不得行使其原有身分依法所得行使之檢察權，乃屬當然之理。

ing criminal liabilities, the prosecutor or military prosecutor transferred pro tempore to this Commission shall sua sponte prosecute for such a case." The foregoing provisions have also gone beyond the scope of the investigation power exercisable by the SCIT by delegating more authority to such prosecutor or military prosecutor than the SCIT may have and thus are contrary to the Constitution. As a result, the provisions of Article 13-II thereof regarding the jurisdictions, which are ancillary to the foregoing provisions, should also be so treated. All of the above provisions are contrary to the fundamental constitutional principles of separation of powers and checks and balances. As for Article 9-I thereof, which provides, "While exercising its authorities, this Commission may borrow and transfer a prosecutor or military prosecutor pro tempore to assist in the relevant investigations," such borrowing and transfer should be subject to the consent of the borrowed person and of the agency to which he or she belongs as a token of respect for such borrowed person and agency. The prosecutor or military prosecutor pro tempore

transferred to the SCIT, though still preserving the status as a prosecutor or military prosecutor during the period of such transfer, may not, as a matter of course, exercise the prosecutorial power exercisable by him or her pursuant to law under his or her original status due to the nature of the Legislative Yuan's investigation power.

No doubt, the lawmakers are free to some extent to formulate the reasons for retrial, which forms one of the links in the legal proceedings. However, any enacted law should have general application to a majority of future events whose occurrence is uncertain and which meets the requisite elements of such law. Article 13-III of the SCITA provides, "In the event that the outcome of the investigation conducted by this Commission differs from the facts as determined by a court in its final and conclusive judgment, it shall be a ground for retrial." The said provision is not constitutionally valid since the reason for retrial is intended for a specific case only, which is in violation of the fundamental principle of rule of law whereby a

再審為訴訟程序之一環，立法者就再審理由固有自由形成之空間；惟法律之制定，原則上應普遍適用於將來符合其構成要件之多數不確定發生之事件。真調會條例第十三條第三項規定「本會調查結果，與法院確定判決之事實歧異者，得為再審之理由」，乃針對個案所制定之再審理由，違反法律平等適用之法治國家基本原則，且逾越立法院調查權之權限範圍，應非憲法之所許。

law shall be equally applied to all, and is also beyond the scope of the investigation power exercisable by the Legislative Yuan. The Control Yuan is the highest control organ of the State and shall exercise the constitutionally mandated powers of impeachment, censure, redress and auditing provided under Articles 95 and 96 on an exclusive basis.

The Control and Legislative Yuans have their respective constitutional mandates and the investigation powers exercisable by the said Yuans are not identical in terms of their respective natures, functions and purposes, nor do they overlap or conflict with each other. Since the SCIT is a special commission subordinate to the Legislative Yuan that is designed to exercise the investigation power of the said Yuan, it should not be obligated to answer to the Control Yuan, nor subject to the supervision of the Control Yuan. In addition, the investigation power exercisable by the SCIT differs from that of the Control Yuan. Besides, the exercise of such power by the SCIT, as well as the outcome of its investigation, should not affect

監察院為國家最高監察機關，其為行使憲法所賦予之彈劾、糾舉、糾正、審計權，依憲法第九十五條、第九十六條具有之調查權，仍應專由監察院行使。其與立法院於憲法之職能各有所司，各自所行使之調查權在權力性質、功能與目的上並不相同，亦無重疊扞格之處。真調會既為隸屬於立法院下行使立法院調查權之特別委員會，自無須向監察院負責，亦不受監察院之監督。而其行使之調查權亦與監察院之調查權有別，且其調查權之行使及調查之結果亦不能影響監察院調查權之行使。是真調會條例第十二條第一項規定「本會對於調查之事件，應於三個月內向立法院提出書面調查報告，並公布之。如真相仍未查明，應繼續調查，每三個月向立法院及監察院提出報告，並公布之」，其

the exercise of the investigation power by the Control Yuan. Article 12-I of the SCITA provides, “In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three (3) months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan and Control Yuan every three (3) months and the same shall be published.” As far as the report to the Control Yuan is concerned, the said provision should be reconsidered and revised so as to clarify the authorities and duties of the SCIT and to avoid undue influence on the Control Yuan’s exercise of its investigation power since such provision is contrary to the principle described above.

中關於真調會有向監察院提出報告義務之規定，殊有悖於前述之原則，應予檢討修正，以釐清真調會之職責，並避免影響監察院調查權之行使。

4. The Scope of Investigation Power Exercisable by the SCIT

As mentioned above, under the principles of separation of powers and checks and balances, the Legislative Yuan, in exercising its investigation power, shall also be subject to certain restrictions as to the

四、真調會行使調查權之範圍

基於權力分立與制衡原則，立法院行使調查權所得調查之對象、事項並非毫無限制，已如上述。是真調會條例第八條第三項「本條例公布之日，各機關所辦理專屬本會管轄案件，應即檢齊

targets or matters under investigation. Article 8-III of the SCITA provides, "On the date of promulgation hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission." Article 8-IV thereof provides, "In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws. Any agency requested by this Commission shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground." Article 8-VI thereof provides, "This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the

全部案卷及證物移交本會」、同條第四項「本會行使職權，不受國家機密保護法、營業秘密法、刑事訴訟法及其他法律規定之限制。受請求之機關、團體或人員不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」、第六項「本會或本會委員行使職權，得指定事項，要求有關機關、團體或個人提出說明或提供協助。受請求者不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」，上開規定關於專屬管轄、移交卷證之規定，與涉及國家機關獨立行使職權而受憲法保障者，未予明文排除於調查權範圍之外，已逾越立法院調查權所得行使之範圍，此部分與憲法前述意旨尚有未符。另涉及國家機密或偵查保密事項，行政首長具有決定是否公開之行政特權，亦已述之如前，立法院行使調查權若涉及此類事項，自應予以適當尊重，而不宜逕自強制行政部門必須公開此類資訊或提供相關文書。如於具體案件就所調查事項是否屬於國家機關獨立行使職權或行政特權之範疇，或就屬於行政特權之資訊應否接受調查或公開而有爭執時，立法院與其他國家機關宜循合理之途徑協商解決，或以法律明定相關要件與程序由

ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground." With respect to the parts of the provisions concerning exclusive jurisdiction, transfer of files and exhibits, as well as the provisions concerning the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, they have failed to exclude the same from the scope of the investigation power and thus have gone beyond the scope of the investigation power exercisable by the Legislative Yuan, which is not in line with the Constitution. Additionally, as mentioned above, an executive chief, by virtue of the executive privilege inherent in his or her executive powers, is entitled to decide whether or not to make public any information that involves national secrets or investigation secrets. The Legislative Yuan, in exercising its investigation power, should give due respect to such privilege but not compel publication of such information or provision of relevant documents by the executive branch if the matter subject to investigation involves such information. In a specific case, should there exist any

司法機關審理解決之。是上開規定關於調查事項涉及國家機密或偵查保密者，相關機關一概不得拒絕之部分，不盡妥適，應予以適當之修正，以符上開意旨。

dispute as to whether a particular matter to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privileges, or whether any information subject to the executive privilege should be under investigation or made public, the Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute. Therefore, with respect to the provisions to the effect that no rejection may be made whatsoever as to matters involving national secrets or investigation secrets, appropriate amendments should be made so as to comply with the aforesaid intents.

5. The Methods, Procedures and Compulsory Measures for the SCIT in Exercising the Investigation Power

Every organ of the State, in exercising its power, should be subject to the law, which is the fundamental demand under the principle of rule of law. The same

五、真調會行使調查權之方法、程序與強制手段

國家機關行使權力均須受法之節制，立法院行使憲法所賦予之權力，亦無例外，此乃法治原則之基本要求。立法院調查權之行使，依調查事項及強制

principle shall apply to the Legislative Yuan without exception in exercising its constitutionally mandated powers. The exercise of the investigation power by the Legislative Yuan, depending upon the matters subject to investigation and the compulsory means used while conducting an investigation, may involve the imposition of restrictions on a variety of constitutionally guaranteed fundamental rights of the people, including, without limitation, the personal freedom as safeguarded under Article 8 of the Constitution or the negative freedom of speech under Article 11 thereof (See J.Y. Interpretation No. 577), the freedom of privacy of correspondence under Article 12 thereof, the trade secrets under Article 15 thereof, the right of privacy, etc. The right of privacy, though not clearly enumerated under the Constitution, is an indispensable fundamental right protected under Article 22 of the Constitution because it is necessary to preserve human dignity, individuality, and the wholeness of personality development, as well as to safeguard the freedom of private living space from interference and the freedom of self-control of per-

方式之不同，可能分別涉及限制多種受憲法保障之人民基本權利，如憲法第八條保障之人身自由、憲法第十一條保障之消極不表意自由（本院釋字第五七七號解釋參照）、憲法第十二條保障之秘密通訊之自由、憲法第十五條所保障之營業秘密、隱私權……等等。其中隱私權雖非憲法明文列舉之權利，惟基於人性尊嚴與個人主體性之維護及人格發展之完整，並為保障個人生活秘密空間免於他人侵擾及個人資料之自主控制，隱私權乃為不可或缺之基本權利，而受憲法第二十二條所保障（本院釋字第五〇九號、第五三五號解釋參照）。立法院行使調查權如涉及限制憲法所保障之人民基本權利者，不僅應有法律之依據，該法律之內容必須明確，且應符合比例原則與正當法律程序。真調會條例第八條第四項前段「本會行使職權，不受國家機密保護法、營業秘密法、刑事訴訟法及其他法律規定之限制」及第六項「本會或本會委員行使職權，得指定事項，要求有關機關、團體或個人提出說明或提供協助。受請求者不得以涉及國家機密、營業秘密、偵查保密、個人隱私或其他任何理由規避、拖延或拒絕」之規定，賦予真調會進行調查所需之強制權限，惟上開規定既排除現有法律所

sonal information (See J.Y. Interpretations Nos. 509 and 535). Where the investigation power exercised by the Legislative Yuan may involve any restrictions imposed on the fundamental rights of the people, not only should there be a basis of law whose contents should be clear and definite, but it should also follow the principles of proportionality and due process of law. The first half of Article 8-IV of the SCITA provides, "In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws." Furthermore, Article 8-VI thereof provides, "This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground." The foregoing provisions have

得提供被調查人之程序保障，卻未訂定相關之程序規定，如事前予受調查對象充分告知受調查事項、法定調查目的與調查事項之關聯性、給予受調查人員相當之準備期間、准許受調查人員接受法律協助、准許合理之拒絕調查、拒絕證言、拒絕提供應秘密之文件資訊等之事由、必要時備置適當之詰問機制、依調查事件之性質採取公開或秘密調查程序……等等，均付諸闕如。雖該條例第一條第二項規定「本條例未規定者，適用其他相關法律規定」，然該項規定所謂之「適用其他相關法律規定」，仍無法彌補本條例就真調會行使職權所得採用之方法與調查之程序未有妥適規定之缺失，不符正當法律程序之要求。至其對人民受憲法所保障權利之限制是否為達成調查真相目的之必要手段，因其規範內容欠缺明確，尚難論斷是否符合比例原則。是真調會條例第八條第四項及第六項規定，均不符正當法律程序及法律明確性原則之要求。

granted the SCIT the authority to enforce its investigations. However, the said provisions, after eliminating the procedural safeguards granted to persons subject to investigation under existing laws, have failed to formulate applicable procedural rules, e.g., prior and sufficient notification to person(s) subject to investigation regarding the matters under investigation; statutory objectives of the investigation and the connection between such objectives and the matters under investigation; granting adequate preparation time to the person(s) under investigation; permitting the person(s) under investigation to accept legal assistance; permitting reasonable grounds for rejection of investigation, testimony, provision of confidential documentation; appropriate mechanism of examination and cross-examination, if necessary; option of open or in camera proceedings as per nature of the matters subject to investigation, etc. Despite the fact that Article 1-II of the SCITA provides, "For matters not provided for by this Act, the provisions of any other applicable laws shall apply," the phrase "the provisions of any other applicable laws shall

apply" contained therein still does not alter the fact that the SCITA fails to provide adequately for the methods and procedures to be adopted by the SCIT in exercising its authorities. Thus, the requirement for due process of law is not satisfied. As for the issue of whether the imposition of restrictions upon the fundamental rights of the people is necessary to achieve the objective of ascertaining the truth, it would be difficult to decide if the principle of proportionality is complied with since the regulatory contents remain ambiguous at this point. Accordingly, both Article 8-IV and Article 8-VI of the SCITA have failed to satisfy the requirements for due process of law and the principle of clarity and definiteness of law.

In order to exercise its investigation power effectively, the Legislative Yuan may, by resolution of its plenary session, impose reasonable pecuniary fines upon those who refuse to fulfill their obligations to assist in the investigation, which is a power ancillary to the Legislative Yuan's investigation power. Nevertheless, in respect of the imposition of pecuniary

立法院為有效行使調查權，固得以法律由立法院院會決議依法對違反協助調查義務者科處適當之罰鍰，此乃立法院調查權之附屬權力。惟對違反協助調查義務者課以罰鍰之法律規定，除採用裁罰手段應為達成調查目的所必要者外，其裁罰要件及標準均需具體明確，俾使受規範者得預見其行為之可罰，且其規定得經司法審查加以確認，以符憲

fines upon those who refuse to fulfill their obligations to assist in the investigation, the means of imposing fines must be necessary to achieve the objectives of the investigation on the one hand, and the requirements and criteria for such fines on the other hand so that any person subject to the fines may realize the punishability of his or her act. In addition, the provisions in respect thereof shall also be subject to judicial review so as to determine whether they satisfy the demands of the principle of proportionality under Article 23 of the Constitution, as well as the principle of clarity and definiteness of law. Article 8-VII of the SCITA provides, "In case of violation of the provisions of Paragraphs I, II, III, IV or VI hereof, the head of the agency and individual in violation shall be subject to a fine of not less than NT$100,000 but not more than NT$1,000,000; in case of any continuous violation subsequent to any fine already imposed hereby, successive fines may be imposed." In addition, the first half of Article 8-VIII thereof provides, "Any head of agency, responsible person of any group or any individual concerned who

法第二十三條之比例原則及法律明確性原則之要求。是真調會條例第八條第七項「違反第一項、第二項、第三項、第四項或第六項規定者，處機關首長及行為人新臺幣十萬元以上一百萬元以下罰鍰，經處罰後仍繼續違反者，得連續處罰之」及第八項前段：機關首長、團體負責人或有關人員拒絕真調會或其委員調查，影響重大，或為虛偽陳述者，依同條第七項之規定處罰等規定，並未明定立法院行使此項裁罰權之程序，且於同條第四項、第六項規定未依前開意旨修正之前，其對違反協助調查義務者行使裁罰權之要件，亦非明確，與正當法律程序及法律明確性之要求均有未符。又就機關首長、團體負責人或有關人員拒受調查，影響重大，或為虛偽陳述者，同條例第八條第八項後段規定「並依刑法第一百六十五條、第二百十四條等相關規定追訴處罰」，應係指上開人員若因受調查而涉有犯罪嫌疑者，應由檢察機關依法偵查追訴，由法院依法審判而言，非謂其拒受調查或為虛偽陳述，即已符合刑法第一百六十五條、第二百十四條或其他犯罪之構成要件，上開規定應本此意旨檢討修正。

rejects the investigation conducted by this Commission or any of its members and, in so rejecting, causes material impact, or who makes false statements, shall be subject to punishment pursuant to Paragraph VII hereof." The foregoing provisions have failed to specify the procedure under which the Legislative Yuan may exercise its power to impose such pecuniary fines. In addition, before the provisions of Article 8-IV and VI are amended according to the aforesaid intents, the requirements for the imposition of such fines upon those who refuse to fulfill their obligations to assist in the investigation are also ambiguous, which is contrary to the demands of due process of law and the principle of clarity and definiteness of law. Moreover, if any head of agency, responsible person of any group or any individual concerned rejects the investigation conducted by the SCIT or any of its members and, in so rejecting, causes material impact, or makes false statements, he or she shall also be "subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code" according to the second half of Article 8-VIII of the

SCITA. The foregoing provision should mean that the prosecutorial agencies shall carry out investigations and prosecutions and the courts shall hold trials according to law, respectively, if any of the aforesaid persons is suspected of any crime after the investigation is conducted, but does not mean that the mere rejection of investigation or making of false statements by the said persons will suffice to meet the criminal elements of Articles 165 and 214 of the Criminal Code or any other offense. The said provision should be reconsidered and revised accordingly.

The compulsory measures ancillary to the investigation power exercisable by the Legislative Yuan should be limited to the imposition of pecuniary fines. Nevertheless, Article 8-IX of the SCITA provides, "This Com-mission and its members, in exercising its or their respective authorities, may prohibit any person under investigation or any other person related to such person from exiting the country." The said provision, by granting the SCIT or its members the compulsory power to prohibit the persons concerned from exit-

至立法院行使調查權所附屬之強制權力，應以科處罰鍰為限，真調會條例第八條第九項規定「本會或本會委員行使職權，認有必要時，得禁止被調查人或與其有關人員出境」，賦予真調會或其委員得依其裁量為限制相關人員出境之強制處分權，已逾越立法院調查權行使強制權力之必要範圍；且其限制亦非調查真相之必要手段，違反憲法第十條及第二十三條規定之意旨。

ing the country at its or their discretion, has gone beyond the necessary scope within which the Legislative Yuan may exercise its investigation power. Furthermore, such restrictions are not necessary to achieve the objective of ascertaining the truth, and thus are found to be contrary to constitutional intents provided for under Articles 10 and 23 of the Constitution.

The provisions of the SCITA, to the extent that they are found to be contrary to the constitutional intents, shall become null and void as of the date of the promulgation hereof.

上開真調會條例，有違憲法規定意旨部分，均自本解釋公布之日起失其效力。

It should be noted that the Grand Justices, in interpreting the Constitution, should do so based on the Justices' certainty of the law, but will not be bound by the views held by petitioners or agencies concerned as to how the law should be applied. This Court is of the opinion that the SCITA is an extraordinary legislation passed by the Legislative Yuan for the purposes of creating the SCIT in an attempt to ascertain the truth regarding the

按司法院大法官解釋憲法，依其法的確信而為解釋，原不受聲請人及關係機關所為關於法適用上主張之拘束。本件解釋認真調會係立法院為行使調查權，調查三一九槍擊事件真相，專案設置之特別委員會，並非不屬任何憲法機關之組織，亦非同時行使立法權、行政權、司法權及監察權之混合機關。本此乃以立法院調查權為本件解釋之論據，並分別就真調會之組織、職權範圍、行使調查權之範圍、方法、程序與其強制

319 Shooting. The SCIT should be categorized as a special commission designed to assist the Legislative Yuan in exercising the investigation power. Therefore, it is not an organization that does not belong to any constitutional organ, nor is it a hybrid organ that exercises the legislative, executive, judicial and control powers simultaneously. Accordingly, this interpretation is premised on the investigation power of the Legislative Yuan, which forms the basis of argument. Detailed reasoning is thus given above as to whether the applicable provisions of the SCITA are consistent with the Constitution that involve the organization and authorities of the SCIT, the scope of investigation exercisable by the SCIT, as well as the methods, procedures and compulsory measures for the SCIT. Therefore, it should be noted that either the claim that the SCIT does not belong to any constitutional organ, as held by the Petitioners; or the claim that the SCIT, an ad hoc organization created for a special mission, stands apart from the constitutional five Yuans, as embraced by the agency concerned, namely, the Legislative Yuan; or the

手段所涉及之真調會條例相關規定，對其是否符合憲法之意旨，詳加論述如上。是聲請人之主張，所謂真調會無法歸屬於任何憲法機關，關係機關立法院主張所稱真調會係在憲法五院之外，因特定任務成立之暫時性組織云云，並各自依此而為憲法適用上之陳述，本院自無再予一一准駁之必要，特此指明。

statements made by the respective parties in support of their claims, must be granted or dismissed by this Court one by one.

Article 78 of the Constitution provides that the Judicial Yuan shall interpret the Constitution and shall have the authority to unify the interpretation of laws and regulations. Article 79 of the Constitution and Article 5-IV of the Amendments to the Constitution provide that the Grand Justices shall have the authority to interpret the Constitution and form a Constitutional Court to adjudicate matters relating to the dissolution of political parties violating the Constitution. While independently exercising the foregoing essential judicial powers mandated by the Constitution, the Grand Justices shall be deemed as judges under the Constitution. The purposes of constitutional interpretation are to ensure the supremacy of the State's Constitution in the legal hierarchy in a constitutional democracy, and to render binding judgments for the protection of fundamental rights of the people and the preservation of such fundamental constitutional values as free, democratic consti-

憲法第七十八條規定司法院解釋憲法，並有統一解釋法律及命令之權。依憲法第七十九條第二項及憲法增修條文第五條第四項規定，解釋憲法及組成憲法法庭審理政黨違憲之解散事項，為司法院大法官之職權。大法官依憲法規定，獨立行使憲法明文規定之上述司法核心範圍權限，乃憲法上之法官。憲法解釋之目的，在於確保民主憲政國家憲法之最高法規範地位，就人民基本權利保障及自由民主憲政秩序等憲法基本價值之維護，作成有拘束力之司法判斷。為符司法權之本質，釋憲權之行使應避免解釋結果縱有利於聲請人，卻因時間經過等因素而不具實益之情形發生。是為確保司法解釋或裁判結果實效性之保全制度，乃司法權核心機能之一，不因憲法解釋、審判或民事、刑事、行政訴訟之審判而有異。

tutional orders. In order to serve the purpose of the judicial power, while exercising the power of constitutional interpretation, the judiciary should avoid the situation where the outcome of the interpretation may be in favor of the petitioner, but no meaningful benefits accrue to him or her due to passage of time or certain other factors. The preventive system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or trials, or civil, criminal or administrative litigations.

Although the preventive system is a core function of the judicial power, it should still be subject to the principle of legal reservation and formulated by the legislators by means of enactment because it is of importance for fundamental rights and public interests. Before the legislature specifies by law any preventive system for the constitutional interpretation procedure, the Grand Justices, in exercising the power of constitutional interpretation,

保全制度固屬司法權之核心機能，惟其制度具基本權利與公共利益重要性，當屬法律保留範圍，應由立法者以法律明定其制度內容。於立法機關就釋憲程序明定保全制度之前，本院大法官行使釋憲權時，如因系爭憲法疑義或爭議狀態之持續、爭議法令之適用或原因案件裁判之執行，可能對人民基本權利或憲法基本原則造成不可回復或難以回復之重大損害，倘依聲請人之聲請於本案解釋前作成暫時處分以定暫時狀

may grant the declaration of the preliminary injunction in the event that the continuance of the doubt or dispute as to the constitutional provisions at issue, the application of the law or regulation in dispute or the enforcement of the judgment for the case at issue may cause irreparable or virtually irreparable harm to any fundamental right of the people or any fundamental constitutional principle, that the granting of a preliminary injunction on the motion of a petitioner prior to the delivery of an interpretation for the case at issue may be imminently necessary to prevent any harm, that no other means is available to prevent such harm, and that, after weighing the pros and cons for granting a preliminary injunction, the granting of the injunction obviously has more advantages than disadvantages. As an additional note, although the petition for preliminary injunction prior to the delivery of an interpretation for the case at issue is not in conflict with the Constitution, it nevertheless is no longer necessary to examine the issue now that an interpretation has been given for the case at issue.

態，對損害之防止事實上具急迫必要性，且別無其他手段可資防免其損害時，即得權衡作成暫時處分之利弊，若作成暫時處分顯然利大於弊時，自可准予暫時處分之宣告。本件聲請於本案解釋作成前為暫時處分部分，雖非憲法所不許，惟因本案業經作成解釋，已無須予以審酌，併此敘明。

Justice Yu-hsiu Hsu filed concurring opinion in part and dissenting opinion in part.

Justice Tzong-Li Hsu filed dissenting opinion in part.

本號解釋許大法官玉秀提出一部協同一部不同意見書；許大法官宗力提出部分不同意見書。

J. Y. Interpretation No.586（December 17, 2004）*

ISSUE: Does the term "co-acquirers" as defined in Article 43-1, Paragraph 1, of the Securities Exchange Act provided by Article 3, Subparagraph 2, of the Guidelines for Filing Reports on the Acquisition of Shares in Accordance with Article 43-1, Paragraph 1, of the Securities Exchange Act exceed its statutory scope and create additional restrictions on people's constitutional rights?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）; J. Y. Interpretation Nos. 137, 216 and 407（司法院釋字第一三七號、第二一六號、第四〇七號解釋）; Articles 43-1, Paragraph 1, 178, Paragraph 1, Subparagraph 1, and 179 of the Securities Exchange Act（證券交易法第四十三條之一第一項、第一百七十八條第一項第一款、第一百七十九條）; Articles 3, Subparagraph 2, and 4 of the Guidelines for Filing Reports on the Acquisition of Shares in Accordance with Article 43-1, Paragraph 1, of the Securities Exchange Act（證券交易法第四十三條之一第一項取得股份申報事項要點第三條第二款、第四條）.

KEYWORDS:

filing（申報）, explanatory administrative rule（解釋性行政

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* Translated by Professor Chun-Jen Chen.

** Contents within frame, not part of the original text, are added for reference purpose only.

規則）, spouse（配偶）, minor child（未成年子女）, degree of relationship（親等）, voting right（表決權）, director（董事）, supervisor（監察人）, chairman, president（董事長）, chief executive officer, general manager（總經理）, co-acquirer（共同取得人）, exceed（逾越）, enabling statute（母法）, autonomous right to information（資訊自主權）, property right（財產權）, doctrine of reservation of law（法律保留原則）, agency-in-charge（主管機關）, civil servant, public functionary（公務員）, principle of public disclosure（公開原則）, public interests（公共利益）, relationship of relatives（親屬關係）, corporate culture（企業文化）.**

HOLDING: The Securities and Exchange Commission of the Ministry of Finance (later renamed the Securities and Futures Commission) promulgated the "Guidelines for Filing Reports on the Acquisition of Shares in Accordance with Article 43-1, Paragraph 1, of the Securities Exchange Act" (hereinafter, the "Guidelines") on September 5, 1985. The Guidelines are explanatory administrative rules promulgated by the then agency-in-charge of securities trading based on its power and authority in order to effect-

解釋文：財政部證券管理委員會（後更名為財政部證券暨期貨管理委員會），於中華民國八十四年九月五日訂頒之「證券交易法第四十三條之一第一項取得股份申報事項要點」，係屬當時之證券交易主管機關基於職權，為有效執行證券交易法第四十三條之一第一項規定之必要而為之解釋性行政規則，固有其實際需要，惟該要點第三條第二款：「本人及其配偶、未成年子女及二親等以內親屬持有表決權股份合計超過三分之一之公司或擔任過半數董事、監察人或董事長、總經理之公司取得股份

tively enforce the stipulation of Article 43-1, Paragraph 1, of the Securities Exchange Act. Though the Guidelines were promulgated due to practical necessity, their Article 3, Subparagraph 2, together with the relevant part of Article 4 provide the definition of a term of the enabling statute that goes beyond its original statutory scope. Article 3, Subparagraph 2, of the Guidelines defines the term "co-acquirers" of Article 43-1, Paragraph 1, of the Securities Exchange Act as "those who acquire shares through a company in which the person, his spouse, his minor child, and his relatives within the second degree of relationship together hold more than one third of the shares with voting rights, or through a company in which the person, his spouse, his minor child, and his relatives within the second degree of relationship hold a half or more of the seats on the board of directors or supervisors, or through a company in which the person, his spouse, his minor child, or his relatives within the second degree of relationship serve(s) as its chairman or chief executive officer." This definition is so broad as to exceed the scope of the term's

者」亦認定為共同取得人之規定及第四條相關部分，則逾越母法關於「共同取得」之文義可能範圍，增加母法所未規範之申報義務，涉及憲法所保障之資訊自主權與財產權之限制，違反憲法第二十三條之法律保留原則，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

possible meaning, and hence creates additional filing obligations which are not stipulated by the enabling statute. Because the creation of filing obligations places a restriction on the people's constitutionally guaranteed autonomous right to information and property right, it shall be imposed by law instead of by administrative regulations. Therefore, Article 3, Subparagraph 2, of the Guidelines are in contravention of the doctrine of reservation to act under Article 23 of the Constitution and shall cease to apply no later than one year after this Interpretation is made public.

REASONING: In order to provide guidelines to its or its subordinate agencies' civil servants, the agency-in-charge may issue necessary opinion letters or directives based on its power and authority to enforce stipulations of specific laws. We have repeatedly stated that the courts, on the other hand, are of course not bound by those administrative opinion letters or directives and are free to use their independent judgments to ascertain facts and to apply laws in given cases (See

解釋理由書：主管機關基於職權因執行特定法律之規定，得為必要之釋示，以供本機關或下級機關所屬公務員行使職權時之依據。另法官於審判時應就具體案情，依其獨立確信之判斷，認定事實，適用法律，不受行政機關函釋之拘束，乃屬當然，業經本院釋字第一三七號、第二一六號、第四〇七號等號解釋闡明在案。法條使用之法律概念，有多種解釋之可能時，主管機關為執行法律，雖得基於職權，作出解釋性之行政規則，然其解釋內容仍不得逾越

J.Y. Interpretations Nos. 137, 216 and 407). When a legal concept used in a statute has more than one possible interpretation, though the agency-in-charge may promulgate explanatory administrative rules based on its power and authority, its interpretation shall not exceed the scope of the legal concept's possible meaning.

母法文義可能之範圍。

Article 43-1, Paragraph 1, of the Securities Exchange Act as amended on January 29, 1988, stipulates that, "Any person who acquires, either individually or jointly with co-acquirers, more than ten percent of the total shares outstanding of a public company shall file a statement with the agency-in-charge within ten days after such acquisition, stating the purpose of acquisition, the sources of funds for the purchase of shares and any other matters required to be disclosed by the agency-in-charge; and such persons shall file timely amendments when there are changes in the matters reported." Though it limits people's autonomous right to information, this provision is enacted with a view to enhance public interests and is intended to elaborate the principle of complete public

七十七年一月二十九日增訂公布之證券交易法第四十三條之一第一項規定：「任何人單獨或與他人共同取得任一公開發行公司已發行股份總額超過百分之十之股份者，應於取得後十日內，向主管機關申報其取得股份之目的、資金來源及主管機關所規定應行申報之事項；申報事項如有變動時，並隨時補正之。」雖對人民之資訊自主權有所限制（本院釋字第五八五號理由書參照），然該規定旨在發揮資訊完全公開原則，期使公司股權重大異動之資訊能即時且充分公開，使主管機關及投資人能瞭解公司股權重大變動之由來及其去向，並進而瞭解公司經營權及股價可能發生之變化，以增進公共利益。其所稱之「共同取得人」，於文義範圍內有多種解釋之可能，而同法並未對於該法律概念作定義性之規定，主管機關為達成前開規

disclosure of information to ensure that major changes of corporate share-ownership are completely disclosed to the public in a timely manner, and to enable the agency-in-charge as well as the investing public to know the reasons for and parties involved in those major changes and to gain a better understanding of possible changes in corporate control and share prices. Since the term "co-acquirers" has more than one possible interpretation and since the statute itself is silent in this regard, in order to enforce the law to accomplish the abovementioned legislative intent, the agency-in-charge, taking the characteristics of our stock markets into account, may promulgate clear and concrete explanatory administrative rules to interpret it.

定立法意旨，自得基於職權，針對我國證券市場特性，予以適當之闡釋，作出具體明確之例示規定，以利法律之執行。

The Securities and Exchange Commission of the Ministry of Finance (later renamed the Securities and Futures Commission), which was the then agency-in-charge under Article 3 of the Securities Exchange Act, promulgated the Guidelines on September 5, 1985 (later amended by the Securities and Futures

財政部證券管理委員會（後更名為財政部證券暨期貨管理委員會）依同法第三條，為當時之證券交易法主管機關，於八十四年九月五日訂頒「證券交易法第四十三條之一第一項取得股份申報事項要點」（財政部證券暨期貨管理委員會八十七年十月三十一日修正），係該會本於主管機關職權，為有效執行

Commission on October 31, 1998). The Guidelines are necessary explanatory administrative rules promulgated by the agency-in-charge based on its power and authority in order to effectively enforce the stipulation of Article 43-1, Paragraph 1, of the abovementioned act by way of elaborating the meanings and the scope of applications of the terms, "acquire shares", "co-acquirers" and "methods of acquisition" used, to inform acquirers of securities when the filing obligations arise and to implement the management of major changes of share-ownership.

法律，落實股權重大異動之管理，對上開法律所為之解釋性行政規則，旨在闡明該規定所稱之「取得股份」、「共同取得人」、「取得方式」等概念之含義及其適用範圍，使證券取得人知悉在何種情形應履行申報義務，為執行證券交易法上開規定所必要。

Though the Guidelines were promulgated due to practical necessity, their Article 3, Subparagraph 2, and the relevant part of Article 4 provide the definition of a term of the enabling statute that goes beyond its original statutory scope. Article 3, Subparagraph 2, of the Guidelines defines the term "co-acquirers" of Article 43-1, Paragraph 1, of the Securities Exchange Act as "those who acquire shares through a company in which the person, his spouse, his minor child, and his relatives within the second degree of relation-

惟上開要點第三條第二款：「本人及其配偶、未成年子女及二親等以內親屬持有表決權股份合計超過三分之一之公司或擔任過半數董事、監察人或董事長、總經理之公司取得股份者」亦認定為共同取得人之規定及第四條相關部分，雖係主管機關為有效揭露資訊，妥適保障投資人權益，考量親屬關係於我國企業文化之特殊性，以客觀上具備一定親屬關係與股份取得行為為標準，認定行為人間意思與行為共同之必然性所訂定。此種定義方式雖有其執行面上之實際考量，然其忽略母法「共同」二字

ship together hold more than one third of the shares with voting right, or through a company in which the person, his spouse, his minor child, and his relatives within the second degree of relationship hold a half or more of the seats on the board of directors or supervisors, or through a company in which the person, his spouse, his minor child, or his relatives within the second degree of relationship serve(s) as its chairman or chief executive officer." This definition reflects the agency's effort to effectively disclose information to appropriately protect the rights and interests of investors. As a result, after taking into account the characteristic relationships of relatives in our corporate culture and the correlation between the relationship of relatives and share acquisition, the agency-in-charge defined the term "co-acquirers" utilizing objective relationships of relatives as standards and recognizing the necessity between the acquirer's intent and collective behavior. This defining method may be sound for practical reasons, yet it neglects the fact that in general the term's prefix, "co-", represents agreements in principle between or among par-

依一般文義理應具備以意思聯絡達到一定目的（如控制、投資）之核心意義，不問股份取得人間主觀上有無意思聯絡，一律認定其意思與行為共同之必然性。衡諸社會現況，特定親屬關係影響、支配家族成員股份取得行為之情形雖屬常見，但例外情形亦難認不存在。單以其客觀上具備特定親屬關係與股份取得行為，即認定股份取得人手中持股為共同取得，屬應併計申報公開之股權變動重大資訊，可能造成股份取得人間主觀上無共同取得之意，卻因其具備客觀之親屬關係與股份取得行為，未依法併同申報而成為母法第一百七十八條第一項第一款、第一百七十九條處罰之對象，顯已逾越證券交易法第四十三條之一第一項「共同取得」之文義可能範圍，增加母法所未規範之申報義務，涉及憲法所保障之資訊自主權與財產權之限制，違反憲法第二十三條之法律保留原則，為避免證券市場失序，該項規定應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

ties to achieve certain objectives (such as control, investment, etc.); therefore, co-acquirers can not be defined according to the necessity between the acquirer's intent and collective behavior regardless of whether or not there are agreements in principle between or among acquirers. In our current society, it is common that specific relationships among relatives may influence or dictate family members' share acquisitions; however, it is also difficult to deny the existence of exceptions. The definition views individual acquirers of shares as co-acquirers and imposes on them filing obligations to publicly disclose the changes of share-ownership, simply because they have purchased corporate shares, and simply because they objectively enjoy specific relationships as relatives. Pursuant to this definition as set forth in Article 3, Subparagraph 2, of the Guidelines, a person, who subjectively has no intention to become a co-acquirer with others yet objectively acquires corporate shares and is related by blood or marriage to other acquirers, may fail to fulfill his or her filing obligation and is therefore subject to pecuniary fines under

Article 178, Paragraph 1, and Article 179 of the enabling statute. Obviously, this definition is so broad as to exceed the scope of the term's possible meaning, and hence creates additional filing obligations which are not stipulated by the enabling statute. Because the creation of filing obligations places a restriction on people's constitutionally guaranteed autonomous right to information and property right, it shall be imposed by law instead of by administrative regulations. Therefore, Article 3, Subparagraph 2, of the Guidelines are in contravention of the doctrine of reservation to act under Article 23 of the Constitution, and in order to prevent stock market upheavals, it shall cease to apply no later than one year after this Interpretation is made public.

Justice Jen-Shou Yang filed dissenting opinion.

本號解釋楊大法官仁壽提出不同意見書。

J. Y. Interpretation No.587（December 30, 2004）*

ISSUE: Are the provisions of Article 1063 of the Civil Code and relevant precedents, in limit a child's right to bring an action for disavowal against the legitimate father as well as a natural father's right to bring an action for disavowal against the child who has been presumed to be another's legitimate child unconstitutional？

RELEVANT LAWS:

Article 22 of the Constitution（憲法第二十二條）; J.Y. Interpretations Nos.177 and 185（司法院釋字第一七七號、第一八五號解釋）; Articles 1055, 1055-1, 1055-2, 1063, 1089-II, and 1094-II of the Civil Code（民法第一千零五十五條、第一千零五十五條之一、第一千零五十五條之二、第一千零六十三條、第一千零八十九條第二項、第一千零九十四條第二項）; Articles 589, 594, 595, 596-I and -II of the Code of Civil Procedure including（民事訴訟法第五百八十九條、第五百九十四條、第五百九十五條、第五百九十六條第一項及第二項）; Supreme Court Precedent Year 23-No.3473 (1934) and Precedent Year 75-No.2071 (1986)（最高法院二十三年上字第三四七三號、七十五年台上字第二〇七一號判例）; Article 7, Section 1, of the UN Convention on the Rights of the Child（聯合國兒童權利公約第七條第一

* Translated by Professor Dr. Amy H.L. SHEE.

** Contents within frame, not part of the original text, are added for reference purpose only.

項（一九九〇年九月二日生效））; Articles 1600, 1600a, 1600b of the German Civil Code（德國民法第一六〇〇條、第一六〇〇a條、第一六〇〇b條）; Articles 256 and 256c of the Swiss Civil Code（瑞士民法第二五六條、第二五六c條）.

KEYWORDS:

Personality rights（人格權）, right to litigation（訴訟權）, legitimate child（婚生子女）, an action for disavowal（否認生父之訴）, the effects of a judicial interpretation（解釋之效力）, extinctive prescription（除斥期間）, legislative discretion（立法形成自由）.**

HOLDING: A child's right to identify his/her blood filiations and to ascertain his/her paternity is concerned with the personality rights and shall be protected by the Constitution. Article 1063 of the Civil Code stipulates, "Where the conception of the wife is during the continuance of a marital relationship, the child so born is presumed to be legitimate. In regard to the presumption of legitimacy provided in the preceding paragraph, either the husband or the wife may bring an action for disavowal if he or she can prove that the conception of the wife is not from

解釋文：子女獲知其血統來源，確定其真實父子身分關係，攸關子女之人格權，應受憲法保障。民法第一千零六十三條規定：「妻之受胎，係在婚姻關係存續中者，推定其所生子女為婚生子女。前項推定，如夫妻之一方能證明妻非自夫受胎者，得提起否認之訴。但應於知悉子女出生之日起，一年內為之。」係為兼顧身分安定及子女利益而設，惟其得提起否認之訴者僅限於夫妻之一方，子女本身則無獨立提起否認之訴之資格，且未顧及子女得獨立提起該否認之訴時應有之合理期間及起算日，是上開規定使子女之訴訟權受到不

the husband; but such disavowal shall be effected within one year after the knowledge of the child's birth." Such law is intended to balance the maintenance of a stable status order and the protection of a child's interests. However, such right may only be exercised by either of the spouses, while the child is not entitled to bring an action for disavowal. Nor does the provision consider the reasonableness of extinctive prescription for a child's petition. Therefore, the law has inappropriately restricted the right of a child to litigation, and is thus insufficient in defending the personal rights. Within this ambit, such law is inconsistent with the constitutional principles of protecting the personality rights and the right to litigation. The relevant holdings of the Supreme Court Precedents Year 23-No.3473 (1934) and Year 75-No.2071 (1986) should no longer be applied. In response, the concerned legislative authorities shall endeavor to amend relevant laws regarding the legal subject and the extinctive prescription of disavowal of paternity in line with the abovementioned constitutional principles.

當限制，而不足以維護其人格權益，在此範圍內與憲法保障人格權及訴訟權之意旨不符。最高法院二十三年上字第三四七三號及同院七十五年台上字第二〇七一號判例與此意旨不符之部分，應不再援用。有關機關並應適時就得提起否認生父之訴之主體、起訴除斥期間之長短及其起算日等相關規定檢討改進，以符前開憲法意旨。

According to J.Y. Interpretations Nos.177 and 185, if a statute or a precedent invoked by a finalized judgment is declared unconstitutional by this Yuan as a result of the people's application for a judicial interpretation, the disadvantaged party of the judgment may, basing the petition on that judicial interpretation, apply for relief according to the law of litigation procedure. If the party of this case is not entitled to a retrial, he/she shall be allowed, within a year after this Interpretation is announced, to bring an action for disavowal against the legally presumed father. In such case, relevant provisions on the disavowal of paternity in the Code of Civil Procedure shall apply mutatis mutandis. When the action is initiated by a statutory agent, it should be brought for the child's best interests.

確定終局裁判所適用之法規或判例，經本院依人民聲請解釋認為與憲法意旨不符時，其受不利確定終局裁判者，得以該解釋為基礎，依法定程序請求救濟，業經本院釋字第一七七號、第一八五號解釋闡釋在案。本件聲請人如不能以再審之訴救濟者，應許其於本解釋公布之日起一年內，以法律推定之生父為被告，提起否認生父之訴。其訴訟程序，準用民事訴訟法關於親子關係事件程序中否認子女之訴部分之相關規定，至由法定代理人代為起訴者，應為子女之利益為之。

The law which disqualifies a natural father from bringing an action for disavowal re his child presumed to be born in wedlock is intended to prevent damage to marriage stability, family harmony and the right of a child to education and nurture, and is thus not contrary to the Constitu-

法律不許親生父對受推定為他人之婚生子女提起否認之訴，係為避免因訴訟而破壞他人婚姻之安定、家庭之和諧及影響子女受教養之權益，與憲法尚無牴觸。至於將來立法是否有限度放寬此類訴訟，則屬立法形成之自由。

tion. As to whether the law is to be amended to loosen the restrictions for such actions to a certain extent, this is a matter of legislative discretion.

REASONING: A child's right to identify his/her blood filiations was declared by Article 7, Section 1, of the UN Convention on the Rights of the Child, validated on September 2, 1990. The right to establish paternity is concerned with a child's personality rights and shall be protected under Article 22 of the Constitution. Article 1063 of the Civil Code stipulates, "Where the conception of the wife is during the continuance of a marital relationship, the child so born is presumed to be legitimate. In regard to the presumption of legitimacy provided in the preceding paragraph, either the husband or the wife may bring an action for disavowal if he or she can prove that the conception of the wife is not from the husband; but such disavowal shall be effected within one year after the knowledge of the child's birth." Such law is intended to balance the maintenance of a stable status order and the protection of a child's interests. How-

解釋理由書：子女有獲知其血統來源之權利，為聯合國一九九〇年九月二日生效之兒童權利公約（Convention on the Rights of the Child）第七條第一項所揭櫫；確定父子真實身分關係，攸關子女之人格權，應受憲法第二十二條所保障。民法第一千零六十三條規定：「妻之受胎，係在婚姻關係存續中者，推定其所生子女為婚生子女。前項推定，如夫妻之一方能證明妻非自夫受胎者，得提起否認之訴。但應於知悉子女出生之日起，一年內為之。」此種訴訟雖係為兼顧身分安定及子女利益而設，惟得提起否認之訴者僅限於夫妻之一方，未規定子女亦得提起否認之訴，或係為避免涉入父母婚姻關係之隱私領域，暴露其生母受胎之事實，影響家庭生活之和諧。然真實身分關係之確定，直接涉及子女本身之人格及利益，如夫妻皆不願或不能提起否認之訴，或遲誤提起該訴訟之期間時，將無從確定子女之真實血統關係，致難以維護其人格權益。是為貫徹前開憲法

ever, the right to disavowal may only be exercised by either of the spouses, while the child is not entitled to it. Such restriction may be justified on the basis of not interfering in the private sphere of marital relations by investigating the facts concerning the begetting of [or paternity of] an out-of-wedlock child, thus resulting in the disturbance of family harmony. Nevertheless, the establishment of paternity relates directly to the child's personality and interests, and when both spouses will not or can not bring an action for disavowal within the time limit and thus fail to ascertain the paternity of a child, the child's personality rights will then be infringed. In order to realise the constitutional rule, it shall be certified that the establishment of paternity is the natural right of a child. It was stipulated in the former German Civil Code that a child could bring an action for disavowal at a supplementary position (when both parents had failed to do it). The law has been amended according to the UN Convention and now allows a child to initiate a legal suit to deny presumed paternity (Articles 1600, 1600a, 1600b of the German Civil

意旨，應肯認確定真實血統關係，乃子女固有之權利，外國立法例如德國舊民法原已規定在特殊情形子女得以補充地位提出否認生父之訴，一九九八年德國民法修正時配合聯合國兒童權利公約之規定，更明定子女自己亦得提起此項訴訟（德國民法第一六〇〇條、第一六〇〇ａ條、第一六〇〇ｂ條參照），瑞士民法第二五六條、第二五六ｃ條亦有類似規定，足供參考。故上開民法規定，僅許夫或妻得提起否認子女之訴，而未顧及子女亦應有得獨立提起否認生父之訴之權利，使子女之訴訟權受到不當限制，而不足以維護其人格權益，此與民法規範父母子女間之法律關係，向以追求與維護子女之最佳利益為考量（民法第一千零五十五條至第一千零五十五條之二、第一千零八十九條第二項、第一千零九十四條第二項規定參照），以實現憲法保障子女人格權益之價值，亦有出入，故在此範圍內，與憲法保障人格權與訴訟權之意旨顯有未符。最高法院二十三年上字第三四七三號判例：「妻之受胎係在婚姻關係存續中者，民法第一千零六十三條第一項，推定其所生子女為婚生子女，受此推定之子女，惟受胎期間內未與妻同居之夫，得依同條第二項之規定以訴否認之，如夫未提起否

Code). There are also similar stipulations in Articles 256 and 256c of the Swiss Civil Code. Therefore, the aforementioned provision of the Civil Code (ROC), which allows the husband or the wife to bring an action for disavowal while denying the child the same claim, has inappropriately restricted the right of a child to litigation, and is thus insufficient in the defense of the personality rights. It is contrary to the best interests of the child that the Civil Code governing the parent-child relationship has been abided by（Articles 1055, 1055-1, 1055-2, 1089II, and 1094II）. Within this ambit, such law is inconsistent with the constitutional principles of protecting the personality rights and the right to litigation. The relevant holdings of the Supreme Court Precedent Year 23-No.3473 (1934), "Where the conception of the wife is during the continuance of a marital relationship, the child so born is presumed to be legitimate under Article 1063, Section 1, of the Civil Code. However, the husband who did not cohabit with his wife during the period of conception may bring an action for disavowal under Section 2 of the same Article. If the

認之訴，或雖提起而未受有勝訴之確定判決，則該子女在法律上不能不認為夫之婚生子女，無論何人，皆不得為反對之主張。」及同院七十五年台上字第二〇七一號判例：「妻之受胎係在婚姻關係存續中者，夫縱在受胎期間內未與其妻同居，妻所生子女依民法第一千零六十三條第一項規定，亦推定為夫之婚生子女，在夫妻之一方依同條第二項規定提起否認之訴，得有勝訴之確定判決以前，無論何人皆不得為反對之主張，自無許與妻通姦之男子出而認領之餘地。」與此意旨不符之部分，亦應不再援用。有關機關應斟酌得提起否認生父之訴之主體、起訴之除斥期間之長短、其起算日並應考慮子女是否成年及子女與法律推定之生父並無血統關係之事實是否知悉等事項，就相關規定適時檢討改進，而使子女在一定要件及合理期間內得獨立提起否認生父之訴。

husband has failed to bring the action or his petition has been denied, the legitimacy of the child is then ascertained beyond anyone's objection"; and Supreme Court Precedent Year 75-No.2071 (1986), "Where the conception of the wife is during the continuance of a marital relationship, the child so born is presumed to be legitimate under Article 1063, Section 1, of the Civil Code even if the husband had not cohabited with his wife during the period of conception. Before one of the spouses brings a successful action for disavowal, the legitimacy of the child may not be denied by anyone, thus it is impossible for an adulterer to acknowledge his child under the law" should no longer be applied. In response, the concerned legislative authorities shall endeavor to amend the relevant laws regarding the legal subject and the extinctive prescription of disavowal. They shall also take into consideration whether the child has reached majority and whether the child knows the fact that he/she has no blood relations with the legally presumed father so as to amend the law to allow the child to bring an action for disavowal within a reason-

able period of time under specified conditions.

According to J.Y. Interpretations Nos.177 and 185, if a statute or a precedent invoked by a finalized judgment is declared unconstitutional by this Yuan as a result of the people's application for a judicial interpretation, the disadvantaged party of the judgment may, basing the petition on that judicial interpretation, apply for relief according to the law of litigation procedure. If the party of this case is not entitled to a retrial, he shall be allowed, within a year after this Interpretation is announced, to bring an action for disavowal against the legally presumed father. In such case, relevant provisions on the disavowal of paternity in the Code of Civil Procedure including Articles 589, 594, 595, 596-I & II shall apply mutatis mutandis. When the action is initiated by a statutory agent, it should be brought for the child's best interests, which is also the legislative purpose of the Civil Code regarding the parent-child relationship.

確定終局裁判所適用之法規或判例，經本院依人民聲請解釋認為與憲法意旨不符時，其受不利確定終局裁判者，得以該解釋為基礎，依法定程序請求救濟，業經本院釋字第一七七號、第一八五號解釋闡釋在案。本件聲請人如不能以再審之訴救濟者，應許其於本解釋公布之日起一年內，以法律推定之生父為被告，提起否認生父之訴。其訴訟程序，準用民事訴訟法關於親子關係事件程序中否認子女之訴部分之規定，即同法第五百八十九條、第五百九十四條、第五百九十五條、第五百九十六條第一項及第二項等相關規定。惟由法定代理人代為起訴者，應為子女之利益為之，以與民法關於父母子女間之規範，皆以追求及維護子女之最佳利益為考量之意旨相符。

The existing law which disqualifies a

現行法律不許親生父對受推定為

natural father from bringing an action for disavowal re his child presumed to have been born in wedlock is intended to prevent damage to marriage stability, family harmony and the right of a child to education and nurture. If the law allowed such litigation, the petitioner would not only disclose the privacy of the other party's marital relation but also make a claim for his misconduct of intervening in the other party's marriage. Such law would contravene the commonly accepted social values. Under such considerations, the law has to restrict the exercise of litigation right in order to prevent damage to another's rights and to maintain the social order, and is thus not contrary to the Constitution. As to whether the legislators shall consider certain conditions such as the facts that spouses do not always cohabit or the natural father is raising his illegitimate child, etc., thus loosening the restrictions on such actions to a certain extent, this is a matter of legislative discretion.

他人之婚生子女提起否認之訴，係為避免因訴訟而破壞他人婚姻之安定、家庭之和諧及影響子女受教養之權益。且如許其提起此類訴訟，則不僅須揭發他人婚姻關係之隱私，亦須主張自己介入他人婚姻之不法行為，有悖社會一般價值之通念。故為防止妨礙他人權利、維持社會秩序而限制其訴訟權之行使，乃屬必要，與憲法並無牴觸。至於將來立法者應否衡量社會觀念之變遷，以及應否考慮在特定條件下，諸如夫妻已無同居共同生活之事實、子女與親生父事實上已有同居撫養之關係等而有限度放寬此類訴訟之提起，則屬立法形成之自由。

J. Y. Interpretation No.588（January 28, 2005）*

ISSUE: Are the various reasons for arrest and custody listed in Article 17-I of the Administrative Execution Act unconstitutional? Are the provisions of Paragraphs II and III of the same Article and Article 19-I of the said Act consistent with the principle of due process of law?

RELEVANT LAWS:

Articles 8-I and 23 of the Constitution（憲法第八條第一項、第二十三條）; J.Y. Interpretations No. 384 and 559（司法院釋字第三八四號、第五五九號解釋）; Articles 8-I (iii), 17-I, II,III, V, 19-I and 21 (i) of the Administrative Execution Act（行政執行法第八條第一項第三款、第十七條第一、二、三、五項、第十九條第一項、第二十一條第一款）; Articles 21, 22-I, II and 22-5 of the Compulsory Enforcement Act（強制執行法第二十一條、第二十二條第一、二項、第二十二條之五）; Articles 75-II, 91, 93-V, 101, 101-1, 103-I and 228-IV of the Code of Criminal Procedure（刑事訴訟法第七十五條第二項、第九十一條、第九十三條第五項、第一百零一條、第一百零一條之一、第一百零三條第一項、第二百二十八條第四項）.

KEYWORDS:

personal liberty（人身自由）, principle of proportionality

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

（比例原則）, due process of law（正當法律程序）, obligation of monetary payment under public law（公法上金錢給付義務）, administrative execution（行政執行）, custody（管收）, arrest（拘提）, trial（審問）, direct trial（直接審理）, oral trial（言詞審理）.**

HOLDING: For purposes of substantial public interests, the Constitution stipulates that the legislature may use compulsory measures that restrain the freedom of people in order to ensure that they fulfill their legal obligations within the scope that is consistent with the principle of proportionality. The provision concerning "custody" in the Administrative Execution Act is intended to satisfy the obligation of monetary payment under public law whereby an indirect compulsory measure to restrain the obligor's body is taken when the obligor is able but unwilling to perform, which is not disallowed by the Constitution. However, in respect of those reasons under which application may be made to the court for an order of custody as listed in Article 17-I in reference to Paragraph II of the same

解釋文：立法機關基於重大之公益目的，藉由限制人民自由之強制措施，以貫徹其法定義務，於符合憲法上比例原則之範圍內，應為憲法之所許。行政執行法關於「管收」處分之規定，係在貫徹公法上金錢給付義務，於法定義務人確有履行之能力而不履行時，拘束其身體所為間接強制其履行之措施，尚非憲法所不許。惟行政執行法第十七條第二項依同條第一項規定得聲請法院裁定管收之事由中，除第一項第一、二、三款規定：「顯有履行義務之可能，故不履行者」、「顯有逃匿之虞」、「就應供強制執行之財產有隱匿或處分之情事者」，難謂其已逾必要之程度外，其餘同項第四、五、六款事由：「於調查執行標的物時，對於執行人員拒絕陳述者」、「經命其報告財產狀況，不為報告或為虛偽之報告者」、「經合法通知，無正當理由而不到場

Article, only Subparagraphs (i), (ii) and (iii) of Paragraph I, which provide, respectively: "where the obligor is apparently able to perform but intentionally does not perform"; "where the obligor apparently is likely to abscond"; and "where the obligor has concealed or disposed of the assets that are subject to the compulsory execution," are difficult to consider as beyond the scope of necessity. The remaining provisions, i.e., Subparagraphs (iv), (v) and (vi) of the same Paragraph, which provide, "where the obligor refused to state to the execution personnel when they investigated as to the subject matter of execution"; "where the obligor refused to report or made a false report after he or she was ordered to report the status of the estate"; and "where the obligor refused to appear without legitimate reason after legal notice," are clearly beyond the boundary of necessity and thus violate the intent of Article 23 of the Constitution.

者」，顯已逾越必要程度，與憲法第二十三條規定之意旨不能謂無違背。

In respect of those reasons under which application may be made to the court for an order of arrest as listed in Ar-

行政執行法第十七條第二項依同條第一項得聲請拘提之各款事由中，除第一項第二款、第六款：「顯有逃匿之

ticle 17-II in reference to Paragraph II of the same Article, only Subparagraphs (ii) and (vi) of Paragraph I which provide, respectively, “where the obligor apparently is likely to abscond,” and “where the obligor refused to appear without legitimate reason after legal notice,” may be deemed to have satisfied the requirement of the principle of proportionality. The remaining provisions, i.e., Subparagraphs (i), (iii), (iv) and (v) of the same paragraph which provide, “where the obligor is apparently able to perform but intentionally does not perform”; “where the obligor has concealed or disposed of the assets that are subject to the compulsory execution”; “where the obligor refused to state to the execution personnel when they investigated as to the subject matter of execution”; and “where the obligor refused to report or made a false report after he or she was ordered to report the status of the estate,” are clearly beyond the boundary of necessity and thus also violate the intent of Article 23 of Constitution.

虞」、「經合法通知，無正當理由而不到場」之情形，可認其確係符合比例原則之必要條件外，其餘同項第一款、第三款、第四款、第五款：「顯有履行義務之可能，故不履行者」、「就應供強制執行之財產有隱匿或處分之情事者」、「於調查執行標的物時，對於執行人員拒絕陳述者」、「經命其報告財產狀況，不為報告或為虛偽之報告者」規定，顯已逾越必要程度，與前揭憲法第二十三條規定意旨亦有未符。

Personal liberty is an essential pre-

人身自由乃人民行使其憲法上各

requisite for people to enjoy their various rights of freedom under the Constitution. The phrase "the procedure prescribed by law" described in Article 8-I of the Constitution means that the procedure based on which the government imposes any measures to restrain a person's liberty, whether he or she is a criminal defendant or not, must not only have statutory foundation, but also fulfill necessary judicial procedure or other due process of law. This procedure is within the scope of constitutional reservation and even the legislative body cannot limit it by enacting statutes to that effect. However, the restrictions imposed on the personal freedom of a criminal defendant and a non-criminal defendant are, after all, different in nature and therefore the judicial procedure or other due process of law need not be identical. Custody is meant to confine a person to a bounded area during a certain period of time, which shall fall within the meaning of "detention" as prescribed in Article 8-I of the Constitution. Therefore, it is essential before the decision of custody is made that certain necessary proceedings be carried out, under which the

項自由權利所不可或缺之前提，憲法第八條第一項規定所稱「法定程序」，係指凡限制人民身體自由之處置，不問其是否屬於刑事被告之身分，除須有法律之依據外，尚須分別踐行必要之司法程序或其他正當法律程序，始得為之。此項程序固屬憲法保留之範疇，縱係立法機關亦不得制定法律而遽予剝奪；惟刑事被告與非刑事被告之人身自由限制，畢竟有其本質上之差異，是其必須踐行之司法程序或其他正當法律程序，自非均須同一不可。管收係於一定期間內拘束人民身體自由於一定之處所，亦屬憲法第八條第一項所規定之「拘禁」，其於決定管收之前，自應踐行必要之程序、即由中立、公正第三者之法院審問，並使法定義務人到場為程序之參與，除藉之以明管收之是否合乎法定要件暨有無管收之必要外，並使法定義務人得有防禦之機會，提出有利之相關抗辯以供法院調查，期以實現憲法對人身自由之保障。行政執行法關於管收之裁定，依同法第十七條第三項，法院對於管收之聲請應於五日內為之，亦即可於管收聲請後，不予即時審問，其於人權之保障顯有未週，該「五日內」裁定之規定難謂周全，應由有關機關檢討修正。又行政執行法第十七條第二項：

matter will be heard by an impartial and fair third party, i.e., the court, and the obligor will appear and participate in the proceeding so as to both ascertain whether the legal requirements and necessity of the custody are satisfied, and to enable the obligor to have an opportunity to defend himself/herself by producing evidence in his or her favor for the court to investigate. Thus, the constitutional guarantee of personal freedom may be realized. In accordance with Article 17-III of the Administrative Execution Act, the court should render its ruling concerning custody within five days of the application. In other words, the court may elect not to try and hear the matter immediately after the application is filed, which renders the protection of human rights incomplete. The provision that a ruling should be made "within five days" is ill considered and the authorities concerned shall review and rectify it accordingly. In addition, under Article 17-II of the Administrative Execution Act, which provides, "Where the obligor neither performs the obligation nor provides collateral afterward upon expiration of the deadline prescribed in the pre-

「義務人逾前項限期仍不履行，亦不提供擔保者，行政執行處得聲請該管法院裁定拘提管收之」、第十九條第一項：「法院為拘提管收之裁定後，應將拘票及管收票交由行政執行處派執行員執行拘提並將被管收人逕送管收所」之規定，其於行政執行處合併為拘提且管收之聲請，法院亦為拘提管收之裁定時，該被裁定拘提管收之義務人既尚未拘提到場，自不可能踐行審問程序，乃法院竟得為管收之裁定，尤有違於前述正當法律程序之要求。另依行政執行法第十七條第二項及同條第一項第六款：「經合法通知，無正當理由而不到場」之規定聲請管收者，該義務人既猶未到場，法院自亦不可能踐行審問程序，乃竟得為管收之裁定，亦有悖於前述正當法律程序之憲法意旨。

ceding paragraph, the Administrative Enforcement Office may apply to the competent court for an order of arrest and custody"; and Article 19-I thereof, which provides, "After rendering the order of arrest and custody, the court shall deliver the warrant of arrest and custody to the Administrative Enforcement Office, which office shall assign junior enforcement officers to make the arrest and send the arrested obligor to the institution of custody," when the Administrative Enforcement Office applies for arrest and custody concurrently and the court makes a concurrent order of arrest and custody, it is impossible to carry out a hearing since the obligor concerned will not have appeared in court for the arrest has not yet been made. Nevertheless, the court can still go so far as to render a ruling of custody, which, in particular, violates the requirement of the aforementioned due process of law. Furthermore, if and when an application for custody is made under Article 17-II and I (vi) of the Administrative Execution Act, which provides, "Where the obligor refused to appear without legitimate reason after legal no-

tice," it is also impossible for the court to carry out a hearing and trial since the obligor is not present. However, the court can still render a ruling of custody, which violates the aforementioned constitutional intent of due process of law as well.

The "police organ" prescribed in Article 8-I of the Constitution, providing, "Except in case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law" means not only the institution named "police" under organizational law but also any agency or person who is authorized by law to use the means of interference and suppression for the purposes of preserving social order or promoting public interests. Therefore, the provision of Article 19-I of the Administrative Execution Act in respect of the arrest and custody exercised by the junior enforcement officers sent by the Administrative Enforcement Office is not in violation of the constitutional intent mentioned above.

憲法第八條第一項所稱「非經司法或警察機關依法定程序，不得逮捕、拘禁」之「警察機關」，並非僅指組織法上之形式「警察」之意，凡法律規定，以維持社會秩序或增進公共利益為目的，賦予其機關或人員得使用干預、取締之手段者均屬之，是以行政執行法第十九條第一項關於拘提、管收交由行政執行處派執行員執行之規定，核與憲法前開規定之意旨尚無違背。

The aforesaid provisions of the Administrative Execution Act that violate the constitutional intents shall become null and void no later than six months from the date of publication of this Interpretation.

上開行政執行法有違憲法意旨之各該規定，均應自本解釋公布之日起至遲於屆滿六個月時失其效力。

REASONING: For purposes of substantial public interests, the Constitution stipulates that the legislature may use compulsory measures that restrain the freedom of people in order to ensure that they fulfill their legal obligations within the scope that is consistent with the principle of proportionality. The Administrative Execution Act is the procedural rule for the purposes of practicing administrative law, upholding their effective exercise, and compelling people to perform their obligations under public law by using the force of the state. With respect to the monetary obligations under public law, the indicated obligor shall perform automatically without the enforcement of the state and the realization of the payment under public law has a material relationship with the finance and the measures of society, health and welfare of the state; the maintenance of the order of society is

解釋理由書：立法機關基於重大之公益目的，藉由限制人民自由之強制措施，以貫徹其法定義務，於符合憲法上比例原則之範圍內，應為憲法之所許。行政執行法係為貫徹行政法令、保障其有效之執行，以國家之強制力，促使人民履行其公法上義務之程序規範。其中關於公法上金錢給付，該法定義務人經通知等合法程序後，本即應自動給付，無待國家之強制，而此項公法上金錢給付之能否實現，攸關國家之財政暨社會、衛生、福利等措施之完善與否，社會秩序非僅據以維護，公共利益且賴以增進，所關極為重大。「管收」係就義務人之身體於一定期間內，拘束於一定處所之強制處分，目的在使其為義務之履行，為間接執行方法之一，雖屬限制義務人之身體自由，惟行政執行法關於「管收」處分之規定，既係在貫徹公法上金錢給付義務，於法定義務人確有履行之能力而不履行時，拘束其身體所為間接強制其履行之措施，亦即對負有

based on it and the public interest relies on it to increase revenue. “Custody” is a compulsory measure whereby the obligor’s body is restrained in a bounded area for a period of time for the purpose of compelling him or her to perform his or her obligations and is a method of indirect measure of enforcement. Although custody restrains an obligor’s body, the rule concerning “custody” in the Administrative Execution Act is intended to fulfill the obligation of monetary payment under public law, where the obligor is indeed able but unwilling to perform, which is an indirect and compulsory method to compel the person to fulfill the obligation of monetary payment under public law that he or she is able to perform but has refused to perform. Given the above statement, it is not disallowed by the Constitution.

給付義務且有履行之可能，卻拒不為公法上金錢給付之人所為促使其履行之強制手段，衡諸前述之說明，尚非憲法所不許。

Although the principle of proportionality is a fundamental principle on the constitutional level, attention should always be paid to the interpretation and application of individual regulations; in particular, to “legislation,” the purpose of

比例原則係屬憲法位階之基本原則，在個別法規範之解釋、適用上，固應隨時注意，其於「立法」尤然，目的在使人民不受立法機關過度之侵害。行政執行法第十七條第二項依同條第一項規定得聲請法院裁定管收之事由中，除

which is to prevent people from excessive intrusion by the legislative authorities. In respect of those reasons under which application may be made to the court for an order of custody as listed in Article 17-I in reference to Paragraph II of the same Article, only Subparagraphs (i), (ii) and (iii) of Paragraph I, which provide, respectively: "where the obligor is apparently able to perform but intentionally does not perform"; "where the obligor apparently is likely to abscond"; and "where the obligor has concealed or disposed of the assets that are subject to the compulsory execution," are difficult to consider as beyond the scope of necessity and therefore may be justified because they require the prerequisite that the enforcement authorities hold substantial evidence to corroborate the obligor's capability of performance (See Article 8-I (iii) of the Administrative Execution Act). The remaining provisions, i.e., Subparagraphs (iv), (v) and (vi) of the same Paragraph, which provide, "where the obligor refused to state to the execution personnel when they investigated as to the subject matter of execution"; "where the obligor refused to

第一項第一、二、三款規定：「顯有履行義務之可能，故不履行者」、「顯有逃匿之虞」、「就應供強制執行之財產有隱匿或處分之情事者」，均以執行機關執有相當證據足認義務人確有履行能力為前提（行政執行法第八條第一項第三款參照）始得為之，自難謂其已逾必要之程度，可認係屬正當者外，其餘同項第四、五、六款事由：「於調查執行標的物時，對於執行人員拒絕陳述者」、「經命其報告財產狀況，不為報告或為虛偽之報告者」、「經合法通知，無正當理由而不到場者」，不論法定義務人是否確有履行之能力而不為，亦不問於此情形下執行機關是否尚有其他較小侵害手段可資運用（如未用盡可行之執行方法），以查明所欲執行之責任財產，一有此等事由，可不為財產之追查，即得聲請法院裁定管收，顯已逾越必要程度，與憲法第二十三條規定之意旨不能謂無違背。至履行能力有無之判斷，則應就義務人整體之收入與財產狀況暨工作能力予以觀察，究竟是否可期待其經由工作收入或其他途徑（如處分財產、減少生活費用之支出），以獲得支付（履行）之方法；且其中並應注意維持生計所必需者（行政執行法第二十一條第一款參照），而「工作能力」

report or made a false report after he or she was ordered to report the status of the estate"; and "where the obligor refused to appear without legitimate reason after legal notice," are clearly beyond the boundary of necessity and thus violate the intent of Article 23 of the Constitution because they fail to ascertain whether the obligor has the capability of performance and whether the enforcement authorities have less intrusive means available (e.g., having not exhausted all other available execution measures) under the circumstances to investigate the assets of liability subject to the execution but, instead, once any such conditions occur, no tracking of assets is required before an application may be made to the court for an order of custody. With respect to the judgment as to the capability of performance, the authorities concerned should review the relevant information about the obligor's income, property and ability to work to determine whether payment (performance) may be anticipated from the obligor's salary or other resources (e.g., disposal of property, reduction of living expenses, etc.). Naturally, it should be taken into account

亦應考慮年齡之大小、健康之狀態與勞動市場供需之情形等，乃當然之事理。

whether there remain assets necessary to maintain the obligor's basic livelihood (See Article 21 (i) of the Administrative Execution Act); and, as to "work ability," the age and health status of the obligor, as well as demand and supply in the labor market, should also be considered.

Arrest is a measure to force an obligor to appear and is also a kind of restraint on personal freedom. The arrest of the obligor as prescribed in Article 17 of the Administrative Execution Act is for the purpose of compelling the obligor to appear, state or report. Although the restraint imposed on personal freedom is less restrictive than custody and the degrees of intrusion are different, it does not mean that the application of the principle of proportionality provided by Article 23 of the Constitution can be excluded. In respect of those reasons under which application may be made to the court for an order of arrest as listed in Article 17-II in reference to Paragraph II of the same Article, only Subparagraphs (ii) and (vi) of Paragraph I which provide, respectively, "where the obligor apparently is likely to

拘提為強制義務人到場之處分，亦為拘束人身自由之一種，行政執行法第十七條關於對義務人之拘提，係以強制其到場履行、陳述或報告為目的，拘束人身自由為時雖較短暫，與管收之侵害程度尚屬有間，但如此亦非謂可排除前述憲法第二十三條有關比例原則規定之適用。行政執行法第十七條第二項依同條第一項得聲請拘提之各款事由中，除第一項第二款、第六款：「顯有逃匿之虞」、「經合法通知，無正當理由而不到場」之情形，尚可認其確係符合比例原則之必要條件外，其餘同項第一款、第三款、第四款、第五款：「顯有履行義務之可能，故不履行者」、「就應供強制執行之財產有隱匿或處分之情事者」、「於調查執行標的物時，對於執行人員拒絕陳述者」、「經命其報告財產狀況，不為報告或為虛偽之報告者」規定，不問執行機關應否先逕就責

abscond," and "where the obligor refused to appear without legitimate reason after legal notice," may be deemed to have satisfied the requirement of the principle of proportionality; the remaining provisions, i.e., Subparagraphs (i), (iii), (iv) and (v) of the same paragraph which provide, "where the obligor is apparently able to perform but intentionally does not perform"; "where the obligor has concealed or disposed of the assets that are subject to the compulsory execution"; "where the obligor refused to state to the execution personnel when they investigated as to the subject matter of execution"; and "where the obligor refused to report or made a false report after he or she was ordered to report the status of the estate," are clearly beyond the boundary of necessity and thus also violate the intent of Article 23 of Constitution because they fail to stipulate whether the enforcement authorities should first execute the assets of liability or make further asset tracking, or whether the obligor has made a statement to the enforcement personnel, thus rendering it unnecessary to make the arrest but, instead, it constitutes a reason for the au-

任財產予以執行或另為財產之追查，或義務人是否已在執行人員之面前為陳述而毋庸拘提等情形，於限期仍不履行，亦不提供擔保之時，均構成得為裁定拘提之聲請事由，顯已逾越必要程度，與前揭憲法第二十三條規定意旨亦有未符。

thority to apply for an order of arrest once the obligor neither performs in due time nor furnishes collateral.

Personal liberty is an essential prerequisite for people to enjoy their various rights of freedom under the Constitution. The phrase "the procedure prescribed by law" described in Article 8-I of the Constitution means that the procedure based on which the government imposes any measures to restrain a person's liberty, whether he or she is a criminal defendant or not, must not only have statutory foundation, but also fulfill the necessary judicial procedure or other due process of law (See J.Y. Interpretation No. 384). This procedure is within the scope of constitutional reservation and even the legislative body cannot limit [or restrict?] it by enacting statutes to that effect. However, the restrictions imposed on the personal freedom of a criminal defendant and a non-criminal defendant are, after all, different in nature and therefore the judicial procedure or other due process of law need not be identical. Custody is meant to confine a person to a bounded area during a certain

人身自由乃人民行使其憲法上各項自由權利所不可或缺之前提，憲法第八條第一項規定所稱「法定程序」，係指凡限制人民身體自由之處置，不問其是否屬於刑事被告之身分，除須有法律之依據外，尚須分別踐行必要之司法程序或其他正當法律程序，始得為之（本院釋字第三八四號解釋參照）。此項程序固屬憲法保留之範疇，縱係立法機關亦不得制定法律而遽予剝奪；惟刑事被告與非刑事被告之人身自由限制，畢竟有其本質上之差異，是其必須踐行之司法程序或其他正當法律程序，自非均須同一不可。管收係於一定期間內拘束人民身體自由於一定之處所，雖亦屬憲法第八條第一項所規定之「拘禁」，然與刑事程序之羈押，目的上尚屬有間。羈押重在程序之保全，即保全被告俾其於整個刑事程序均能始終到場，以利偵查、審判之有效進行，以及判決確定後之能有效執行；管收則有如前述，目的在使其為金錢給付義務之履行，為間接執行方法之一種，並非在保全其身體，故其所踐行之司法程序自無須與羈押完

period of time, which shall fall within the meaning of "detention" as prescribed in Article 8-I of the Constitution. However, it is different from the detention in a criminal procedure in terms of purposes. Detention emphasizes procedural security that is aimed to ensure the appearance of the defendant throughout the entire criminal procedure so as to facilitate the effective proceeding of investigation and trial, as well as effective execution of the judgment. The purpose of custody, as mentioned above, is to make the obligor perform the obligation of paying money. It is a kind of indirect measure of execution, which is not designed to secure the obligor's body, so the required judicial procedure need not be exactly the same as that of detention. Nonetheless, as is true with detention, it is essential before the decision of custody is made that certain necessary proceedings be implemented, under which the matter will be heard by an impartial and fair third party, i.e., the court, and the obligor will appear and participate in the proceeding so as to both find out whether the legal requirements and necessity of the custody are satisfied,

全相同。然雖如此，其於決定管收之前，仍應踐行必要之司法程序則無二致，此即由中立、公正第三者之法院審問，並使法定義務人到場為程序之參與，除藉之以明管收之是否合乎法定要件暨有無管收之必要外，並使法定義務人得有防禦之機會，提出有利之相關抗辯以供法院調查，期以實現憲法對人身自由之保障。

and to enable the obligor to have an opportunity to defend himself/herself by producing evidence in his or her favor for the court to investigate. Thus, the constitutional guarantee of personal freedom may be realized.

Articles 17-II, III and 19-I of the Administrative Execution Act provide, respectively, "Where the obligor neither performs the obligation nor provides collateral upon expiration of the deadline prescribed in the preceding paragraph, the Administrative Enforcement Office may apply to the competent court for an order of arrest and custody"; "The court shall render the order within five days of the application provided in the preceding paragraph. In case of dissatisfaction with the order, the Administrative Enforcement Office or the obligor may file an appeal within ten days; the provisions concerning the appeal to set aside court rulings as prescribed under the Code of Civil Procedure shall apply mutatis mutandis to the proceeding of the aforesaid appeal"; and "After rendering the order of arrest and custody, the court shall deliver the warrant

行政執行法第十七條第二、三項：「義務人逾前項限期仍不履行，亦不提供擔保者，行政執行處得聲請該管法院裁定拘提管收之」、「法院對於前項聲請，應於五日內裁定。行政執行處或義務人不服法院裁定者，得於十日內提起抗告；其程序準用民事訴訟法有關抗告程序之規定」、第十九條第一項：「法院為拘提管收之裁定後，應將拘票及管收票交由行政執行處派執行員執行拘提並將被管收人逕送管收所」，其中關於管收之裁定，依同法第十七條第五項規定，雖係準用強制執行法、刑事訴訟法，但行政執行法係將拘提管收一併予以規定（該法第十七條第二項以下），此與強制執行法有異（見該法第二十一條、第二十二條第一、二項），亦與刑事訴訟法有間（見該法第七十五條以下、第九十三條、第一百零一條以下、第二百二十八條第四項後段）。是除單獨之「拘提」、「管收」或「拘提

of arrest and custody to the Administrative Enforcement Office, which office shall assign junior enforcement officers to make the arrest and send the arrested obligor to the institution of custody." With respect to the order of custody, the Compulsory Enforcement Act and the Code of Criminal Procedure shall be applicable mutatis mutandis in accordance with Article 17-V of the said Act. However, the Administrative Execution Act simultaneously provides for arrest and custody (See Articles 17-II et seq.), which is different from the Compulsory Enforcement Act (See Articles 21, 22-I, II thereof) and the Code of Criminal Procedure (See Articles 75 et seq., 93, 101 et seq. and the latter part of 228-IV thereof). Therefore, besides "arrest," or "custody" alone or "custody subsequent to arrest," the Administrative Enforcement Office may decide to consolidate them and apply for arrest and custody and the court may render an order consolidating arrest and custody. Additionally, according to the said Article 19-I of the Administrative Execution Act, "after rendering the order of arrest and custody, the court…may carry out the arrest

後之管收」外，行政執行處依法固可合併為拘提且管收之聲請，法院亦可合併為拘提管收之裁定。另前揭行政執行法第十九條第一項：「法院為拘提管收之裁定後……執行拘提並將被管收人逕送管收所」，此亦為其特別規定，強制執行法無論矣，即刑事訴訟法亦無拘提到案逕送看守所之明文（該法第九十一條前段、第一百零三條第一項參照），此等自無準用強制執行法、刑事訴訟法之餘地。又依行政執行法第十七條第三項，法院對於管收之聲請，應於「五日內」為之，此亦係該法之特別規定，而與強制執行法（第二十二條之五）所準用之刑事訴訟法不同。依刑事訴訟法第九十三條第五項規定，法院於受理羈押之聲請後，應即時訊問，同法第一百零一條、第一百零一條之一復規定，「被告經法院訊問後」認得予羈押或有羈押之必要者，得（裁定）羈押之，亦即法院受理羈押之聲請後，應即時訊問，而於訊問後即應決定羈押之與否。其所以規定即時訊問，乃在使「被告」得就聲請羈押之事由為答辯，法院亦得就羈押之聲請為必要之調查；其所以規定訊問後應即決定羈押之與否，目的在保障人權，俾免被告身體之自由遭受無謂之限制。茲行政執行法前開之規定，法院竟

of the obligor and send the obligor directly to the institution of custody," which is also a special provision under the said act that is absent in the Compulsory Enforcement Act. Even the Code of Criminal Procedure does not expressly provide that, after arrest, the defendant may be sent to prison directly (See the first part of Article 91 and Article 103-I thereof). Therefore, it is impossible for the Compulsory Enforcement Act and the Code of Criminal Procedure to be applied mutatis mutandis under these circumstances. In addition, under Article 17-III of the Administrative Execution Act, the court shall render its ruling concerning custody "within five days" of the application, which is also a special provision that is different from the Compulsory Enforcement Act (See Article 22-5 thereof), to which the Code of Criminal Procedure shall be applicable mutatis mutandis. According to Article 93-V of the Code of Criminal Procedure, after receiving the application for detention, the court shall interrogate the defendant immediately. Articles 100 and 101-1 thereof further provide that, "upon interrogation of the defendant by the court,"

可於管收聲請後，不予即時審問，而猶得於「五日內」為裁定，其於人權之保障顯有未週，該「五日內」裁定之規定，未兼顧及此，應予檢討修正。

the defendant may (by a ruling) be detained if the court deems it appropriate or necessary. In other words, after accepting the application for detention, the court shall interrogate immediately and decide whether the detention should be ordered. The reason for immediate interrogation is to afford the "defendant" an opportunity to plead against the detention whereas the court may also investigate into the necessity of detention. The reason for an immediate decision as to whether detention should be made after interrogation is to protect human rights by preventing unreasonable restraint of a defendant's physical freedom. Nonetheless, under the aforesaid provisions of the Administrative Execution Act, the court may elect not to try and hear the matter immediately after the application is filed and may render its ruling "within five days," which obviously renders the protection of human rights incomplete. The provision that a ruling should be made "within five days" fails to consider the foregoing reasons and, accordingly, shall be reviewed and rectified for its inadequacy in protecting human rights.

Furthermore, where the Administrative Enforcement Office applies for arrest and custody concurrently, the obligor for whom a ruling of custody is issued naturally can not appear by means of arrest and it is thus unlikely that he or she will have a hearing and trial. However, the court can still render an order of custody based merely on information furnished unilaterally by the Administrative Office without any oral hearing and trial to determine whether the application for custody satisfies statutory requirements and whether custody is necessary. And, thus, the obligor is not given any opportunity to defend himself/herself by proffering favorable pleas and pointing out means of proof for the court to deliberate before the court issues an order for his or her custody and sends him or her directly to an institution of custody after his/her arrest. There is no hearing at all, not even an inquiry as to his/her "identity," (i.e., inquiry as to whether the person is the one subject to the arrest) so it violates the requirement of due process of law more than anything else. Furthermore, as for another reason that the court may give an order of cus-

又行政執行處倘為拘提且管收之聲請者，該被裁定拘提管收之義務人於裁定之時，既尚未拘提到場，自不可能踐行審問程序，法院係單憑行政執行處一方所提之聲請資料以為審查，無從為言詞之審理，俾以查明管收之聲請是否合乎法定要件暨有無管收之必要，更未賦予該義務人以防禦之機會，使其能為有利之抗辯，指出證明之方法以供法院審酌，即得為管收之裁定，且竟可於拘提後將之逕送管收所，亦無須經審問程序，即連「人別」之訊問（即訊問其人有無錯誤）亦可從缺，尤有違於前述正當法律程序之要求。再者，前開法院得為裁定管收之事由中，其「經合法通知，無正當理由而不到場」之此款，亦係強制執行法（第二十二條第一、二項）及刑事訴訟法（第一百零一條、第一百零一條之一）之所無，而該義務人既猶未到場，自亦不可能踐行審問程序，乃法院竟得依聲請而為管收之裁定，此一容許為書面審理之規定，其有悖於前述正當法律程序之憲法意旨，更不待言。

tody, i.e., "where the obligor refused to appear without legitimate reason after legal notice," it is also not found in the Compulsory Enforcement Act (See Article 22-I, 2 thereof) and the Code of Criminal Procedure (See Article 101, 101-1 thereof). Since the obligor did not appear, it is also impossible for the court to carry out the trial. However, the court can still render an order of custody as per an application based on written hearings, which, needless to say, is contrary to the aforesaid constitutional intent of due process of law as well.

As to the proceedings regarding hearings on custody, an obligor should be given an opportunity to appear for the hearing, which is absolutely essential. In addition, if the materials submitted by the Administrative Enforcement Office were considered by the court as insufficient or still ambiguous, the court may order the said office to have personnel appear before the court to make supplementary statements or submissions and the office cannot refuse to do so. It should be noted that the required burden of proof for the

至於上述所稱關於管收之審問程序，其應賦予義務人到場之機會，此乃絕對之必要。法院對於行政執行處聲請管收所提資料，若認尚有未足或尚有不明者，得命該處派員到場為一定之陳述或補正，於此，行政執行處不得拒絕，固屬當然；而該處就此所為之聲請，要以自由證明為已足，法院之心證，亦非須至不容合理懷疑之確信程度為必要，附此指明。

office to apply under the said proceedings is met subject to the court's discretion rather than beyond a reasonable doubt.

The "police" is a state administrative action or entity that is characterized by its authority to use compulsory means (interference, suppression) for the purposes of preserving social order or promoting public interests; it is a word of multiple meanings, i.e., both broad and narrow, which are also substantive and formal, respectively. The broad, or substantive, meaning is observed in terms of its "function," i.e., any and all actions that have the above-mentioned qualities of the "police" or, in other words, that exercise the authority under this meaning. On the other hand, the narrow, or formal, meaning focuses on the organization of the police and limits the scope of the term to the form of a police organ--the Police Act. Thus, only the authorities and personnel expressly provided under the said Act satisfy the definition while those who merely carry out the actions of police or shoulder the missions of the police do not. The said Administrative Execution Act provides expressly for

「警察」係指以維持社會秩序或增進公共利益為目的，而具強制（干預、取締）手段特質之國家行政作用或國家行政主體，概念上原屬多義之用語，有廣、狹即實質、形式兩義之分。其採廣義、即實質之意義者，乃就其「功能」予以觀察，凡具有上述「警察」意義之作用、即行使此一意義之權限者，均屬之；其取狹義、即形式之意義者，則就組織上予以著眼，而將之限於警察組織之形式－警察法，於此法律所明文規定之機關及人員始足當之，其僅具警察之作用或負警察之任務者，不與焉。上述行政執行法既已就管收、拘提為明文之規定，並須經法院之裁定，亦即必須先經司法審查之准許，則其「執行」自非不得由該主管機關、即行政執行處之人員為之（本院釋字第五五九號解釋參照）。是憲法第八條第一項所稱「非經司法或警察機關依法定程序，不得逮捕、拘禁」之「警察機關」，乃採廣義，凡功能上具有前述「警察」之意義、即法律規定以維持社會秩序或增進公共利益為目的，賦予其

the custody and arrest and the required order rendered by the court. In other words, a judicial review is required before it is granted so the "execution" can be made by the competent authority, namely, the personnel of the Administrative Enforcement Office (See J.Y. Interpretation No. 559). Therefore, the "police organ" prescribed in Article 8-I of the Constitution, which provides, "Except in case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law" has adopted the broad meaning, denoting not only the institution named "police" under organizational law but also the functional "police," i.e., any agency or person who is authorized by law to use the means of interference and suppression for the purposes of preserving social order or promoting public interests. Therefore, the provision of Article 19-I of the Administrative Execution Act in respect of the arrest and custody exercised by the junior enforcement officers sent by the Administrative Enforcement Office is not in violation of the constitutional intent

機關或人員得使用干預、取締之手段者，概屬相當，並非僅指組織法上之形式「警察」之意。是以行政執行法第十九條第一項關於拘提、管收交由行政執行處派執行員執行之規定，核與憲法前開規定之意旨尚無違背。

mentioned above.

The aforesaid provisions of the Administrative Execution Act that violate the constitutional intents shall become null and void no later than six months from the date of publication of this Interpretation.

上開行政執行法有違憲法意旨之各該規定，均應自本解釋公布之日起至遲於屆滿六個月時失其效力。

Justice Young-Mou Lin filed concurring opinion.

Justice Tzong-Li Hsu filed concurring opinion in part and dissenting opinion in part, in which Justice Ho-Hsiung Wang, Justice Yih-Nan Liaw, Justice Tzu-Yi Lin and Justice Yu-hsiu Hsu joined.

Justice Feng-Zhi Peng filed concurring opinion in part and dissenting opinion in part.

本號解釋林大法官永謀提出協同意見書；許大法官宗力、王大法官和雄、廖大法官義男、林大法官子儀、許大法官玉秀共同提出部分協同、部分不同意見書；彭大法官鳳至提出一部協同意見書及一部不同意見書。

J. Y. Interpretation No.589（January 28, 2005）*

ISSUE: Is Article 10 of the Act Governing the Recompense for the Discharge of Special Political Appointees, which does not provide that a special political appointee with a defined term of office shall have the alternative of monthly paid pension for discharge, in violation of the constitutional principle of legitimate expectation?

RELEVANT LAWS:

Article 93 of the Constitution（憲法第九十三條）; Article 7-II and V of the Amendment to the Constitution（憲法增修條文第七條第二項、第五項）; J. Y. Interpretation No. 525（司法院釋字第五二五號解釋）; Article 5-I (i) of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第一款）; Articles 4-III, 5 and 15 of the Act Governing the Pension of Special Political Officials (as amended and promulgated on December 11, 1985)（政務官退職酬勞金給與條例第四條第三項、第五條、第十五條（民國七十四年十二月十一日修正公布））; Articles 4-III, 6 and 19-III of the Act Governing the Pension of Special Political Appointees (as amended and promulgated on June 30, 1999)（政務人員退職酬勞金給與條例第四條第三項、第六條、第十九條第三項（民國八十八年六月三十日修正公

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

布））; Articles 4, 9, 10-II, and 21 of the Act Governing the Recompense for the Discharge of Special Political Appointees (as promulgated on January 7, 2004)（政務人員退職撫卹條例第四條、第九條、第十條第二項、第二十一條（民國九十三年一月七日公布））; Article 6-III of the Public Functionaries Retirement Act (as amended and promulgated on January 28, 1995)（公務人員退休法第六條第三項（民國八十四年一月二十八日修正公布））; Article 5-III of the Act Governing the Retirement of School Teachers and Staff (as amended and promulgated on January 12, 2000)（學校教職員退休條例第五條第三項（民國八十九年一月十二日修正公布））; Article 25-I (ii) of the Act Governing the Service of Armed Forces Officers and Sergeants (as amended and promulgated on June 5, 2002)（陸海空軍軍官士官服役條例第二十五條第一項第二款（民國九十一年六月五日修正公布））; Article 8 of the Enforcement Rules of the Recompense Act (as promulgated on April 5, 2004)（政務人員退職撫卹條例施行細則第八條（民國九十三年四月五日公布））; Directive B.T.E.T. No. 0932334207 dated July 19, 2004, of the Ministry of Civil Service（銓敘部九十三年七月十九日部退二字第0932334207號函）.

KEYWORDS:

principle of rule of law（法治國原則）, principle of legitimate expectation（信賴保護原則）, benefit of legitimate reliance（信賴利益）, public interest（公益）, defined term of office（任期保障）, independent exercise of function（獨立

行使職權）, power of control（監察權）, sunset provision（落日條款）, right of property under public law（公法上財產權）,transitional provision （過渡條款）, special political appointee （政務人員）, monthly paid pension for discharge（月退職酬勞金）, monthly retirement payment（月退休金）, payment of recompense of discharge （退撫給與）.**

HOLDING: The principle of rule of law is a basic principle of the Constitution and its purposes are to ensure the protection of the rights of people, the stability of the legal order and the compliance with the principle of legitimate expectation. After the promulgation and implementation of an administrative regulation, if the authority that instituted or promulgated the regulation amends or repeals the regulation according to legal procedure, it should also take into account the protection of the legitimate expectation of the regulated party. If the regulated party has apparently acted objectively in response to the facts constituting the legitimate reliance during the period of the implementation of the regulation, thus creating the basis of reliance, and the party has the

解釋文：法治國原則為憲法之基本原則，首重人民權利之維護、法秩序之安定及信賴保護原則之遵守。行政法規公布施行後，制定或發布法規之機關依法定程序予以修改或廢止時，應兼顧規範對象信賴利益之保護。受規範對象如已在因法規施行而產生信賴基礎之存續期間內，對構成信賴要件之事實，有客觀上具體表現之行為，且有值得保護之利益者，即應受信賴保護原則之保障。至於如何保障其信賴利益，究係採取減輕或避免其損害，或避免影響其依法所取得法律上地位等方法，則須衡酌法秩序變動所追求之政策目的、國家財政負擔能力等公益因素及信賴利益之輕重、信賴利益所依據之基礎法規所表現之意義與價值等為合理之規定。如信賴利益所依據之基礎法規，其作用不僅在保障私人利益之法律地位而已，更具有

benefit that is worthy of protection, the party should then be protected by the principle of legitimate expectation. As for the method adopted to protect the benefit of legitimate reliance, i.e., whether it is by reducing or preventing damage to the party, or by refraining from influencing its legal position acquired under the law, it should be decided by assessing and balancing the factors of public interests such as the political purposes pursued by the change of legal order and financial ability of the state, and the weight of the legitimate reliance and the meaning and value of the basic regulation on which the legitimate reliance is based and so forth. If the basic regulation on which the legitimate reliance is based has the effect of realizing the purpose of public interests through the protection of the legal position rather than protecting the mere legal position of private interests, the protection of legitimate reliance involved with the change of the basic regulation should be strengthened so as to prevent the party from damage, thus assuring the public purposes that the basic regulation is intended to realize.

藉該法律地位之保障以實現公益之目的者，則因該基礎法規之變動所涉及信賴利益之保護，即應予強化以避免其受損害，俾使該基礎法規所欲實現之公益目的，亦得確保。

The Constitution provides for defined terms of offices for specific positions so as to preserve independence in the exercise of such officeholders' functions. The nature of such offices is different from that of those political appointees who assume and leave public office as the ruling political party alternates or the governmental policy changes. Such provision is not only to secure the stability of the individual positions but, more importantly, by the defined term of office, to assure the purpose of the independence in the exercise of such officeholder's functions under the law, thus manifesting the value of public interests. Therefore, to achieve the function of the defined term of office, it is necessary to fully protect the legal position acquired and the legitimate expectation arising therefrom, and to prevent such officeholders from suffering damage and relieve them of any hesitation while exercising their functions independently. Only then will it not deviate from the constitutional intent to provide for the defined term of office for the positions and satisfy the constitutional principle of legitimate expectation.

憲法對特定職位為維護其獨立行使職權而定有任期保障者，其職務之性質與應隨政黨更迭或政策變更而進退之政務人員不同，此不僅在確保個人職位之安定而已，其重要意義，乃藉任期保障，以確保其依法獨立行使職權之目的而具有公益價值。故為貫徹任期保障之功能，對於因任期保障所取得之法律上地位及所生之信賴利益，即須充分加以保護，避免其受損害，俾該等人員得無所瞻顧，獨立行使職權，始不違背憲法對該職位特設任期保障之意旨，並與憲法上信賴保護原則相符。

Article 7-V of the Amendment to the Constitution provides: “The members of the Control Yuan shall be beyond party affiliation and independently exercise their powers and fulfill their duties in accordance with the law.” To ensure the independence of exercising the control power and to bring the function of control power into full play, our Constitution provides expressly that the term of office for a member of the Control Yuan is defined as six years (See Article 93 of the Constitution and Article 7-II of the Amendments to the Constitution). The term of office of the members of the 3rd Control Yuan is six years, from February 1, 1999, to January 31, 2005. When the members of the Control Yuan began that term, there was no “sunset provision” for the Act Governing the Pension of Special Political Officials as amended and promulgated on December 11, 1985. In other words, when the members of the 3rd Control Yuan took office, they had a legitimate expectation that their term of office was guaranteed and that, upon expiry of their term of office, they would have the right of property under public law to claim the monthly

憲法增修條文第七條第五項規定：「監察委員須超出黨派以外，依據法律獨立行使職權。」為維護監察權之獨立行使，充分發揮監察功能，我國憲法對監察委員之任期明定六年之保障（憲法第九十三條及憲法增修條文第七條第二項規定參照）。查第三屆監察委員之任期六年，係自中華民國八十八年二月一日起，至九十四年一月三十一日止。該屆監察委員開始任職時，七十四年十二月十一日修正公布之政務官退職酬勞金給與條例尚無落日條款之規定，亦即第三屆監察委員就任時，係信賴其受任期之保障，並信賴於其任期屆滿後如任軍、公、教人員年資滿十五年者，有依該給與條例第四條擇領月退職酬勞金之公法上財產權利。惟為改革政務人員退職制度，而於九十三年一月七日另行制定公布政務人員退職撫卹條例（以下簡稱「退撫條例」），並溯自同年月一日施行。依新退撫條例，政務人員與常務人員服務年資係截然區分，分段計算，並分別依各該退休（職）法規計算退休（職）金，並且政務人員退撫給與，以一次發給為限，而不再有月退職酬勞金之規定。雖該退撫條例第十條設有過渡條款，對於新退撫條例公布施行前，已服務十五年以上者，將來退職時

paid pension for discharge in accordance with Article 4 of the said Act if they later served in a military, civil or teaching position and accumulated seniority to fifteen years. However, the Act Governing the Recompense for the Discharge of Special Political Appointees (hereinafter the "Recompense Act") was instituted and promulgated on January 7, 2004, and was put into force retroactively on the first date of the same month and year. In accordance with the Recompense Act, the seniority of the special political appointees and general governmental employees is subject to separate systems and calculations at different levels and the pension for the retirement/discharge is calculated according to their respective rules and regulations, and, in addition, the recompense to the special political appointees can only be made in lump sum payment, not in monthly payment. There is a transitional provision in Article 10 of the Recompense Act providing that the appointees who have served for more than fifteen years before the promulgation of the new Recompense Act can still claim the monthly retirement payment in accor-

仍得依相關退職酬勞金給與條例，選擇月退職酬勞金。但對於受有任期保障以確保其依法獨立行使職權之政務人員於新退撫條例公布施行前、後接續任年資合計十五年者，卻無得擇領月退職酬勞金之規定，顯對其應受保護之信賴利益，並未有合理之保障，與前開憲法意旨有違。有關機關應即依本解釋意旨，使前述人員於法律上得合併退撫條例施行前後軍、公、教年資及政務人員年資滿十五年者，亦得依上開政務官退職酬勞金給與條例及八十八年六月三十日修正公布之政務人員退職酬勞金給與條例之規定擇領月退職酬勞金，以保障其信賴利益。

dance with applicable acts governing pensions; however, there is no provision that the appointees with defined term of office for the purpose of ensuring the independence in the exercise of their function who have served their duty for fifteen years continuously, which is accumulated before and after the promulgation of the new Recompense Act, can file a claim for the monthly retirement payment. Therefore, it is clearly in violation of the said intent of the Constitution for lack of reasonable protection of their legitimate expectation. The authorities concerned shall forthwith follow the purport of this interpretation to allow the said appointees to claim the monthly paid pension where their seniority has reached fifteen years accumulated legally by their military, civil, teaching and special political service before and after the implementation of the Recompense Act under the aforesaid Act Governing the Pension of Special Political Officials, as well as the Act Governing the Pension of Special Political Appointees as amended and promulgated on June 30, 1999, so that their legitimate expectation will be protected.

REASONING: Article 5-I (i) of the Constitutional Interpretation Procedure Act provides: "When a central or local government agency, in carrying out its function and duty, has questions about the meanings of a constitutional provision: or, when a government agency has a dispute with other agencies in the application of a constitutional provision; or, when a government agency has questions about the constitutionality of an act or regulation at issue," the petitions for interpretation of the Constitution may be made. The petitioner of this case, i.e., the Control Yuan, in dealing with the matters in respect of the discharge/retirement of special political appointees, has questions about the constitutionality of the application of the Act Governing the Recompense for the Discharge of Special Political Appointees promulgated on January 7, 2004, and put into force retroactively on the first date of the same month and year, and hence has applied for the interpretation by this Yuan. The petition, in this Yuan's view, conformed to the said provision and therefore should be accepted.

解釋理由書：司法院大法官審理案件法第五條第一項第一款規定：「中央或地方機關，於其行使職權，適用憲法發生疑義，或因行使職權與其他機關之職權，發生適用憲法之爭議，或適用法律與命令發生有牴觸憲法之疑義者」得聲請解釋。本件聲請人監察院為處理政務人員退職案件，適用九十三年一月七日公布並溯自同年月一日施行之政務人員退職撫卹條例，發生有牴觸憲法之疑義，聲請本院解釋，核與首開規定相符，應予受理，合先敘明。

The principle of rule of law is a basic principle of the Constitution and its purposes are to ensure the protection of the rights of people, the stability of legal order and the compliance with the principle of legitimate expectation. After the promulgation and implementation of an administrative regulation, if the authority that instituted or promulgated the regulation amends or repeals the regulation according to legal procedure, it should also take into account the protection of the legitimate expectation of the regulated party. Unless the regulation predetermines an effective term or the application of the regulation must be suspended due to change of circumstances, which does not give rise to any issue of legitimate expectation, the repeal of or amendment to a regulation for purposes of public interest that causes damages to the legal benefits arising out of people's objective expression of reliance should be adopted by means of reasonable compensation or transitional provision to reduce the damage to or impact on the legal position acquired under the law. Thus it would be consistent with the constitutional intent of

法治國原則為憲法之基本原則，首重人民權利之維護、法秩序之安定及信賴保護原則之遵守。行政法規公布施行後，制定或發布法規之機關依法定程序予以修改或廢止時，應兼顧規範對象信賴利益之保護。除法規預先定有施行期間或因情事變遷而停止適用，不生信賴保護問題外，其因公益之必要廢止法規或修改內容致人民客觀上具體表現其因信賴而生之法律上利益受損害，應採取合理之補救措施，或訂定過渡期間之條款，以減輕其損害或避免影響其依法所取得之法律上地位，方符憲法公益與私益平衡之意旨。受規範對象如已在因法規施行而產生信賴基礎之存續期間內，對構成信賴要件之事實，有客觀上具體表現之行為，且有值得保護之利益者，即應受信賴保護原則之保障（本院釋字第五二五號解釋參照）。至於如何保障其信賴利益，究係採取減輕或避免其損害，或避免影響其依法所取得法律上地位等方法，則須衡酌法秩序變動所追求之政策目的、國家財政負擔能力等公益因素及信賴利益之輕重、信賴利益所依據之基礎法規所表現之意義與價值等為合理之規定。如信賴利益所依據之基礎法規，其作用不僅在保障私人利益之法律地位而已，更具有藉該法律地位

balancing the public and private interests. If the regulated party has apparently acted objectively in response to the facts constituting the legitimate reliance during the period of the implementation of the regulation, thus creating the basis of reliance, and the party has the benefit that is worthy of protection, the party should then be protected by the principle of legitimate expectation (See J. Y. Interpretation No. 525). As for the method adopted to protect the benefit of legitimate reliance, i.e., whether it is by reducing or preventing damage to the party, or by refraining from influencing its legal position acquired under the law, it should be decided by assessing and balancing the factors of public interests such as the political purposes pursued by the change of legal order and financial ability of the state, and the weight of the legitimate reliance and the meaning and value of the basic regulation on which the legitimate reliance is based and so forth. If the basic regulation on which the legitimate reliance is based has the effect of realizing the purpose of public interests through the protection of the legal position rather than protecting the

之保障以實現公益之目的者，則因該基礎法規之變動所涉及信賴利益之保護，即應強化以避免其受損害，俾使該基礎法規所欲實現之公益目的，亦得確保。

mere legal position of private interests, the protection of legitimate reliance involved with the change of the basic regulation should be strengthened so as to prevent the party from damage, thus assuring the public purposes that the basic regulation is intended to realize.

The Constitution provides for defined terms of offices for specific positions so as to preserve independence in the exercise of such officeholders' functions. The nature of such offices is different from that of those political appointees who assume and leave public office as the ruling political party alternates or the governmental policy changes. Such provision is not only to secure the stability of the individual positions but, more importantly, by the defined term of office, to assure the purpose of the independence in the exercise of such officeholder's functions under the law, thus manifesting the value of public interests. Therefore, to achieve the function of the defined term of office, it is necessary to fully protect the legal position acquired and the legitimate expectation arising therefrom, and to

憲法對特定職位為維護其獨立行使職權而定有任期保障者，其職務之性質與應隨政黨更迭或政策變更而進退之政務人員不同，此不僅在確保個人職位之安定而已，其重要意義，乃藉任期保障，以確保其依法獨立行使職權之目的而具有公益價值。故為貫徹任期保障之功能，對於因任期保障所取得之法律上地位及所生之信賴利益，即須充分加以保護，避免其受損害，俾該等人員得無所瞻顧，獨立行使職權，始不違背憲法對該職位特設任期保障之意旨，並與憲法上信賴保護原則相符。

prevent such officeholders from suffering damage and relieve them of any hesitation while exercising their functions independently. Only then will it not deviate from the constitutional intent to provide for the defined term of office for the positions and satisfy the constitutional principle of legitimate expectation.

Article 7-V of the Amendment to the Constitution provides: "The members of the Control Yuan shall be beyond party affiliation and independently exercise their powers and fulfill their duties in accordance with the law." To ensure the independence of exercising the control power and to bring the function of control power into full play, our Constitution provides expressly that the term of office for a member of the Control Yuan is defined as six years (See Article 93 of the Constitution and Article 7-II of the Amendments to the Constitution). The term of office of the members of the 3rd Control Yuan is six years, from February 1, 1999, to January 31, 2005. When the members of the Control Yuan began that term, there was no "sunset provision" for the Act Govern-

憲法增修條文第七條第五項規定：「監察委員須超出黨派以外，依據法律獨立行使職權。」為維護監察權之獨立行使，充分發揮監察功能，我國憲法對監察委員之任期明定六年之保障（憲法第九十三條及憲法增修條文第七條第二項規定參照），以確保監察委員職位之安定，俾能在一定任期中，超然獨立行使職權。查第三屆監察委員之任期六年，係自八十八年二月一日起，至九十四年一月三十一日止。該屆監察委員開始任職時，七十四年十二月十一日修正公布之政務官退職酬勞金給與條例（以下簡稱「舊給與條例」）尚無落日條款之規定，該條例係於其任職後於八十八年六月三十日修改名稱為「政務人員退職酬勞金給與條例」（以下簡稱「新給與條例」）時，始有施行期間「本條例自修正條文公布之日起一年六

ing the Pension of Special Political Officials as amended and promulgated on December 11, 1985 (hereinafter the "Old Pension Act"). The provision that "this Act shall become void at the end of one year and six months from the promulgation of the amended provisions" was added when the title of the Act was changed into the Act Governing the Pension of Special Political Appointees on June 30, 1999 (hereinafter the "New Pension Act") (See Article 19-III of the New Pension Act). In other words, when the members of the 3rd Control Yuan took office, they had a legitimate expectation that their term of office was guaranteed and that, upon expiry of their term of office, they would have the right of property under public law to claim the monthly paid pension for discharge in accordance with Article 4 of the Old Pension Act if they later served in a military, civil or teaching position and their seniority accumulated to fifteen years. Having taken the office based on this reliance is an apparently objective act in response to the facts constituting the legitimate reliance and must therefore be protected by legiti-

個月失其效力」（新給與條例第十九條第三項規定參照）之增訂。亦即第三屆監察委員就任時，係信賴其受任期之保障，並信賴於其任期屆滿後如任軍、公、教人員年資滿十五年者，有依舊給與條例第四條擇領月退職酬勞金之公法上財產權利。本此信賴而就任，即是其對構成信賴要件之事實，有客觀上具體表現之行為，而須受信賴之保護。惟為改革政務人員退職制度，乃廢止政務人員退職酬勞金給與條例，而於九十三年一月七日另行制定公布政務人員退職撫卹條例，並溯自同年月一日施行。依新退撫條例，政務人員與常務人員服務年資係截然區分，分段計算，並分別依各該退休（職）法規計算退休（職）金，並且政務人員退撫給與，以一次發給為限（退撫條例第四條、第九條規定參照），而不再有月退職酬勞金之規定。雖該退撫條例第十條規定，九十二年十二月三十一日前服務年資、應領之退職金及支給機關，適用新、舊給與條例規定辦理，即於新退撫條例公布施行前，已服務十五年以上者，將來退職時仍得依新、舊給與條例，選擇月退職酬勞金。但受有任期保障之政務人員於新退撫條例公布施行前、後接續任年資合計十五年者，原得依新、舊給與條例擇領

mate expectation. However, the Act Governing the Pension of Special Political Appointees was repealed and the Act Governing the Recompense for the Discharge of Special Political Appointees was instituted and promulgated on January 7, 2004, and was put into force retroactively on the first date of the same month and year. Under the Recompense Act, the seniority of the special political appointees and general governmental employees is subject to separate systems and calculations at different levels and the pension for the retirement/discharge is calculated according to their respective rules and regulations; and, in addition, the recompense to the special political appointees can only be made in lump sum payment, not in monthly payment. (See Articles 4 and 9 of the Recompense Act) Although Article 10 of the said Recompense Act provides that the rules of the New and Old Pension Acts shall apply to the seniority of service before December 31, 2003, the pension receivable and the pension-paying authority. In other words, the appointees who have served for more than fifteen years before the promulgation

月退職酬勞金，而新退撫條例卻無得擇領月退職酬勞金之規定，顯對其應受保護之信賴利益，並未有合理之保障，與前開憲法意旨有違。

of the new Recompense Act can still claim the monthly retirement payment in accordance with the New and Old Pension Acts. However, there is no provision that the appointees with defined term of office who have served for fifteen years continuously accumulated before and after the promulgation of the new Recompense Act can claim the monthly retirement payment; that is, those who could originally claim the monthly paid pension for discharge in accordance with the Old and New Pension Acts. Therefore, it is clearly in violation of the said intent of the Constitution for lack of reasonable protection of their legitimate expectation.

Furthermore, according to Article 10-II of the Recompense Act, Article 8 of the Enforcement Rules of the Recompense Act and Directive B.T.E.T. No. 0932334207 dated July 19, 2004, of the Ministry of Civil Service, providing that "For a special political appointee taking office before or after the implementation of this Act,..... whose seniority of service was less than fifteen years before December 31, 2003, and who has any military,

又縱依退撫條例第十條第二項及同條例施行細則第八條規定暨銓敘部九十三年七月十九日部退二字第0932334207號函釋「本條例施行前後續任政務人員，……如九十二年十二月三十一日前之服務年資未滿十五年，且具有軍、公、教人員年資，則九十三年一月一日以後之年資，得選擇不領取公提儲金本息，並按轉任前軍、公、教人員之等級對照軍、公、教人員退撫基金繳費費率補繳退撫基金，併計軍、公、

civil and teaching seniority, then the seniority after January 1, 2004, can be in a way that will not claim the principal and interest of the public deposits and, based on the military, civil and teaching level, to compensate the pension fund according to the corresponding rate of the military, civil and teaching pension fund prior to the transfer, he or she can also choose to claim the monthly retirement payment if the accumulated seniority of military, civil or teaching service reaches fifteen years and he or she is sixty years old or older." However, the monthly retirement payment receivable under the aforesaid regulations is actually substantially less than the amount receivable based on the New and Old Pension Acts due to different bases of calculation (See Article 4-III of the Act Governing the Pension of Special Political Officials as amended and promulgated on December 11, 1985; Article 4-III of the Act Governing the Pension of Special Political Appointees as amended and promulgated on June 30, 1999; Article 6-III of the Public Functionaries Retirement Act as amended and promulgated on January 28, 1995; Article 5-III of the Act Govern-

教人員年資滿十五年，且年滿六十歲者，亦得選擇支領月退休金。……」。惟實際上依此規定得領取之月退休金與依新、舊給與條例規定得領取之月退職酬勞金，因計算給與之基準不同（七十四年十二月十一日修正公布之政務官退職酬勞金給與條例第四條第三項、八十八年六月三十日修正公布之政務人員退職酬勞金給與條例第四條第三項、八十四年一月二十八日修正公布之公務人員退休法第六條第三項、八十九年一月十二日修正公布之學校教職員退休條例第五條第三項、九十一年六月五日修正公布之陸海空軍軍官士官服役條例第二十五條第一項第二款規定參照），兩者數額相差甚鉅，故依此規定及函釋，新退撫條例第十條之過渡條款規定，對於八十八年六月三十日給與條例修法增訂落日條款前已就任，且受憲法任期保障並獨立行使職權之人員權益而言，尚非合理之補救措施，與憲法上信賴保護原則有所不符。有關機關應即依本解釋意旨，使前述人員於法律上得合併退撫條例施行前後軍、公、教年資及政務人員年資滿十五年者，亦得依上開政務官退職酬勞金給與條例及政務人員退職酬勞金給與條例之規定擇領月退職酬勞金，以保障其信賴利益。

ing the Retirement of School Teachers and Staff as amended and promulgated on January 12, 2000; and Article 25-I (ii) of the Act Governing the Service of Armed Forces Officers and Sergeants as amended and promulgated on June 5, 2002). Therefore, under the aforesaid regulations and directive, the transitional provision of Article 10 of the new Recompense Act should not be considered as reasonable compensation to those appointees with the defined term of office who, while independently exercising their function, took office before the "sunset provision" was added to the Pension Act on June 30, 1999, and thus is inconsistent with the constitutional principle of legitimate expectation. The authorities concerned shall forthwith follow the purport of this interpretation to allow the said appointees to claim monthly retirement payment where their seniority reaches fifteen years accumulated legally by their military, civil, teaching and special political service before and after the implementation of the Recompense Act under the aforesaid Act Governing the Pension of Special Political Officials, as well as the Act Governing the

Pension of Special Political Appointees, so that their legitimate expectation will be protected.

J. Y. Interpretation No.590（February 25, 2005）*

ISSUE: Does "the litigation procedure" a judge must suspend for a petition to judicial interpretation include the non-contentious procedure? After the suspension of such procedure, shall a judge, in urgent circumstances, take decisive measures before the interpretation is made?

RELEVANT LAWS:

Articles 8, 16, 23, 78 and 80 of the Constitution（憲法第八條、第十六條、第二十三條、第七十八條、第八十條）; Article 5-IV of the Amendments to the Constitution（憲法增修條文第五條第四項）; J. Y. Interpretations Nos. 371 and 572（司法院釋字第三七一號、第五七二號解釋）; Articles 9, 15-II, and 16 of the Child and Juvenile Sexual Transaction Prevention Act（兒童及少年性交易防制條例第九條、第十五條第二項、第十六條）; Articles 108 and 114 (iii) of the Code of Criminal Procedure（刑事訴訟法第一百零八條、第一百十四條第三款）.

KEYWORDS:

court order to suspend the litigation procedure（裁定停止訴訟程序）, urgent circumstances（急迫情形）, necessary measures（必要處分）.**

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* Translated by Professor Dr. Amy H.L. SHEE.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: During the disposition of a case, if the presiding judge of any court instance suspects with reasonable assurance that an applicable statute may contravene the Constitution, he or she shall make it a prerequisite issue, suspend the litigation procedure, and provide concrete reasoning of his or her objective belief on its unconstitutionality so as to petition to the Grand Justices of this Yuan for a judicial interpretation. The term "during the disposition of a case" denotes all criminal, administrative, civil and non-contentious cases. Hence, "to suspend the litigation procedure" refers to the suspension of the procedures of all these cases including trial and non-contentious ones. The suspension of trial or non-contentious procedures is the prerequisite course of action to be followed by the judge to petition for judicial interpretation. Nevertheless, after the suspension of a trial or non-contentious procedure, a judge shall, in urgent circumstances, look into legislative purposes, balance the rights and welfare of parties with public interests, and consider all related matters of the case so as to maintain necessary safeguards, protec-

解釋文：法官於審理案件時，對於應適用之法律，依其合理之確信，認為有牴觸憲法之疑義者，各級法院得以之為先決問題，裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋。此所謂「法官於審理案件時」，係指法官於審理刑事案件、行政訴訟事件、民事事件及非訟事件等而言，因之，所稱「裁定停止訴訟程序」自亦包括各該事件或案件之訴訟或非訟程序之裁定停止在內。裁定停止訴訟或非訟程序，乃法官聲請釋憲必須遵循之程序。惟訴訟或非訟程序裁定停止後，如有急迫之情形，法官即應探究相關法律之立法目的、權衡當事人之權益及公共利益、斟酌個案相關情狀等情事，為必要之保全、保護或其他適當之處分。本院釋字第三七一號及第五七二號解釋，應予補充。

tion or take other appropriate measures. Judicial Interpretations Nos. 371 and 572 of this Yuan shall thus be complemented.

REASONING: According to the subject argument of this petition, it was during the disposition of a child protection and placement case, Taiwan Miaoli District Court Year 90 Protection No.31, that the petitioner asserted with assurance that the applied Article 16 and its related Article 15, Paragraph 2, of the Child and Juvenile Sexual Transaction Prevention Act contravened Articles 8 and 23 of the Constitution, and thus petitioned for judicial interpretation pursuant to Interpretation No.371 of the Judicial Yuan. However, in order to avoid placing the protected party at a disadvantage, the judge made the final decision on the case before this petition, thus requiring a supplementary elaboration on Interpretation No. 371 as to whether it is a mandatory prerequisite to suspend the litigation procedure before petition. This Yuan, in handling the petition, considers it necessary to add a supplementary elucidation to Interpretation No.371 on the involved procedural issue.

解釋理由書：本件聲請人聲請意旨，以其審理台灣苗栗地方法院九十年度護字第三一號兒童保護安置事件時，認須適用兒童及少年性交易防制條例第十六條之規定，確信該條及相關之同條例第九條及第十五條第二項規定，有牴觸憲法第八條及第二十三條之疑義，乃依司法院釋字第三七一號解釋提出釋憲聲請，然為免受保護者遭受不利益，故先為本案之終局裁定，並請求就依該號解釋聲請釋憲時，是否必須停止訴訟程序為補充解釋等語。本院審理本件聲請案件，對此所涉之聲請程序問題，認上開解釋確有補充之必要，爰予補充解釋。

According to Judicial Interpretations Nos.371 and 572 of this Yuan, during the disposition of a case, if the presiding judge of any court instance suspects with reasonable assurance that an applicable statute may contravene the Constitution, he or she shall make it a prerequisite issue to suspend the litigation procedure and provide concrete reasoning of his or her objective belief on its unconstitutionality so as to petition to the Grand Justices of this Yuan for a judicial interpretation, the purpose of which is to exempt a judge from the dilemma of upholding the Constitution and applying the law, on the one hand, and preventing the waste of judicial resources on the other. The term "during the disposition of a case" denotes all criminal, administrative, civil and non-contentious cases. Hence, "to suspend the litigation procedures" refers to suspension of all trial and non-contentious cases.

依本院釋字第三七一號及第五七二號解釋，法官於審理案件時，對於應適用之法律，依其合理之確信，認為有牴觸憲法之疑義者，各級法院得以之為先決問題，裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋，以排除法官對遵守憲法與依據法律之間可能發生之取捨困難，亦可避免司法資源之浪費。此所謂「法官於審理案件時」，係指法官於審理刑事案件、行政訴訟事件、民事事件及非訟事件等而言。因之，所稱「裁定停止訴訟程序」自亦包括各該事件或案件之訴訟或非訟程序之裁定停止在內。

On the petition for judicial interpretation, a judge must order the suspension of the litigation procedure, for under Article 78 of the Constitution and Article 5, Paragraph 4, of the Amendment to the

法官聲請解釋憲法時，必須一併裁定停止訴訟程序，蓋依憲法第七十八條及憲法增修條文第五條第四項規定，宣告法律是否牴觸憲法，乃專屬司法院大法官之職掌。各級法院法官依憲法第

Constitution, it is the exclusive authority of the Grand Justices of the Judicial Yuan to resolve questions on the constitutionality of a law. Under Article 80 of the Constitution, judges of all court instances shall dispose of cases independently, according to law, yet this does not embrace the power to declare a law unconstitutional and thus refuse to apply it. Therefore, during the disposition of a case, if the presiding judge, based on his or her own reasonable assurance, suspects that an applicable statute may contravene the Constitution and thus considers it necessary to petition for judicial interpretation, the litigation procedure is then on no ground to continue, or it will permit the judge to employ a law, which has been assumed to have violated the Constitution, and thus will infringe upon the principle of rule of law under which a judge shall decide a case under legitimate law, which has been assured by Judicial Interpretations Nos.371 and 572. Hence, it is a mandatory prerequisite course of action for a judge to suspend the trial or non-contentious procedure to petition for judicial interpretation.

八十條之規定，應依據法律獨立審判，並無認定法律為違憲而逕行拒絕適用之權限。因之，法官於審理案件時，對於應適用之法律，依其合理之確信，認為有牴觸憲法之疑義而有聲請大法官解釋之必要者，該訴訟程序已無從繼續進行，否則不啻容許法官適用依其確信違憲之法律而為裁判，致違反法治國家法官應依實質正當之法律為裁判之基本原則，自與本院釋字第三七一號及第五七二號解釋意旨不符。是以，裁定停止訴訟或非訟程序，乃法官依上開解釋聲請釋憲必須遵循之程序。

Article 16 of the Constitution guarantees people the right to litigation, the purpose of which is to enable people to secure their legal rights authentically and punctually. State organs are thus obliged to render institutional shields for effective relief. During the disposition of a case where a trial or non-contentious procedure may have been suspended on legal grounds, the residing judge, in an urgent situation, shall not close the case by making a final judgment, but shall take necessary measures for the protection of people's rights and public interests. After the presiding judge suspends a trial or non-contentious procedure to petition for judicial interpretation, the involved case is barred from proceeding, so in urgent circumstances, a judge shall look into the legislative purposes, balance the rights and welfare of the parties with the public interests, and consider all relevant matters of the case so as to safeguard, protect or take other appropriate measures in line with the Constitution and the above-cited Interpretations. Further, to ensure the appropriateness of such measures, the parties and interested persons of a case shall

憲法第十六條規定人民有訴訟權，旨在使人民之權利獲得確實迅速之保護，國家機關自應提供有效救濟之制度保障。各類案件審理進行中，訴訟或非訟程序基於法定事由雖已停止，然遇有急迫之情形，法官除不得為終結本案之終局裁判外，仍應為必要之處分，以保障人民之權利並兼顧公共利益之維護。法官因聲請釋憲，而裁定停止訴訟或非訟程序後，原因案件已不能繼續進行，若遇有急迫之情形，法官即應探究相關法律之立法目的、權衡當事人之權益及公共利益、斟酌個案相關情狀等情事，為必要之保全、保護或其他適當之處分，以貫徹上開憲法及解釋之旨趣。又為求處分之適當，處分之前，當事人、利害關係人應有陳述意見之機會；且當事人或利害關係人對該處分，亦得依相關程序法之規定，尋求救濟，乃屬當然。至前述所謂遇有急迫狀況，應為適當處分之情形，例如證據若不即刻調查，行將滅失，法官即應為該證據之調查；又如刑事案件有被告在羈押中，其羈押期間刻將屆滿，法官應依法為延長羈押期間之裁定或為其他適當之處分（刑事訴訟法第一百零八條參照）；或如有刑事訴訟法第一百十四條第三款之情形，法官應為准予具保停止羈押之裁

be given opportunities to express their opinions regarding the case before any measures are taken. The parties and interested persons may certainly seek relief against the measures under relevant procedural laws. The so-called urgent circumstances that deserve appropriate measures may include the following: In order to safeguard any evidence from possible obliteration, the judge shall instigate a necessary investigation; when a criminal suspect is detained but the time limit for legal detention is about to expire, the judge shall prolong the duration of detention or take other appropriate measures according to Article 108 of the Code of Criminal Procedure, or in the case of what is provided in Article 114, Paragraph 3, the judge shall order a release on bail. We now consider the concerned Article 16 of the Child and Juvenile Sexual Transaction Prevention Act in the present case. An authority by law shall place a child or a juvenile involved in, or at risk of being involved in, sexual exploitation at its Emergency Accommodation Centre pursuant to Article 15, Paragraph 2, of the Act. If the Centre, within 72 hours of the

定等是。再以本件聲請案所涉之兒童及少年性交易防制條例第十六條規定而言，主管機關依同條例第十五條第二項規定將從事性交易或有從事性交易之虞之兒童或少年，暫時安置於其所設置之緊急收容中心，該中心依第十六條第一項規定，於安置起七十二小時內，提出報告，聲請法院裁定時，法院如認為該七十二小時之安置規定及該條關於裁定應遵循程序之規定有牴觸憲法之疑義，依本院釋字第三七一號及第五七二號解釋裁定停止非訟程序，聲請本院解釋憲法者，則在本院解釋以前，法院對該受安置於緊急收容中心之兒童或少年即不得依該條例第十六條第二項規定，為不予安置之裁定，亦不得裁定將該兒童或少年交付主管機關安置於短期收容中心或其他適當場所，致該兒童或少年繼續安置於緊急收容中心，形同剝奪受安置兒童、少年之親權人、監護人之親權或監護權，對受緊急安置之兒童、少年人身自由保護之程序及其他相關權益之保障，亦顯有欠缺。遇此急迫情形，法官於裁定停止非訟程序時，即應為必要之妥適處分，諸如先暫交付其親權人或監護權人，或於該兒童或少年之家庭已非適任時，則暫將之交付於社會福利機構為適當之輔導教養等是。本院釋字第三

placement, submits a report to the court for an order (to continue the placement), while the court, which questions the constitutionality of the legally specified 72-hour placement and its related provisions in the Law, thus orders the suspension of the procedure according to Interpretations Nos.371 and 572 of this Yuan and petitions for judicial interpretation, then before an Interpretation is made by this Yuan, the court is not empowered to apply Article 16, Paragraph 2, of the Act to release the placed child or juvenile, nor can the court entrust the child or juvenile to the authority to place in a short-term accommodation centre or other appropriate place, consequently depriving the parent or guardian of his or her custodial right, or failing to secure personal freedom and other procedural rights of the child or juvenile. In such exceptional circumstances, the judge, when ordering suspension of the non-contentious procedure, should take appropriate measures, including returning the child in question to the custody of the parent or guardian, or, where the family is considered unfit, referring the child or juvenile to a suitable

七一號及第五七二號解釋應予補充。

social welfare institution for guidance and nurturance. Interpretations Nos.371 and 572 of this Yuan shall be supplemented as above.

To conclude, during the disposition of a case, when there are questions on the constitutionality of an applicable law, a judge may petition to this Yuan for judicial interpretation according to Interpretations Nos.371 and 572. However, such a petition can only be made while the case is heard and the procedure remains in course, otherwise a judicial interpretation on the constitutionality of such law will cease to be a prerequisite for deciding the concerned case. The present petition is based on the child protection and placement case, Taiwan Miau-Li District Court Year 90 Protection No.31, in which the applicant judge had applied Article 16, Paragraph 2, of the Child and Juvenile Sexual Transaction Prevention Act to make his final decision, so the case is no longer pending. Consequently, the petition for a judicial interpretation on questions over the constitutionality of Article 9 and Article 15, Paragraph 2, of the Act does

末按法官於審理案件時，對於應適用之法律，認為有牴觸憲法之疑義，依本院釋字第三七一號及第五七二號解釋，聲請本院大法官解釋者，應以聲請法官所審理之案件並未終結，仍在繫屬中為限，否則即不生具有違憲疑義之法律，其適用顯然於該案件之裁判結果有影響之先決問題。本件據以聲請之台灣苗栗地方法院九十年度護字第三一號兒童保護安置事件，聲請法官已適用兒童及少年性交易防制條例第十六條第二項規定為本案之終局裁定，事件已脫離其繫屬，是其認所適用之該條規定及相關之同條例第九條及第十五條第二項，有牴觸憲法之疑義，依本院上開解釋聲請釋憲部分，核與各該解釋所示聲請釋憲之要件不符，應不予受理。

not meet the requirements set by the abovementioned Interpretations and should therefore be rejected.

Justice Tsay-Chuan Hsieh filed concurring opinion.

Justice Young-Mou Lin filed dissenting opinion.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋謝大法官在全提出協同意見書；林大法官永謀及許大法官玉秀分別提出不同意見書。

J. Y. Interpretation No.591（March 4, 2005）*

ISSUE: Is the Arbitration Act, in failing to specify a contradiction in reasoning of an arbitral award as a ground for bringing an action to set aside such award, in violation of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Articles 1, 2, 33-II (v), 37, 38 (ii), 1st half and 40-I (i) of the Arbitration Act (as amended and promulgated on June 24, 1998)（仲裁法第一條、第二條、第三十三條第二項第五款、第三十七條、第三十八條第二款前段、第四十條第一項第一款（民國八十七年六月二十四日修正公布））; Articles 5 and 34 of the UNCITRAL Model Law on International Commercial Arbitration (1985)（一九八五年聯合國國際商務仲裁法範本第五條、第三十四條）.

KEYWORDS:

right of instituting legal proceedings（訴訟權）, fair trial（公平審判）, civil dispute（民事紛爭）, arbitration（仲裁）, doctrine of national sovereignty（國民主權原理）, subject of rights（權利主體）, subject of litigation（訴訟主體）, right of procedural disposition（程序處分權）, right of procedural option（程序選擇權）, autonomous resolution of disputes arising from private causes（私法紛爭自主解決）, arbitral award（仲裁判斷）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: The right of instituting legal proceedings as guaranteed under Article 16 of the Constitution is aimed to ensure that when the people's rights are infringed, they may institute legal proceedings pursuant to procedures set by the law, and shall be entitled to fair trials. In respect of the procedures to be followed and the relevant requirements, however, the legislature may set forth reasonable and equitable rules after weighing such various factors as the type and nature of cases, the functions of a litigation system, as well as the statutory means to resolve a dispute out of court. As long as the relevant provisions tally with the aforesaid intentions and are necessary, they are not contrary to the constitutional intent to guarantee the right of instituting legal proceedings.

解釋文：憲法第十六條所保障之訴訟權，旨在確保人民於其權利受侵害時，有依法定程序提起訴訟，並受法院公平審判之權利。惟訴訟應循之程序及相關要件，立法機關得衡量訴訟案件之種類、性質、訴訟制度之功能及訴訟外解決紛爭之法定途徑等因素，為正當合理正當合理之規定；倘其規範內容合乎上開意旨合乎上開意旨，且有其必要性者，即與憲法保障訴訟權之意旨無違。

The types of civil disputes have tended to become more and more diverse as the social and economic circumstances have constantly changed. In order to determine the relative duties of disputing parties and thus to resolve disputes, the State has established such mechanisms as

民事紛爭事件之類型，因社會經濟活動之變遷趨於多樣化，為期定分止爭，國家除設立訴訟制度外，尚有仲裁及其他非訴訟之機制。基於國民主權原理及憲法對人民基本權利之保障，人民既為私法上之權利主體，於程序上亦應居於主體地位，俾其享有程序處分權及

arbitration and other non-litigious means in addition to the litigation systems. Under the doctrine of national sovereignty and the constitutional guarantee of the people's fundamental rights, the people should assume principal roles in the procedure so as to enjoy the rights of procedural disposition and procedure option whereby they are enabled to choose through mutual agreement to resolve a dispute by means of litigation or any other statutorily prescribed non-litigious dispute resolution procedure to the extent that public interests are not contravened since they are the subjects of rights under private law. Arbitration is a system under which the parties, according to the law and based on the principle of freedom of contract, choose through mutual agreement to resolve a dispute via non-litigious means. The system has the dual effects of both procedural and substantive laws and possesses the quality of autonomous resolution of disputes arising from private causes, which is acknowledged by the Constitution.

程序選擇權，於無礙公益之一定範圍內，得以合意選擇循訴訟或其他法定之非訴訟程序處理爭議。仲裁係人民依法律之規定，本於契約自由原則，以當事人合意選擇依訴訟外之途徑處理爭議之制度，兼有程序法與實體法之雙重效力，具私法紛爭自主解決之特性，為憲法之所許。

The Arbitration Act as amended and

中華民國八十七年六月二十四日

promulgated on June 24, 1998, provides that, "where an arbitral award shall state the reasons upon which it is based but fails to do so," one party may bring an action against the other to set aside the arbitral award (See Articles 40-I (i) and 1st half of 38 (ii) thereof). Although the said Act does not list contradiction in reasoning of an arbitral award as a ground for bringing such an action, it may well be a systemic design made by the legislature for purposes of developing a healthy environment necessary to preserve the arbitration system after considering the characteristics of arbitration, as well as consulting the common practices of international commercial arbitration. Therefore, it has not gone beyond the bounds of legislative liberty and thus does not contravene the intent of Article 16 of the Constitution to protect the people's right of instituting legal proceedings.

修正公布之仲裁法規定「仲裁判斷書應附理由而未附者」，當事人得對於他方提起撤銷仲裁判斷之訴（第四十條第一項第一款、第三十八條第二款前段），雖未將仲裁判斷之理由矛盾列為得提起訴訟之事由，要屬立法機關考量仲裁之特性，參酌國際商務仲裁之通例，且為維護仲裁制度健全發展之必要所為之制度設計，尚未逾越立法機關自由形成之範圍，與憲法第十六條保障人民訴訟權之本旨並無牴觸。

REASONING: Article 16 of the Constitution unambiguously provides for the people's right of instituting legal proceedings. There is no doubt it is intended to ensure the people's right to bring an

解釋理由書：憲法第十六條明定人民有訴訟之權，固在確保人民於其權利受侵害時，有依法定程序提起訴訟之權利，法院亦有為公平審判之義務。惟訴訟應循之程序及相關要件，立法機

action pursuant to procedures set by the law if and when their rights are infringed, for which the courts have a duty to hold fair trials. In respect of the procedures to be followed and the relevant requirements, however, the legislature may set forth reasonable and equitable rules after weighing such various factors as the type and nature of cases, the functions of a litigation system, as well as the statutory means to resolve a dispute out of court. As long as the relevant provisions are in line with the aforesaid intentions and are necessary, they are not contrary to the constitutional intent to guarantee the right of instituting legal proceedings.

關得衡量訴訟案件之種類、性質、訴訟制度之功能及訴訟外解決紛爭之法定途徑等因素，為正當合理正當合理之規定；倘其規範內容合乎上開意旨合乎上開意旨，且有其必要性者，即與憲法所保障之訴訟權無違。

The types of civil disputes have tended to become more and more diverse and varied, as the social and economic circumstances have constantly changed. In order to determine the relative duties of disputing parties and thus to resolve disputes, the State, in formulating its legal systems, has not only established the litigation system, but also created such non-litigious mechanisms as arbitration, mediation, conciliation and intercession. Un-

民事紛爭事件之類型，因社會經濟活動之變遷趨於多元多樣化。為期定分止爭，國家設立之法制，除設立訴訟制度外，尚有諸如仲裁、調解、和解及調處等非訴訟機制。現代法治國家，基於國民主權原理及憲法對人民基本權利之保障，人民既為私法上之權利主體，於訴訟或其他程序亦居於主體地位，故在無礙公益之一定範圍內，當事人應享有程序處分權及程序選擇權，俾其得以衡量各種紛爭事件所涉之實體利益與程

der the doctrine of national sovereignty and the constitutional guarantee of the people's fundamental rights as espoused by a contemporary state ruled under law, the people should assume principal roles in a lawsuit or other proceedings so as to enjoy the rights of procedural disposition and procedure option whereby they are able to evaluate the substantive and procedural interests involved in various disputes and then choose through mutual agreement to resolve a dispute by means of litigation or any other statutorily prescribed non-litigious dispute resolution procedure to the extent that public interests are not contravened since they are the subjects of rights under private law. Arbitration is a system under which the people mutually agree to submit to an arbitral tribunal any private dispute arising out of a defined legal relationship between the parties for purposes of resolution of such a dispute (See Articles 1, 2 and 37 of the Arbitration Act). Under such dispute resolution mechanism, the parties, according to the law and based on the principle of freedom of contract, choose through mutual agreement to resolve a dispute via

序利益，合意選擇循訴訟或其他法定之非訴訟程序處理爭議。仲裁係人民關於一定之法律關係，及由該法律關係所生之爭議，依當事人協議交付仲裁庭依規定之程序為判斷，以解決私法爭議之制度（仲裁法第一條、第二條及第三十七條參照）。此項解決爭議之機制，係本於契約自由原則，以當事人之合意為基礎，選擇依訴訟外之途徑處理爭議問題，兼有程序法與實體法之雙重效力，具私法紛爭自主解決之特性，為憲法之所許。

non-litigious means. The system has dual effects of both procedural and substantive laws and possesses the quality of autonomous resolution of disputes arising from private causes, which is acknowledged by the Constitution.

In order to promote the healthy development of the arbitration system, the State should render necessary assistance and supervision. It is the common practice of the international community, however, that the legislatures will, after considering the characteristics of arbitration, as well as respecting the mutual agreement of the parties to resolve their disputes by means other than litigation, enact reasonable and appropriate legal provisions for the grounds under which a party may make an application for setting aside an arbitral award. Under the UNCITRAL Model Law on International Commercial Arbitration as adopted and recommended by the United Nations in 1985, when it is a matter of the recourse to a court for setting aside an arbitral award, except where "the award is in conflict with the public policy of a State" and thus concerns a substantive

為促進仲裁制度之健全發展，國家固應對於仲裁為必要之協助與監督，惟立法機關衡酌仲裁制度之性質，尊重當事人依訴訟外途徑解決爭議之合意，以法律對仲裁當事人請求撤銷仲裁判斷之事由為合理適當之規定，則為國際間普遍採行之制度。聯合國大會決議通過，並推薦各國採用之一九八五年聯合國國際商務仲裁法範本（UNCITRAL Model Law on International Commercial Arbitration）規定，當事人聲請法院撤銷仲裁判斷之事由，除「仲裁判斷違反本國之公共秩序者」，涉及實體事項者外，其餘諸如仲裁協議之當事人不適格、仲裁協議無效、仲裁人之選定或仲裁程序之進行未經合法通知或有其他原因致使當事人未獲陳述之機會、仲裁判斷逾越仲裁協議之範圍、仲裁庭之組成或仲裁程序牴觸仲裁協議或仲裁法，及爭議事件不具仲裁容許性等，均為有關程序之重大瑕疵（第三十四條，另第五

matter, all other grounds are considered material procedural defects, e.g., a party to the arbitration agreement was under some incapacity; the said agreement is not valid; a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case; the arbitral award contains decisions on matters beyond the scope of the submission to arbitration; the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement of the parties or was not in accordance with the arbitration law; and the subject matter of the dispute is not capable of settlement by arbitration (See Articles 34 and 5 thereof). The foregoing provisions are intended to preserve the autonomy and independence of the arbitration system and to bring its function of speedy resolution of disputes into full play by preventing the judiciary from easily conducting a general review of the substantive issues of an arbitral award.

條參照）。上開規定之目的，在於避免司法機關動輒對仲裁判斷之實質問題為全面之審理，俾維護仲裁制度之自主原則並發揮迅速處理爭議之功能。

Article 40-I of the Arbitration Act (formerly known as the Commercial Arbi-

仲裁法（八十七年六月二十四日修正前稱為商務仲裁條例）第四十條第

tration Act prior to its amendment on June 24, 1998) unambiguously provides for the various situations under which a party may make an application against the other for setting aside an arbitral award. The grounds provided for under Subparagraph (i) thereof include: "the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration"; "the arbitral award shall state the reasons upon which it is based but fails to do so"; or "the arbitral award orders that a party engage in any conduct not permitted by the law." Therefore, an action may be brought to set aside an arbitral award not only if the material contents of the award are contrary to any mandatory or prohibitive regulation under the law, but also if the award fails to state the reasons upon which it is based when it should do so. Nevertheless, contradiction in reasoning of an arbitral award is not a ground for bringing such an action. A look into the legislative history of the Arbitration Act shows that, under Article 33-II (v) thereof, an arbitral award,

一項明定當事人得對於他方提起撤銷仲裁判斷訴訟之各種情形，其中第一款規定之事由包括：「仲裁判斷與仲裁協議標的之爭議無關，或逾越仲裁協議之範圍者」、「仲裁判斷書應附理由而未附者」、「仲裁判斷，係命當事人為法律上所不許之行為者」。是除仲裁判斷之實質內容有違法律之強制或禁止規定等為法律上所不許之情形者外，仲裁判斷書如有應附理由而未附者，固得提起撤銷仲裁判斷訴訟，惟仲裁判斷有理由矛盾之情形者，則不在得提起訴訟之範圍。考其原意，乃依仲裁法第三十三條第二項第五款規定，仲裁判斷書原則上固應記載事實及理由，但當事人約定無庸記載者，得予省略。是仲裁判斷書是否有應附理由而未附之情形，法院得依仲裁判斷書及仲裁協議等相關文件之記載而為認定。然是否有理由矛盾之情形，則須就仲裁事件之相關事實及仲裁判斷之理由是否妥適，重為實體內容之審查始能認定，與「應附理由而未附」之情形顯有不同。立法機關考量仲裁之特性，係為實現當事人以程序自治解決爭議之原則，爰參酌國際商務仲裁之通例，而為合理之規定，乃促進仲裁制度之健全發展所必要，並未逾越立法機關自由形成之範疇，與憲法第十六條保障

in principle, shall state the facts and reasons upon which it is based, but the facts and reasons may be omitted where the parties have agreed that no reasons are to be given. Given this, the court may determine whether an arbitral award fails to state the reasons upon which it is based when it should do so in light of the records contained in relevant documents such as the arbitral award and arbitration agreement. On the other hand, however, it is not possible to decide if there is any contradiction in reasoning unless and until a substantive review of the merits of the matter at issue is conducted in respect of the relevant facts of the matter and the appropriateness of the reasons for the award. Hence, the latter situation is obviously different from one in which "the reasons should have been stated." Having considered the characteristics of arbitration, which are aimed at resolving disputes between the parties under the principle of procedural autonomy, the legislature has enacted reasonable provisions after consulting the common practices of international commercial arbitration so as to develop a healthy environment neces-

人民訴訟權之本旨無違尚無牴觸。

sary to preserve the arbitration system. Therefore, it has not gone beyond the bounds of legislative liberty and thus does not contravene the intent of Article 16 of the Constitution to protect the people's right of instituting legal proceedings.

J. Y. Interpretation No.592（March 30, 2005）*

ISSUE: At what point and to what extent shall J. Y. Interpretation No. 582 apply?

RELEVANT LAWS:

J. Y. Interpretations Nos. 177, 185, 188, 201 and 582（司法院釋字第一七七號、第一八五號、第一八八號、第二〇一號、第五八二號解釋）; Article 5-I (i) of the Act of Constitutional Interpretation Procedure（司法院大法官審理案件法第五條第一項第一款）; Articles 287-1 and 287-2 of the Code of Criminal Procedure (as augmented on February 6, 2003 and implemented on September 1, 2003)（刑事訴訟法第二百八十七條之一、第二百八十七條之二（九十二年二月六日增訂公布、同年九月一日施行））; Precedent S.T. No. 2423 (Sup. Ct., 1942) and Precedent T.S.T. No. 419 (Sup. Ct., 1957)（最高法院三十一年上字第二四二三號、四十六年台上字第四一九號判例）.

KEYWORDS:

time force and effect（時間效力）, general force and effect（一般效力）, co-defendant（共同被告）, supplementary interpretation（補充解釋）, non-retroactivity（向將來發生效力）, principle of stability of the law（法安定性原則）, retroactivity（溯及效力）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: As Interpretation No. 582 did not declare whether the said interpretation should be effective retroactively or whether those precedents declared as unconstitutional should become void from a specified date, the time force and effect shall therefore be determined by determining the scope of the general force and effect except for the case in respect of which the original petition for interpretation was filed. In other words, from the date of the interpretation concerned, various levels of courts shall abide by the intent of the said interpretation in hearing and deciding relevant cases. As for the criminal cases already pending in various levels of courts prior to the date of J.Y. Interpretation No. 582, the application of said Interpretation shall be limited to those cases whose finding of facts involves the use of a co-defendant's statement as evidence supporting the guilt of another co-defendant.

解釋文：本院釋字第五八二號解釋，並未於解釋文內另定應溯及生效或經該解釋宣告違憲之判例應定期失效之明文，故除聲請人據以聲請之案件外，其時間效力，應依一般效力範圍定之，即自公布當日起，各級法院審理有關案件應依解釋意旨為之。至本院釋字第五八二號解釋公布前，已繫屬於各級法院之刑事案件，該號解釋之適用應以個案事實認定涉及以共同被告之陳述，作為其他共同被告論罪之證據者為限。

REASONING: It should be first noted that the Petitioner of this Interpretation, i.e., the Supreme Court, in exercising its authority of unifying the application of

解釋理由書：本件聲請人最高法院依法行使其統一法令見解之職權時，適用本院釋字第五八二號解釋，對於該憲法解釋之時間效力、範圍發生疑

a particular law or regulation, was in doubt about the time force and effect, as well as the scope, of J. Y. Interpretation No. 582. Therefore, the petition for a supplementary interpretation was not only rightfully filed in accordance with Article 5-I (i) of the Act of Interpretation Procedure for Grand Justices, but this Court also found it necessary to render a supplementary interpretation. The petition is hence accepted.

義聲請補充解釋部分，符合司法院大法官審理案件法第五條第一項第一款規定，且有補充解釋之必要，應予受理，合先敘明。

An interpretation rendered by this Court after conducting a judicial review based on a petition filed by the people shall, in principle, take effect as of the date of the interpretation; and any law or regulation declared as unconstitutional by the said interpretation shall, under the principle of stability of the law, cease to be effective as of the date on which the interpretation comes into effect. In order to provide the petitioner with a remedy, however, an interpretation rendered by this Court based on a petition filed by the people shall also take effect as to the case in respect of which the original petition for interpretation was filed. As regards the

本院大法官依人民聲請所為法令違憲審查之解釋，原則上應自解釋公布當日起，向將來發生效力；經該解釋宣告與憲法意旨不符之法令，基於法治國家法安定性原則，原則上自解釋生效日起失其效力，惟為賦予聲請人救濟之途徑，本院大法官依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由，此觀本院釋字第一七七號、第一八五號解釋自明。

petitioner against whom a final and conclusive judgment was rendered, the interpretation may be used as a ground for retrial or extraordinary appeal, which has been made clear by J. Y. Interpretations Nos. 177 and 185.

Where a substantive criminal law based on which a final criminal decision was made is declared by an interpretation of this Court as unconstitutional due to violation of fundamental human rights, it should be taken into consideration whether the said interpretation should take effect retroactively. However, the precedents declared by J.Y. Interpretation No. 582 as unconstitutional, e.g., Precedent S.T. No. 2423 (Sup. Ct., 1942) and Precedent T.S.T. No. 419 (Sup. Ct., 1957), are criminal procedural law precedents which have been in existence for years. The criminal cases related thereto are simply innumerable. Should extraordinary appeals be brought under the Code of Criminal Procedure on the ground that said precedents are unconstitutional, the results would have devastating effects on the social order and public good. There-

刑事確定判決所依據之刑事實體法規經大法官解釋認違反基本人權而牴觸憲法者，應斟酌是否賦予該解釋溯及效力。惟本院釋字第五八二號解釋宣告與憲法意旨不符之最高法院三十一年上字第二四二三號、四十六年台上字第四一九號判例等為刑事訴訟程序法規，且已行之多年，相關刑事案件難以計數，如依據各該違憲判例所為之確定判決，均得依刑事訴訟法之規定提起非常上訴，將造成社會秩序、公共利益之重大損害，故該解釋除對聲請人據以聲請解釋之案件，具有溯及效力外，並未明定賦予一般溯及效力。

fore, other than the case in respect of which the original petition for interpretation was filed, as to which the said interpretation shall have a retroactive effect, the interpretation does not have a general retroactivity.

Additionally, a constitutional interpretation rendered by this Court shall have binding force upon various organs of the State and its people. As of the date of the interpretation, various organs shall, in handling the matters related thereto, follow the intent of the interpretation. This is known as the general force and effect of an interpretation rendered by this Court, as has been made clear by J. Y. Interpretations Nos. 185 and 188. Considering the preservation of the stability of the law, as well as the protection of the defendants' fundamental rights, the application of J. Y. Interpretation No. 582 shall be limited to those criminal cases already pending in various levels of courts prior to the date of said Interpretation whose finding of facts involves the use of a co-defendant's statement as evidence supporting the guilt of another co-defendant. Article 287-1 of

又本院大法官依人民聲請所為之憲法解釋，有拘束全國各機關及人民之效力，各機關自解釋公布當日起，處理有關事項，應依解釋意旨為之，固屬本院大法官解釋之一般效力，本院釋字第一八五號、第一八八號解釋足資參照。本件衡酌法安定性之維持與被告基本權利之保障，於本院釋字第五八二號解釋公布前，已繫屬於各級法院之刑事案件，該號解釋之適用應以個案事實認定涉及以共同被告之陳述，作為其他共同被告論罪之證據者為限。至中華民國九十二年二月六日增訂公布、同年九月一日施行之刑事訴訟法第二百八十七條之一：「法院認為適當時，得依職權或當事人或辯護人之聲請，以裁定將共同被告之調查證據或辯論程序分離或合併。前項情形，因共同被告之利害相反，而有保護被告權利之必要者，應分離調查證據或辯論。」第二百八十七條之二：「法院就被告本人之案件調查共同被告

the Code of Criminal Procedure, as augmented on February 6, 2003, and implemented on September 1, 2003, provides, "Where the court deems proper, it may ex officio or upon the application by a party or defense attorney, separate or consolidate the proceedings regarding the investigation of evidence or arguments for co-defendants. Under the circumstances described in the preceding paragraph, if it is necessary to protect the rights of the accused because of conflicting interests between the co-defendants, the court shall separate the relevant investigations or arguments." Article 287-2 thereof provides, "Where the court investigates a co-defendant for a case concerning the accused, the provisions concerning a witness shall apply mutatis mutandis to the co-defendant." The aforesaid provisions are consistent with the intention of J. Y. Interpretation No. 582. Therefore, it should also be noted that it is unnecessary to apply the said Interpretation to those cases in respect of which trial procedures have been conducted pursuant to the aforesaid provisions after the implementation of the said law.

時，該共同被告準用有關人證之規定」等規定，與本院釋字第五八二號解釋意旨相同。是上開法律施行後，已依各該法條踐行審判程序之案件，自無適用本院釋字第五八二號解釋之必要，併予指明。

In addition, any precedent against the intention of an interpretation rendered by this Court shall become null and void as of the date of the interpretation. (See J. Y. Interpretations Nos. 185 and 201) This Court in J. Y. Interpretation No. 582 holds that the Supreme Court precedents, i.e., Precedent S.T. No. 2423 (Sup. Ct., 1942) and Precedent T.S.T. No. 419 (Sup. Ct., 1957), in holding that a statement made by a co-defendant against himself may be admitted into evidence supporting the determination of facts related to another co-defendant, are inconsistent with Articles 16 and 8-I of the Constitution and, therefore, those portions of the opinions as given in the aforesaid two precedents, as well as in other precedents with the same holding, which are not in line with the intent described in the said interpretation, should no longer be cited and applied. As regards the clause that "other precedents with the same holding"…shall no longer be cited and applied, it is an elaboration developed through J. Y. Interpretations Nos. 185 and 201. Furthermore, it should be noted that Articles 173-I (iii) and 273-I of the Code of Criminal Procedure as

另違背司法院大法官解釋之判例，於該解釋公布後，當然失其效力（本院釋字第一八五號、第二〇一號解釋參照）。本院釋字第五八二號解釋以最高法院三十一年上字第二四二三號及四十六年台上字第四一九號判例所稱共同被告不利於己之陳述得採為其他共同被告犯罪事實認定之證據一節，核與憲法第十六條、第八條第一項規定不符，該二判例及其他相同意旨判例，與解釋意旨不符部分，應不再援用。其中所謂「其他相同意旨判例」應不再援用部分，即係依本院釋字第一八五號、第二〇一號解釋意旨所為之闡釋；又查二十四年修正公布之刑事訴訟法第一百七十三條第一項第三款、第二百七十三條第一項，均於五十六年一月二十八日修正，依序改列同法第一百八十六條第三款、第一百六十六條第一項，內容並無不同。嗣上開規定於九十二年二月六日修正公布，前者業經刪除，後者內容亦經修改，本件聲請人陳稱上開「其他相同意旨判例」究何所指，及二十四年修正公布之刑事訴訟法第一百七十三條第一項第三款、第二百七十三條第一項應屬違憲，聲請補充解釋部分，均無補充解釋之必要。復查二十四年修正公布之刑事訴訟法第二百七十六條、現行刑事

amended and promulgated in 1935 were amended on January 28, 1967, and re-numbered as Articles 186 (iii) and 166-I of said Code, the provisions of which, however, remain the same. When the said provisions were later amended and promulgated on February 6, 2003, the former provision was deleted whereas the latter was revised. The Petitioner of this Interpretation, therefore, has requested that a supplementary interpretation be given as to the exact meaning of the phrase "other precedents with the same holding" mentioned above, as well as to the constitutionality of Articles 173-I (iii) and 273-I of the Code of Criminal Procedure as amended and promulgated in 1935. This Court, however, has found it unnecessary to render any supplementary interpretation in this regard. Moreover, since Article 276 of the Code of Criminal Procedure as amended and promulgated in 1935, Articles 156-II, 1st half of 159-II, 159-1, 159-2, 159-4, 159-5, 206, 273-2 and 287-2 of the Code of Criminal Procedure now in force, the proviso of Article 7-3 of the existing Enforcement Act of the Code of Criminal Procedure, Article 15-II of the

訴訟法第一百五十六條第二項、第一百五十九條第二項前段、第一百五十九條之一、第一百五十九條之二、第一百五十九條之四、第一百五十九條之五、第二百零六條、第二百七十三條之二、第二百八十七條之二、現行刑事訴訟法施行法第七條之三但書相關部分、性侵害犯罪防治法第十五條第二項、兒童及少年性交易防制條例第十條第二項、家庭暴力防治法第二十八條第二項、組織犯罪防制條例第十二條暨檢肅流氓條例中有關秘密證人筆錄等傳聞證據之例外規定，均非本院釋字第五八二號解釋之對象，自不生就此等規定聲請補充解釋之問題。是本件聲請人此部分補充解釋之聲請，應不受理。

Sexual Assault Prevention Act, Article 10-II of the Child and Juvenile Sexual Transaction Prevention Act, Article 28-II of the Domestic Violence Prevention Act, Article 12 of the Organized Crime Prevention Act, as well as the exceptions to the hearsay rule for transcripts given by a secret witness under the Gangster Prevention Act, were not meant to be covered by J. Y. Interpretation No. 582, no issue should arise as to the necessity of giving a supplementary interpretation for the aforesaid provisions. Therefore, in respect of the petition for a supplementary interpretation as to those provisions, this Court shall rightfully dismiss.

Justice Tsay-Chuan Hsieh filed concurring opinion in part and dissenting opinion in part.

Justice Yu-Tien Tseng filed dissenting opinion in part.

本號解釋謝大法官在全提出部分協同、部分不同意見書；曾大法官有田提出部分不同意見書。

J. Y. Interpretation No.593（April 8, 2005）*

ISSUE: Are the provisions of the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees regarding the targets and manners in which the fees are imposed in violation of the Constitution?

RELEVANT LAWS:

Articles 7, 15 and 23 of the Constitution（憲法第七條、第十五條、第二十三條）; Articles 27-I and 75 of the Highway Act (as amended and promulgated on January 23, 1984)（公路法第二十七條第一項、第七十五條（民國七十三年一月二十三日修正公布））; Articles 2 and 3 of the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees (as amended and published on September 26, 1997)（汽車燃料使用費徵收及分配辦法第二條、第三條（民國八十六年九月二十六日修正發布））.

KEYWORDS:

automobile fuel use fees（汽車燃料使用費）, principle of express delegation（授權明確性原則）, principle of legal reservation（法律保留原則）, principle of proportionality（比例原則）, principle of equality（平等原則）, reasonable nexus（合理之關聯性）, double taxation（雙重課稅）.**

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: The people's rights of property as protected by Article 15 of the Constitution are involved when the State imposes monetary obligations other than taxation on certain people based on specific purposes of the public interest. The purpose, target and range of the obligation should be either provided by law or through an order made by the authority in charge within the scope explicitly authorized by law. If the target of collection prescribed by the law or order is a purpose serving choice made after considering the different characters of the matter and if the manner and range prescribed have reasonable nexus with the accomplishment of the purpose, the law or order does not violate the principle of equality or the principle of proportionality.

解釋文：國家基於一定之公益目的，對特定人民課予繳納租稅以外之金錢義務，涉及人民受憲法第十五條保障之財產權，其課徵目的、對象、額度應以法律定之，或以法律具體明確之授權，由主管機關於授權範圍內以命令為必要之規範。該法律或命令規定之課徵對象，如係斟酌事物性質不同所為之合目的性選擇，其所規定之課徵方式及額度如與目的之達成具有合理之關聯性，即未牴觸憲法所規定之平等原則與比例原則。

Article 27-I of the Highway Act as amended and promulgated on January 23, 1984, provides that "The authority in charge of highways, for the purposes of raising the funds for maintenance, repair and safety management of highways, may collect the automobile fuel use fees, the rate of which shall be higher than fifty

中華民國七十三年一月二十三日修正公布之公路法第二十七條第一項規定：「公路主管機關，為公路養護、修建及安全管理所需經費，得徵收汽車燃料使用費；其徵收費率，不得超過燃料進口或出廠價格百分之五十」，已就汽車燃料使用費之徵收目的、對象及額度上限予以明定；同條第二項並具體明確

percent (50%) of the price of importing the fuel or the ex works value." The said provision has clearly prescribed the purpose, target and ceiling of the range of automobile fuel use fees. Paragraph II of the same Article explicitly authorizes the Ministry of Transportation and Communications, after consulting with the Ministry of Finance, to make the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees. Since the purpose, scope and contents are clearly prescribed in the authorization, it is not inconsistent with the principle of express delegation. The authority in charge, based on the aforesaid authorization, amended and published the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees on September 26, 1997. Article 2 of the said Regulation provides, "Any type of automobile driven on highways or the roads in city areas shall be subject to the automobile fuel use fees according to this Regulation except for those indicated in Article 4 hereof." Article 3 thereof provides, "The automobile fuel use fees shall be collected by the Ministry of Transportation and Commu-

授權交通部會商財政部，訂定汽車燃料使用費徵收及分配辦法，其授權之目的、範圍及內容均有明確之規定，與授權明確性原則並無不合。主管機關基於上開授權於八十六年九月二十六日修正發布汽車燃料使用費徵收及分配辦法，其第二條規定：「凡行駛公路或市區道路之各型汽車，除第四條規定免徵之車輛，均依本辦法之規定，徵收汽車燃料使用費」。第三條規定：「汽車燃料使用費按各型汽車每月耗油量，依附表費額，由交通部或委託省（市）分別代徵之。其費率如下：一、汽油每公升新台幣二點五元。二、柴油每公升新台幣一點五元（第一項）。前項耗油量，按各型汽車之汽缸總排氣量、行駛里程及使用效率計算之（第二項）。」均未逾越公路法之授權範圍，符合憲法第二十三條法律保留原則之要求。上開辦法第二條所定之徵收對象、第三條所定之徵收方式，並未牴觸憲法第七條之平等原則與第二十三條之比例原則。汽車燃料使用費與使用牌照稅之徵收亦不生雙重課稅之問題。

nications or by the province (city) empowered by the said Ministry in accordance with the amount of fuel consumed per month by each type of automobile based on the amounts shown in the schedule attached hereto. The rates are: 1. Gasoline NT$2.5 per liter; and 2. Diesel fuel NT$1.5 per liter (Paragraph I). The amount of oil consumed provided in the preceding paragraph shall be calculated according to the total amount of exhaust generated by cylinders, mileages and fuel use efficiency of each type of automobile (Paragraph II).” These articles do not breach the scope of authorization granted by the Highway Act and are consistent with the principle of legal reservation under Article 23 of the Constitution. Furthermore, the targets prescribed in Article 2 and the manners prescribed in Article 3 of the said Regulation do not violate the principle of equality under Article 7, and the principle of proportionality under Article 23 of the Constitution. There is also no issue concerning double taxation where both automobile fuel use fees and license plate tax are collected.

REASONING: The people's rights of property as protected by Article 15 of the Constitution are involved when the State imposes monetary obligations other than taxation on certain people based on specific purposes of the public interest. The purpose, target and range of the obligation should be either provided by law or through an order made by the authority in charge within the scope explicitly authorized by law. With regard to the monetary payment obligation, it should be based on a just legislative purpose and be collected within a necessary scope from the proper target in a reasonable manner and range in order to be consistent with the principle of equality and the principle of proportionality.

解釋理由書：國家基於一定之公益目的，對特定人民課予繳納租稅以外之金錢義務，涉及人民受憲法第十五條保障之財產權，其課徵之目的、對象、額度應以法律定之，或依法律具體明確授權，由主管機關以命令為必要之規範。而有關繳納金錢之義務，則應本於正當之立法目的，在必要範圍內對適當之對象以合理之方式、額度予以課徵，以符合憲法所規定之平等原則與比例原則。

Where the State imposes monetary payment obligation on certain people, it should clearly prescribe the purpose, target and range of the collection by law. If the law explicitly authorizes the authority in charge to make necessary rules by orders, such rules should be comprehensively judged from the viewpoint of their relevancy as expressed by the enabling

國家對特定人民課徵金錢給付義務，應以法律明定課徵之目的、對象與額度，如以法律具體明確授權主管機關以命令為必要之規範，應就授權法律整體規定之關聯意義，綜合判斷立法機關之授權是否符合授權明確原則，及行政主管機關之命令是否逾越母法授權或與之牴觸。七十三年一月二十三日修正公布之公路法第二十七條第一項規定：

statute in its entirety, whether the authorization granted by the legislative authority satisfies the principle of express delegation and whether the order made by the executive authority in charge breaches or conflicts with the authorization of the enabling statute. Article 27-I of the Highway Act as amended and promulgated on January 23, 1984, provides that "The authority in charge of highways, for the purposes of raising the funds for maintenance, repair and safety management of highways, may collect the automobile fuel use fees, the rate of which shall be higher than fifty percent (50%) of the price of importing the fuel or the ex works value." Paragraph II of the same Article authorizes the Ministry of Transportation and Communications, after consulting with the Ministry of Finance, to make the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees. Article 75 of the said Act provides that if the owner of the automobile does not pay the automobile fuel use fees as required by law, the authority in charge of highways shall notify the owner that he or she should pay within a specified period

「公路主管機關，為公路養護、修建及安全管理所需經費，得徵收汽車燃料使用費；其徵收費率，不得超過燃料進口或出廠價格百分之五十」；同條第二項前段授權交通部會商財政部，訂定汽車燃料使用費徵收及分配辦法。同法第七十五條並規定汽車所有人不依規定繳納汽車燃料使用費者，公路主管機關應限期通知其繳納。是公路法已就汽車燃料使用費之徵收目的、對象及徵收費率之上限予以明定，並就徵收方式及徵收後之分配辦法，授權主管機關訂定。其授權之目的、範圍及具體內容均已明確規定，符合授權明確性原則。

of time. Therefore, the Highway Act has explicitly authorized the purpose, target and ceiling of the range of collection of the automobile fuel use fees and authorized the authority in charge to decide the manners of collection and distribution after the collection. The purpose, scope and the material contents have been clearly prescribed so the authorization is consistent with the principle of express delegation.

The Ministry of Transportation and Communications, based on the authority under the aforesaid relevant provisions of the Highway Act, amended and published the Regulation Governing the Collection and Distribution of Automobile Fuel Use Fees. Article 2 of the said Regulation provides that any type of automobile driven on highways or the roads in city areas shall be subject to the automobile fuel use fees according to the said Regulation except for those indicated in Article 4 thereof. Article 3 of the said Regulation provides that the fees shall be set at NT$2.5 per liter in the case of gasoline and NT$1.5 per liter in the case of diesel

交通部依上開公路法相關規定之授權，於八十六年九月二十六日修正發布汽車燃料使用費徵收及分配辦法，其第二條規定行駛公路或市區道路之各型汽車，除依同辦法第四條規定免徵者外，均應依法繳納汽車燃料使用費。同辦法第三條規定以汽油每公升新台幣二點五元、柴油每公升新台幣一點五元之費率，依各型汽車之汽缸總排氣量、行駛里程及使用效率推算耗油量，再依附表費額由交通部或委託省（市）徵收。系爭辦法規定汽車所有人為徵收對象，係在上開公路法第七十五條所定範圍內，故不生逾越公路法授權範圍之問題。至於徵收方式是否逾越公路法相關規定之授權，則須就公路法整體規定，

fuel, and be calculated according to the total amount of exhaust generated by cylinders, mileages and fuel use efficiency of each type of automobile, and be collected by the Ministry of Transportation and Communications or by the province (city) empowered by the Ministry according to the amounts shown in the schedule attached. The Regulation at issue provide that the owner of the automobile is the target of collection, which falls within the scope prescribed in the aforesaid Article 75 of the Highway Act. Thus, there is no overstepping the authorization granted by the Highway Act. With respect to whether the manners of collection breach the scope of authorization granted by the relevant provisions of the Highway Act, they should be comprehensively judged from the viewpoint of their relevancy as expressed by the Highway Act in its entirety whether or not the purpose of collection of the automobile fuel use fees is breached. Based on Article 27-I of the Highway Act, the primary purpose of collecting automobile fuel use fees is for the financing of costs of the maintenance, repair and safety management of high-

綜合判斷授權開徵汽車燃料使用費之目的而定。依上開公路法第二十七條第一項規定，汽車燃料使用費之開徵係為支應公路養護、修建、安全管理之財政需要，而非以控制燃油使用量為其主要政策目的，倘主管機關所採之計徵方式，係在法定費率範圍內，並足以相對反映公路使用量之多寡，自得綜合考量稽徵成本、行政效率、運輸政策、道路工程計畫、環境保護或其他公路法授權所為維護之公益，作適當之政策判斷，不因公路法使用「汽車燃料使用費」之名稱，並規定以燃油之價格定其費率，即得遽予論斷主管機關應以個別汽車使用燃油之實際用量，採隨油課徵方式徵收，方與授權意旨相符。系爭規定按各型汽車之汽缸總排氣量、行駛里程及使用效率，推計其耗油量，以反映用路程度多寡，雖不若以個別汽車實際耗油量計徵精確，惟乃主管機關考量稽徵成本與技術所作之選擇，尚未逾越公路法之授權意旨，與憲法第二十三條之法律保留原則並無違背。

ways rather than for controlling the use of fuel. If the calculation used by the authority in charge is within the scope provided by the Act and is appropriate enough to reflect the amount of use of the highways, the authority in charge can make its proper political decision after comprehensively considering the costs of collection, administrative efficiency, transportation policy, highway construction plan, environmental protection or other public interests that the Highway Act intends to protect. It should not be inferred that the purpose of the aforesaid authorization would not be achieved unless the authority in charge calculates the rates based on the amount of actual use of fuel by an individual automobile and collects the same with the fuel because the Highway Act names the fees the "automobile fuel use fees" and provides that the rates are determined by the price of fuel. The regulation at issue calculates the amount of fuel consumed by the total amount of exhaust generated by cylinders, mileage and fuel use efficiency so as to reflect how much the highway is used. This is not so precise as the calculation based on the actual

amount of fuel consumed by an individual automobile; however, it is the choice made by the authority in charge after considering the costs of collection and technicalities, which does not overstep the purport of the authorization granted by the Highway Act, nor is inconsistent with the principle of legal reservation embodied in Article 23 of the Constitution.

"Those who are equal should be treated equally, unequal be treated unequally." This is the basic meaning of the constitutional principle of equality. Therefore, if the same matters or things are treated in a discriminatory manner without any legitimate reason or different matters or things are not treated in a reasonably different manner, the principle of equality is violated. Whether the law is consistent with the principle of equality should be judged by deciding whether the purpose of the discriminatory treatment under the law at issue is constitutional, whether there is a certain level of nexus between the class and the purpose of the law, and to what level the nexus should reach. According to Article 2 of the Regu-

按等者等之，不等者不等之，為憲法平等原則之基本意涵。是如對相同事物為差別待遇而無正當理由，或對於不同事物未為合理之差別待遇，均屬違反平等原則。法規範是否符合平等原則之要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，其所採取之分類與規範目的之達成之間，是否存有一定程度的關聯性，以及該關聯性應及於何種程度而定。本件汽車燃料使用費徵收及分配辦法第二條規定，向各型汽車所有人課徵汽車燃料使用費，其主要目的係為籌措上開公路法第二十七條第一項規定之公路養護、修建及安全管理所需經費，已屬合憲之重大公益目的。雖汽車所有人未必完全等同於公路使用人，惟駕駛汽車實為使用公路之主要態樣。欲使享有汽車所有權之利益能

lation Governing the Collection and the Distribution of Automobile Fuel Use Fees at issue, the primary purpose of the collection of automobile fuel use fees from the owner of each type of automobile is to finance the costs of maintenance, repair and safety management of highways in accordance with Article 27-I of the aforesaid Highway Act, which serves a constitutionally compelling public interest. The automobile is the main type of motor vehicle being driven on highways, even though not all owners of automobiles regularly drive on highways. To maximize the benefits of having the ownership of an automobile, a perfect, safe and accessible network of highways is the prerequisite. The owners of the automobiles will benefit either directly or indirectly regardless of whether they drive themselves or not. In addition, after the collected automobile fuel use fees are distributed to the central or local authorities, the authorities will adopt the method of income and expense list and use it exclusively for the collection of automobile fuel use fees, road traffic safety regulations, and maintenance, repair and recon-

獲得最大之發揮，須以完善、安全、四通八達的公路網絡為前提，無論汽車所有人是否自為駕駛，均直接、間接享受此等利益。再者，主管機關所徵得之汽車燃料使用費分配各中央、地方機關後，均由受分配機關採取收支並列方式，專用於汽車燃料使用費之稽徵、道路交通安全管理、道路養護與修建，故實際上汽車所有人亦相當程度得享用徵收汽車燃料使用費後之利益。是系爭規定以主要享用公路養護等利益之汽車所有人為對象，課徵專用於公路養護等目的之汽車燃料使用費，而未及於所有使用公路之人，固對汽車所有人有差別待遇，惟以汽車所有人為課徵對象，並非恣意選擇，符合國家基於達成公路養護等之立法目的，對特定人民課予繳納租稅以外金錢義務之意旨，與憲法第七條之平等原則尚無牴觸。又汽車燃料使用費徵收及分配辦法第三條，雖未對使用汽油之汽車所有人，依其使用九二無鉛汽油、九五無鉛汽油或九八無鉛汽油之不同，規定不同之計算費率，惟主管機關係基於稽徵成本、行政效率及其他公共政策之考量，尚難認係恣意或不合理；且對所有使用汽油之汽車所有人採取相同之計算費率，與目的之達成亦有合理之關聯性，故與平等原則亦尚無牴

struction of the roads, thus enabling the owners of automobiles to actually enjoy the benefits of the collection of automobile fuel use fees to a certain degree. Therefore, the Regulation at issue make the owners of automobiles who are the main persons enjoying the benefits of the highway maintenance, etc., the targets for the purpose of collecting automobile fuel use fees that are used exclusively for highway maintenance, etc., does not cover all those who use the highways. The discriminatory treatment of the owners of automobiles under the said Regulation, however, is not an arbitrary choice and, therefore, is consistent with the legislative purpose of highway maintenance, etc., and in line with the purport that imposes monetary obligations other than paying taxes on certain people, which is not contrary to the principle of equality embodied in Article 7 of the Constitution. In addition, despite the fact that Article 3 of the Regulation Governing the Collection and Distribution of the Automobile Fuel Use Fees does not provide different rates of calculation for using 92 unleaded gasoline, 95 unleaded gasoline or 98 unleaded

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gasoline, it is not arbitrary or unreasonable in that the decision was made by the authority in charge based on such considerations as costs of collection, administrative efficiency and other public policies. Furthermore, the imposition of identical rates on all owners of automobiles using fuel has a reasonable nexus to achieving the purpose and thus does not violate the principle of equality.

As mentioned above, the primary purpose of collecting the automobile fuel use fees is to finance the costs of maintenance, repair and safety management of highways, which is a compelling public interest. As regards the manners of the collection provided in Article 3 of the aforesaid Regulation, although the amount payable is not based on the actual amount of fuel used by each automobile owner, nor on his or her use of or the level of wear and tear inflicted on highways, one cannot conclude that the calculation based on the total amount of exhaust generated by cylinders is completely unfair or unreasonable. For instance, the larger the amount of the total exhaust generated by

課徵汽車燃料使用費之主要目的係為籌措公路養護、修建及安全管理所需經費，屬重大之公益目的，已如前述。至於前開辦法第三條所定之徵收方式，縱非根據各汽車駕駛人事實上之燃油使用量或對公路之使用、耗損程度定其應納數額，惟按汽缸總排氣量推計，仍不能遽論完全悖於常理。例如汽車之汽缸總排氣量愈大，往往消耗愈多燃油；或可能因其總噸數隨之提高，而對公路造成更高之負擔與損傷。又其區別營業與自用車而異其徵收次數（同辦法第五條參照），係反映營業用車較諸自用車普遍有較高之燃油及公路使用量。至於對每公升柴油課徵之汽車燃料使用費低於汽油，除柴油之價格與汽油有相當差距外，則係出於運輸及產業政策之

the cylinders of an automobile, the more fuel it usually will consume; or the heavier the gross weight it carries, the harder burden it may put, and the more damage it may inflict, on the highways. In addition, distinguishing an automobile for business purposes from one for personal use in varying the frequency of collection (See Article 5 of the said Regulation) is meant to reflect the fact that an automobile for business purposes usually consumes a larger amount of fuel and is driven more often on the highway than one for personal use. As for the fact that the amount of the automobile fuel use fees collected for the use of diesel fuel per liter is lower than that for the use of gasoline, it is not only due to the considerable price difference between diesel fuel and gasoline, but also because of the considerations of transportation and industrial policies. Therefore, the collection of automobile fuel use fees as per the amount of fuel consumed according to the total amount of exhaust generated by cylinders, mileages and use efficiency and the determination of rates by distinguishing the use of gasoline or diesel fuel, based on the pur-

考量所致。是基於公路養護、修建及安全管理之目的，而向各型汽車所有人，按汽車汽缸總排汽量、行駛里程及使用效率推算耗油量，並分別依其使用汽油或柴油而定其費率課徵汽車燃料使用費，尚難認屬恣意之決定，且與課徵目的之達成亦具合理關聯性，故上開公路法第二十七條、汽車燃料使用費徵收及分配辦法第三條，與憲法第二十三條之比例原則並無牴觸。

pose of maintenance, repair and safety management of highways, can hardly be considered an arbitrary decision. And, there is a reasonable nexus with the achievement of the purpose of collection. Therefore, the aforesaid Article 27 of the Highway Act and Article 3 of the Regulation Governing the Collection of the Automobile Fuel Use Fees are not inconsistent with the principle of proportionality provided by Article 23 of the Constitution.

Finally, the License Plate Tax is imposed to finance the general needs of the State, and is collected from the owners or users who are licensed to use their transportation vehicles on public land or waterways. On the other hand, the Automobile Fuel Use Fees are the fees collected for the maintenance, repair and safety management of highways. Since the two are widely different in nature and purpose of collection, there is no issue of double taxation.

末按使用牌照稅係為支應國家一般性財政需求，而對領有使用牌照之使用公共水陸道路交通工具所有人或使用人課徵之租稅，汽車燃料使用費則為公路養護、修建及安全管理所徵收之費用，二者之性質及徵收目的迥然不同，不生雙重課稅問題。

J. Y. Interpretation No.594（April 15, 2005）*

ISSUE: Is the penal provision for the infringement of trademark set forth in Article 77 of the Trademark Act as amended in 1993 unconstitutional?

RELEVANT LAWS:

Articles 8, 15 and 23 of the Constitution（憲法第八條、第十五條、第二十三條）; J.Y. Interpretations Nos. 432, 476, 521 and 551（司法院釋字第四三二號、第四七六號、第五二一號、第五五一號解釋）; Articles 1, 62 (ii) and 77 of the Trademark Act (as amended and promulgated on December 22, 1993)（商標法第一條、第六十二條第二款、第七十七條（民國八十二年十二月二十二日修正公布））; Article 253 of the Criminal Code（刑法第二百五十三條）.

KEYWORDS:

trademark right（商標權）, right of marks（標章權）, *nullum crimen sine lege, nulla poena sine lege*; no crime and no punishment without a law（罪刑法定原則）, principle of clarity and definiteness of law（法律明確性）, criminal sanction（刑罰制裁）, administrative control（行政管制）.**

HOLDING: Articles 8 and 15 of the Constitution expressly guarantee the physical freedom and property rights of a

解釋文：人民身體之自由與財產權應予保障，固為憲法第八條、第十五條所明定；惟國家以法律明確規定犯

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

citizen. Nevertheless, where the State imposes criminal sanctions on specific acts that pose a threat to the society and thus restrict the physical freedom and property rights of a citizen in accordance with legally prescribed requirements and consequences, such sanctions may not be considered as in conflict with the provisions of Articles 8 and 15 of the Constitution unless they are contrary to the purport of Article 23 of the Constitution. The foregoing has been made clear by J.Y. Interpretations Nos. 476 and 551.

罪之構成要件與法律效果，對於特定具社會侵害性之行為施以刑罰制裁而限制人民之身體自由或財產權者，倘與憲法第二十三條規定之意旨無違，即難謂其牴觸憲法第八條及第十五條之規定，本院釋字第四七六號、第五五一號解釋足資參照。

As a trademark right is a property right, it should be protected under Article 15 of the Constitution. In addition, the registration and protection of trademarks or other protected marks can simultaneously identify the source of the goods or services as distinguished by the trademark or other marks so as to protect the interests of consumers and maintain the orderly operation of the free market. Article 77 of the Trademark Act as amended and promulgated on December 22, 1993, in applying mutatis mutandis Article 62 (ii) thereof, is intended to protect the rights of

商標權為財產權之一種，依憲法第十五條之規定，應予保障。又商標或標章權之註冊取得與保護，同時具有揭示商標或標章所表彰之商品或服務來源，以保障消費者利益，維護公平競爭市場正常運作之功能。中華民國八十二年十二月二十二日修正公布之商標法第七十七條準用第六十二條第二款規定，旨在保障商標權人之權利，並避免因行為人意圖欺騙他人，於有關同一商品或類似商品之廣告、標帖、說明書、價目表或其他文書，附加相同或近似於他人註冊商標圖樣而陳列或散布，致一般消費者對商品或服務之來源、品質發生混

a trademark owner and prevent a person from deceiving others by affixing a mark that is identical or similar to a registered trademark or logo of another person to advertisements, labels, brochures, price lists or other instruments regarding the same or similar goods, and displaying or distributing the same, thus resulting in confusion or mistake on the part of general consumers as to the source or quality of the goods or services. Therefore, the requisite elements of the offense were unambiguously set forth by law, which may result in imprisonment of no more than three years, detention, and, in addition thereto or in lieu thereof, a fine of no more than NT$200,000. Thus, not only did the provision at issue comply with the principle of clarity and definiteness of law, but it was also necessary to protect the rights of a trademark owner, the interests of consumers, and the relevant market order. As such, it is not inconsistent with Article 23 of the Constitution, nor is it contrary to the purports of Articles 8 and 15 thereof, which guarantee the physical freedom and property rights of a citizen.

淆誤認而權益受有損害，故以法律明定之犯罪構成要件，處行為人三年以下有期徒刑、拘役或科或併科新台幣二十萬元以下罰金，符合法律明確性之要求，且為保障商標權人權利、消費者利益及市場秩序所必要，並未牴觸憲法第二十三條規定，與憲法第八條、第十五條保障人民身體自由及財產權之意旨，尚無違背。

REASONING: Articles 8 and 15 of the Constitution expressly guarantee the physical freedom and property rights of a citizen. Nevertheless, where the State imposes criminal sanctions on specific acts that pose a threat to the society and thus restrict the physical freedom and property rights of a citizen in accordance with legally prescribed requirements and consequences, such sanctions may not be considered as in conflict with the provisions of Articles 8 and 15 of the Constitution unless they are contrary to the purport of Article 23 of the Constitution. The foregoing has been made clear by J.Y. Interpretations Nos. 476 and 551.

解釋理由書：人民身體之自由與財產權應予保障，固為憲法第八條、第十五條所明定；惟國家以法律明確規定犯罪之構成要件與法律效果，對於特定具社會侵害性之行為施以刑罰制裁而限制人民之身體自由或財產權者，倘與憲法第二十三條規定之意旨無違，即難謂其牴觸憲法第八條及第十五條之規定，本院釋字第四七六號、第五五一號解釋足資參照。

Furthermore, the lawmakers, in proposing various rules and systems, may properly use an indefinite concept of law in legislation after measuring and considering the complexities of the social life and the facts surrounding it that the law intends to regulate, as well as the appropriateness of its application to any specific case. The principle of clarity and definiteness of law is not violated if the meaning of a legal provision is not difficult to

又立法者於立法定制時，得衡酌法律所規範生活事實之複雜性及適用於個案之妥當性，從立法上適當運用不確定法律概念而為相應之規定。如法律規定之意義，自立法目的與法體系整體關聯性觀點非難以理解，且個案事實是否屬於法律所欲規範之對象，為一般受規範者所得預見，並可經由司法審查加以認定及判斷者，即無違反法律明確性原則，亦迭經本院釋字第四三二號、第五二一號解釋闡釋有案。

comprehend from the viewpoints of legislative purpose and the relevance of the legal systems as a whole, if an average person may ascertain whether a specific set of facts is subject to the law at issue, and if the concept may be determined and judged through judicial review. This Court has repeatedly elaborated on the foregoing in J.Y. Interpretations Nos. 432 and 521.

As a trademark right is a property right, it should be protected under Article 15 of the Constitution. In addition, the registration and protection of trademarks or other protected marks can simultaneously identify the source of the goods or services as distinguished by the trademark or other marks so as to protect the interests of consumers and maintain the orderly operation of the free market. The foregoing is made clear by Article 1 of the Trademark Act as amended and promulgated on December 22, 1993, which provides, “This Act is enacted to safeguard the right to the exclusive use of trademark and consumers’ interest so as to facilitate the normal development of industries and

商標權為財產權之一種，依憲法第十五條之規定，應予保障。又商標或標章權之註冊取得與保護，同時具有揭示商標或標章所表彰之商品或服務來源，以保障消費者利益、維護公平競爭市場正常運作及增進公共利益之功能，此觀八十二年十二月二十二日修正公布之商標法第一條規定「為保障商標專用權及消費者利益，以促進工商企業之正常發展，特制定本法」之意旨自明。

commerce.”

For the purpose of achieving the aforesaid constitutional objectives of protecting property rights and public interests, Article 77 of the Trademark Act, designed to protect service marks, has applied mutatis mutandis Article 62 (ii) thereof, which states, “Any person who, with the intent to deceive others, affixes a mark that is identical or similar to a registered trademark or logo of another person to advertisements, labels, brochures, price lists or other instruments regarding the same or similar goods, and displays or distributes the same, shall be punishable by imprisonment of no more than three years, detention, and, in addition thereto or in lieu thereof, a fine of no more than NT$200,000.” The said provisions were indeed justifiably intended to protect a person’s rights as to his or her registered trademark or other protected marks, and to prevent the general consumer from suffering damages resulting from confusion or mistake as to the source or quality of the goods or services. In addition, as far as this matter is concerned, the legislature

商標法為實現上開憲法所保障之財產權及公共利益之目的，於第七十七條關於服務標章之保護準用第六十二條第二款規定：意圖欺騙他人，於有關同一商品或類似商品之廣告、標帖、說明書、價目表或其他文書，附加相同或近似於他人註冊商標圖樣而陳列或散布者，處三年以下有期徒刑、拘役或科或併科新台幣二十萬元以下罰金。旨在保護他人註冊之商標或標章權，並避免一般消費者對商品或服務之來源、品質發生混淆誤認致權益受有損害，其目的洵屬正當。且本件立法機關衡酌商標或標章權之侵害，對於人民財產權、消費者利益、公平競爭之經濟秩序及工商企業發展危害甚鉅，乃對意圖欺騙他人之行為施以刑罰制裁；又考量法益受侵害之程度及態樣，而選擇限制財產或人身自由之刑罰手段，以補充刑法第二百五十三條偽造仿造商標商號罪適用上之不足，尚未逾越必要之範圍，並未牴觸憲法第二十三條規定，與憲法第八條、第十五條保障人民身體自由及財產權之意旨，尚無違背。

has considered the fact that the infringement of trademarks or other protected marks will pose great danger to the citizen's property rights, the consumer's interests, the economic order embodied in fair competition, as well as the development of industries and commerce. It is to this aim that the lawmakers have decided to impose criminal sanctions on those who intend to deceive others. Furthermore, having considered the magnitude and modes of the infringement of such legally recognized and protected interests, the legislature has chosen to employ such penalties as the restrictions of one's property or physical freedom to supplement the inadequacies of Article 253 of the Criminal Code, which deals with the forgery or copying of trademarks or trade names. As such, it remains within the boundary of necessity and thus is not inconsistent with Article 23 of the Constitution, nor is it contrary to the purports of Articles 8 and 15 thereof, which guarantee the physical freedom and property rights of a citizen.

In respect of the acts prohibited un-

上開法律規定所禁止之行為，應

der the aforesaid law, these should be determined by determining whether the trademark or other mark affixed by an alleged infringer is identical or similar to another's registered trademark or other mark and whether the relevant consumers, after using normal care, are likely to be confused or mistaken, which should be sufficient to determine the scope thereof. From the standpoint of a reasonably prudent person that the law intends to protect, the scope thereof should be foreseeable after he or she exercises normal care. Therefore, the provision at issue does not run afoul of the principle of clarity and definiteness of elements as embodied in the principle of "No crime and no punishment without a law," which satisfies the requirements of the principle of clarity and definiteness of law under a constitutional state. Having said the above, it should also be noted that it is at the lawmakers' discretion to decide whether no criminal sanctions will be imposed unless and until an alleged infringer continues or repeats the infringing act after an initial decision is made or some administrative control is exercised in respect of a particu-

以行為人所附加之商標或標章與他人註冊商標或標章是否相同或近似，依相關消費者施以通常之注意力，猶不免發生混淆誤認之虞為斷，其範圍應屬可得確定，從合理謹慎受規範行為人立場，施以通常注意力即可預見，無悖於罪刑法定原則中之構成要件明確性原則，符合法治國原則對法律明確性之要求，故立法機關是否採行由行政程序就具體個案進行第一次判斷或施以行政管制後，受規範行為人仍繼續或重複其違法行為者，始採取刑罰制裁，乃立法者自由形成範圍，併予指明。

lar case through administrative procedure.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Pi-Hu Hsu filed concurring opinion.

本號解釋許大法官玉秀提出部分協同意見書；徐大法官璧湖提出協同意見書。

J. Y. Interpretation No.595（May 6, 2005）*

ISSUE: Which court should have the jurisdiction over a dispute arising in connection with the Bureau of Labor Insurance's claim in subrogation after the said Bureau made advances of arrear wages that should have been paid by an employer?

RELEVANT LAWS:

Article 28-I and –II of the Labor Standards Act（勞動基準法第二十八條第一項、第二項）; Article 79 (i) of the Labor Standards Act (December 25, 2002)（勞動基準法第七十九條第一款（九十一年十二月二十五日））; Articles 2 and 14 of the Regulation Governing the Appropriation and Advances of Arrear Wages（積欠工資墊償基金提繳及墊償管理辦法第二條、第十四條）.

KEYWORDS:

advance funds（墊償基金）, arrear wages（積欠工資）, claim for wages（工資債權）, right to claim in subrogation（代位求償權）, assigned claim（承受債權）, jurisdiction（審判權）, ordinary court（普通法院）, administrative court（行政法院）.**

HOLDING: According to Article 28-I and –II of the Labor Standards Act, an employer shall make deposits into an

解釋文：勞動基準法第二十八條第一項、第二項規定，雇主應繳納一定數額之積欠工資墊償基金（以下簡稱

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

"arrear wage advance fund" at a fixed rate (hereinafter referred to as "Arrear Wage Advance Fund"), and, in the case of an employer winding up or liquidating his or her business or being adjudicated bankrupt, a worker shall be entitled to payment of wages out of the said fund which have been overdue for a period not exceeding six months so as to protect the rights and interests of the worker and maintain the stability of his or her livelihood. Paragraph IV of the same Article provides, "Where a worker is not paid arrear wages after having requested payment from the employer, the arrear wages shall be disbursed from the said arrear wage advance fund, whereupon the employer shall reimburse the said fund within the prescribed time limit." Furthermore, the first half of Article 14-I of the Regulation Governing the Appropriation and Advances of Arrear Wages (hereinafter referred to as the "Advance Regulation") provides, "The Bureau of Labor Insurance, after making advances of arrear wages that should have been paid by an employer according to Article 28 of the said Act, may exercise the first-priority claim for wages in subro-

墊償基金）；於雇主歇業、清算或破產宣告時，積欠勞工之工資，未滿六個月部分，由該基金墊償，以保障勞工權益，維護其生活之安定。同條第四項規定「雇主積欠之工資，經勞工請求未獲清償者，由積欠工資墊償基金墊償之；雇主應於規定期限內，將墊款償還積欠工資墊償基金」，以及「積欠工資墊償基金提繳及墊償管理辦法」（以下簡稱墊償管理辦法）第十四條第一項前段規定：「勞保局依本法第二十八條規定墊償勞工工資後，得以自己名義，代位行使最優先受清償權（以下簡稱工資債權）」，據此以觀，勞工保險局以墊償基金所墊償者，原係雇主對於勞工私法上之工資給付債務；其以墊償基金墊償後取得之代位求償權（即民法所稱之承受債權，下同），乃基於法律規定之債權移轉，其私法債權之性質，並不因由國家機關行使而改變。勞工保險局與雇主間因歸墊債權所生之私法爭執，自應由普通法院行使審判權。

gation under its own name (hereinafter referred to as "Claim for Wages")." Accordingly, the payment advanced by the Bureau of Labor Insurance is, in essence, a private debt owed by the employer to the worker, i.e., wages. The right to claim in subrogation vested with the said Bureau after advancing the payment out of the Arrear Wage Advance Fund (i.e., an assigned claim under the civil law; similarly hereinafter) is a transfer of claim pursuant to statutory provisions, and the private nature of such claim should not be changed because it is exercised by a state organ. Therefore, an ordinary court shall have jurisdiction over a private dispute arising in connection with the Bureau of Labor Insurance's claim in subrogation after the said Bureau made advances of arrear wages that should have been paid by an employer.

REASONING: Article 28-I of the Labor Standards Act provides, "In the case of an employer winding up or liquidating his or her business or being adjudicated bankrupt, the worker shall have a preferred right to payment of wages which

解釋理由書：勞動基準法第二十八條第一項規定：「雇主因歇業、清算或宣告破產，本於勞動契約所積欠之工資未滿六個月部分，有最優先受清償之權。」第二項前段規定：「雇主應按其當月僱用勞工投保薪資總額及規定之

are payable under the labor contracts and which have been overdue for a period not exceeding six months.” And, the first half of Paragraph II thereof provides, “An employer shall make a monthly deduction at a fixed rate of the insured wages of workers and deposit the same in an "arrear wage advance fund" created for the purpose of paying the arrear wages referred to in the preceding paragraph.” The foregoing provisions are set forth by the Government for the purposes of protecting the rights and interests of workers, relieving the financial predicament of laborers, and furthering social stability and economic development. They are designed to prevent a worker from suffering damages due to non-payment of wages which are payable under the labor contracts resulting from the employer’s poor operation, bankruptcy or malicious shutdown. Under the said provisions, an employer must deposit a certain amount in the Arrear Wage Advance Fund at a fixed rate and, in the case of an employer winding up or liquidating his or her business or being adjudicated bankrupt, a worker shall be entitled to payment of wages out of the said fund

費率，繳納一定數額之積欠工資墊償基金，作為墊償前項積欠工資之用」，此乃政府為保障勞工權益，改善勞工處境，促進社會安定與經濟發展所為之規定，避免企業經營陷入困境，宣告破產，或惡性倒閉，致勞工對於雇主依勞動契約所積欠之工資，無以獲償而蒙受損害。雇主須依此規定向墊償基金提繳一定數額之款項，於雇主歇業、清算或破產宣告時，其所積欠勞工之工資未滿六個月部分，由該基金墊償，以保障勞工之工資於此範圍內確能獲得支付。

which have been overdue for a period not exceeding six months so as to guarantee the payment of the worker's wages to that extent.

Article 28-IV of the aforesaid Act provides, "Where a worker is not paid arrear wages after having requested payment from the employer, the arrear wages shall be disbursed from the said arrear wage advance fund, whereupon the employer shall reimburse the said fund within the prescribed time limit." Furthermore, the first half of Article 14-I of the Advance Regulation, which is established pursuant to the aforesaid Article 28, provides, "The Bureau of Labor Insurance, after making advances of arrear wages that should have been paid by an employer according to Article 28 of the said Act, may exercise the first-priority claim for wages in subrogation under its own name." Accordingly, the payment advanced by the Bureau of Labor Insurance is, in essence, a private debt owed by the employer to the worker, i.e., wages. Despite the fact that the Arrear Wage Advance Fund is established and managed

同法第二十八條第四項規定：「雇主積欠之工資，經勞工請求未獲清償者，由積欠工資墊償基金墊償之；雇主應於規定期限內，將墊款償還積欠工資墊償基金」，以及依同條規定訂定之墊償管理辦法第十四條第一項前段規定：「勞保局依本法第二十八條規定墊償勞工工資後，得以自己名義，代位行使最優先受清償權」，就此以觀，勞工保險局以墊償基金所墊償者，原係雇主對於勞工私法上之工資給付債務。雖墊償基金由中央主管機關設置管理，惟墊償基金之資金來源乃由雇主負責繳納，其墊償行為並非以國庫財產提供人民公法上給付，而是以基金管理者之身分，將企業主共同集資形成之基金提供經營不善企業之勞工確實獲得上開積欠工資之保障，蓋勞工保險局於墊償勞工後，取得對雇主之代位求償權，其債權範圍、內容與原來之私法上工資債權具相同性質。再勞工保險局為墊償基金行使此項代位求償權時，乃處於與勞工之同一地位，不因墊償基金由中央主管機關

by the central competent authority, the source of such fund derives from payments made by employers. The authority's act of making advances is not a payment made under any public law to the people out of treasury funds, but instead is the provision of the fund collected from business owners to workers of a poorly operated business to ensure that such workers receive the aforesaid arrear wages. The Bureau of Labor Insurance, after making advances of arrear wages to the workers, will be entitled to make a first-priority claim for wages in subrogation. The scope, content and nature of such claim are identical to those of the original claim for wages under private law. In addition, while exercising the said claim in subrogation for the purpose of the Arrear Wage Advance Fund, the Bureau of Labor Insurance is essentially placing itself in the shoes of the worker. The nature of such claim does not change because the Arrear Wage Advance Fund is managed by a commission established by the central competent authority, or because the matters concerning the collection and custody of contributions to the

設置管理委員會管理，基金收繳有關業務由勞工保險機構辦理（勞動基準法第二十八條第五項），或墊償基金之設立具有公益上理由，而異其性質。亦即原勞工之工資債權改由勞工保險局行使，乃係基於法律規定之債權移轉，其所具私法債權之性質並不因由國家機關行使而改變。勞工保險局與雇主間因前述債權所生之私法爭執，自應由普通法院行使審判權。至於雇主違背繳納基金費用之義務，應依中華民國九十一年十二月二十五日修正公布前之勞動基準法第七十九條第一款規定裁處罰鍰，係屬違背公法上義務，則應循行政訴訟途徑為之。又本件係聲請機關就其職權適用勞動基準法第二十八條、墊償管理辦法第十四條第一項規定，關於其訴訟事件應屬何機關審判之見解與他機關有異，而聲請本院為統一解釋，憲法第十六條規定之訴訟權內涵及各該民事、行政訴訟法法條本身，概非聲請解釋之標的，本件解釋自不併予及之，均併此敘明。

said fund are managed by the labor insurance agency (See Article 28-V of the Labor Standards Act), or because the Arrear Wage Advance Fund is established in the interest of the public. In other words, the transfer of the original claim for wages from the workers to the Bureau of Labor Insurance is a transfer of claim pursuant to statutory provisions, and the private nature of such claim should not be changed because it is exercised by a state organ. Therefore, an ordinary court shall have jurisdiction over a private dispute arising in connection with the aforesaid claim. As regards an employer's breach of duty to make contributions to the said fund, a monetary fine shall be determined and imposed under Article 79 (i) of the Labor Standards Act as amended and promulgated on December 25, 2002. Since the said act is a breach of duty under public law, the applicable procedures for administrative litigation should be followed. As an additional note, this matter has been brought to the attention of this Court because the agency filing the petition at issue was of a different opinion from other agencies as to the jurisdiction

over legal actions arising in connection with the provisions of Article 28 of the Labor Standards Act and Article 14 of the Regulation Governing the Appropriation and Advances of Arrear Wages. Thus, a petition for uniform interpretation in that respect has been initiated. It should also be noted that, since the connotations of the right of instituting legal proceedings under Article 16 of the Constitution, as well as the respective provisions of the Code of Civil Procedure and of the Code of Administrative Procedure, are not the subject matters of the petition at issue, this Interpretation is not intended to cover the same.

Justice Tzong-Li Hsu filed concurring opinion, in which Justice Lai, In-Jaw, Justice Tzu-Yi Lin and Justice Yu-hsiu Hsu joined.

Justice Feng-Zhi Peng filed concurring opinion in part and dissenting opinion in part, in which Justice Tzu-Yi Lin joined.

本號解釋許大法官宗力、賴大法官英照、林大法官子儀、許大法官玉秀共同提出協同意見書；彭大法官鳳至、林大法官子儀共同提出部分協同、部分不同意見書。

J. Y. Interpretation No.596（May 13, 2005）*

ISSUE: Is the failure of the Labor Standards Act to prohibit the transfer, offset, attachment and security of the right to claim retirement pensions unconstitutional?

RELEVANT LAWS:

Articles 7, 15, 18, 23, 83 and 153 of the Constitution（憲法第七條、第十五條、第十八條、第二十三條、第八十三條、第一百五十三條）; Article 6 of the Amendment to the Constitution（憲法增修條文第六條）; J. Y. Interpretations Nos. 280, 433 and 575（司法院釋字第二八〇號、第四三三號、第五七五號解釋）; Articles 56 and 61 of the Labor Standards Act（勞動基準法第五十六條、第六十一條）; Articles 8 and 29 of the Labor Pension Act (promulgated on June 30, 2004)（勞工退休金條例第八條、第二十九條（九十三年六月三十日公布））; Article 14 of the Public Functionaries Retirement Act（公務人員退休法第十四條）; Article 3 of the Provisional Act for Senior Citizens' Welfare Living Allowances（敬老福利生活津貼暫行條例第三條）; Articles 294 and 338 of the Civil Code（民法第二百九十四條、第三百三十八條）; Articles 52, 53 and 122 of the Compulsory Enforcement Act（強制執行法第五十二條、第五十三條、第一百二十二條）.

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

KEYWORDS:

principle of equality（平等原則）, legislative discretion（立法自由形成）, right to claim retirement pensions（請領退休金之權利）, employment relationship（勞雇關係）.**

HOLDING: The intent of Article 7 of the Constitution, which provides that all people of the Republic of China shall be equal under the law, is not one of absolute and mechanical equality in form. Rather, it is meant to guarantee people a substantially equal standing before the law. The legislative body, based on the value system of the Constitution and the legislative purpose, may rightfully give reasonably discriminatory treatments after considering the differences of the addressed subject areas. The methods utilized by the State to protect the livelihood of retired workers and public officials are not exactly the same. In order to decide whether the different treatments violate the constitutional principle of equality, it is important to examine without prejudgment the type of work, the rights and obligations concerned and the various meas-

解釋文：憲法第七條規定，中華民國人民在法律上一律平等，其內涵並非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等；立法機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理之差別對待。國家對勞工與公務人員退休生活所為之保護，方法上未盡相同；其間差異是否牴觸憲法平等原則，應就公務人員與勞工之工作性質、權利義務關係及各種保護措施為整體之觀察，未可執其一端，遽下論斷。勞動基準法未如公務人員退休法規定請領退休金之權利不得扣押、讓與或供擔保，係立法者衡量上開性質之差異及其他相關因素所為之不同規定，屬立法自由形成之範疇，與憲法第七條平等原則並無牴觸。

ures of protection for the public officials and workers on the whole. The Labor Standards Act, unlike the Public Functionaries Retirement Act, fails to provide that the right to claim retirement pensions shall not be attached, transferred or secured. This different treatment, however, results from the legislators' deliberation of the different natures as described above and falls within the scope of legislative discretion, which is not in conflict with the principle of equality as embodied under Article 7 of the Constitution.

REASONING: The intent of Article 7 of the Constitution, which provides that all people of the Republic of China shall be equal under the law, is not one of absolute and mechanical equality in form. Rather, it is meant to guarantee people a substantially equal standing before the law. The legislative body, based on the value system of the Constitution and the legislative purpose, may rightfully give reasonably discriminatory treatments after considering the differences of the addressed subject areas. Article 153-I of the Constitution provides that "The State,

解釋理由書：憲法第七條規定，中華民國人民在法律上一律平等，其內涵並非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，立法機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理之差別對待。憲法第一百五十三條第一項規定，國家為改良勞工之生活，增進其生產技能，應制定保護勞工之法律，實施保護勞工之政策。惟保護勞工之內容與方式應如何設計，立法者有一定之自由形成空間。

in order to improve the livelihood of workers and farmers and to improve their productive skill, shall enact laws therefore and carry out policies for their protection." As to the substance and methods of the protection, however, the legislators shall exercise certain discretion.

Article 15 of the Constitution provides that people's property right shall be guaranteed. The intent thereof is to ensure that an individual may freely exercise the rights and powers to use, derive benefits from, and dispose of any and all of his or her properties depending upon the existing status of such properties, so as to secure the resources of life on which the survival of individuals and the free development of characters rely. However, to distribute resources reasonably, the State can restrict people's property rights by law to such extent as not to violate the principle of proportionality set forth in Article 23 of the Constitution.

The people's right of claims under private law falls within the scope of property right guaranteed under Article 15 of

憲法第十五條保障人民之財產權，使財產所有人得依財產之存續狀態行使其自由使用、收益及處分之權能，以確保人民所賴以維繫個人生存及自由發展其人格之生活資源。惟為求資源之合理分配，國家自得於不違反憲法第二十三條比例原則之範圍內，以法律對於人民之財產權予以限制。

人民於私法上之債權，係憲法第十五條財產權保障之範圍，國家為保護人民私法上之債權，設有民事強制執行

the Constitution. The State, in order to protect the rights of a creditor in private law, has established the civil compulsory enforcement system under which a creditor holding the enforcement title may apply to the enforcement court to use compulsory means to exercise the rights of the creditor by using enforcement against his or her debtors' assets. Although debtors have the obligation to endure the force of the State during the enforcement, the legislators still may balance the realization of creditors' rights in private law and the necessity to protect debtors' subsistence and then, to the extent that Articles 7 and 23 of the Constitution are not violated, enact certain legislation to prohibit the enforcement against a certain part of the debtors' assets so as to protect the right of existence set forth in Article 15 of the Constitution and other fundamental rights. Articles 52 and 53 of the Compulsory Enforcement Act prohibit the attachment of debtors' and their domestic relatives' necessities (e.g., food, fuel, money and other items which are essential for livelihood) for a period of two months; furthermore, Article 122 of the same Act prohibits the

制度，俾使債權人得依據執行名義，聲請執行法院，使用強制手段，對於債務人之財產加以執行，以實現其債權，至債務人於強制執行中，雖有忍受國家強制力之義務，惟為維護其受憲法第十五條所保障之生存權及其他基本人權，立法者仍得衡酌債權人私法上債權實現及債務人生存保護必要，於不違反憲法第七條及第二十三條之範圍內，立法禁止對於債務人部分財產之執行。強制執行法第五十二條、第五十三條規定，禁止查封債務人及其共同生活親屬二個月間生活所必需之食物、燃料及金錢，以及其他為維持生活所必需之財物，並於第一百二十二條規定，債務人對於第三人之債權，係維持債務人及其共同生活之親屬生活所必需者，不得為強制執行；又民法第三百三十八條規定，禁止扣押之債，其債務人不得主張抵銷等規定，雖因此限制債權人之債權之實現，但為保障債務人及其共同生活之親屬之生存權所必要，尚無違於憲法上之比例原則。至禁止執行之債務人財產範圍，並不以上開強制執行法規定者為限，倘立法者基於憲法保障特定對象之意旨，或社會政策之考量，於合於比例原則之限制範圍內，仍得以法律規範禁止執行特定債務人之財產。

enforcement of the payment of the debts owed to the debtors by third parties so long as the same are necessary to maintain the livelihood of the debtors and their domestic relatives; and, Article 338 of the Civil Code prohibits the debtors from offsetting the debts which are not subject to attachment. The aforesaid provisions, while restricting the realization of creditors' rights, do not violate the constitutional principle of proportionality in that they are necessary to guarantee the rights of existence of the debtors and their domestic relatives. As to the scope of debtors' assets not subject to enforcement, it is not limited to what is provided for in the above-mentioned provisions of the Compulsory Enforcement Act. Where the legislators decide that it would be in line with the constitutional intent to protect a specific category of people or other social policy considerations without violating the constitutional principle of proportionality, they may still enact laws to forbid the enforcement against the assets of certain debtors.

The right of workers to claim their

勞工請領退休金之權利，屬於私

retirement pensions is the right of claims in private law and falls within the confines of property right protected by the Constitution as well. Article 294 of the Civil Code provides that the right of claims that cannot be transferred according to their nature, or are prohibited from being attached, cannot be transferred in essence. Unlike the right of workers to claim compensation for occupational hazards that shall not be subject to transfer, offset, attachment, or security, as expressly prescribed (See Article 61 thereof), there is no similar provision in the Labor Standards Act dealing with the right of workers to claim their retirement pensions so that retired workers can enjoy the power of free disposition in accordance with the existing status of the right, or may transfer or use the same as security for their debts. Employers or creditors can also offset or petition the court according to the law for the attachment of the right to claim retirement pensions against workers so as to satisfy the credits. If the legislators, in addition to prohibiting the workers' retirement reserve funds allocated and contributed monthly by em-

法上之債權，亦為憲法財產權保障之範圍。民法第二百九十四條雖規定債權依其性質不得讓與，或債權禁止扣押者，即不具讓與性。惟勞動基準法對於勞工請領退休金之權利，並未如勞工受領職業災害補償之權利明文規定不得讓與、抵銷、扣押或擔保（第六十一條參照），退休勞工自得依其權利存續狀態，享有自由處分之權能，得為讓與或供債務之擔保。勞工之雇主或債權人亦得對勞工請領退休金之權利主張抵銷，或依法向法院聲請扣押，以實現其債權。倘立法者於勞動基準法第五十六條第一項雇主按月提撥勞工退休準備金專戶存儲，不得作為讓與、扣押、抵銷或擔保之標的外，又規定勞工請領退休金之權利不得讓與、扣押、抵銷或供擔保，對於勞工退休生活之安養而言，固係保障，惟對於勞工行使「請領退休金之權利」亦將形成限制，對於勞工之雇主或其他債權人而言，則屬妨害其私法上債權之實現，限制其受憲法所保障之財產權。因此是否規定勞工請領退休金之權利不得為讓與、抵銷、扣押或供擔保之標的，既然涉及勞工、雇主及其他債權人等財產權行使之限制，自應由立法者依客觀之社會經濟情勢，權衡勞工退休生活之保護與勞工、雇主及其他債

ployers and deposited in a specially designated account from being the objects of transfer, attachment, offset or security under Article 56-I of the Labor Standards Act, also prohibit the workers' right to claim protection of retirement pensions from transfer, attachment, offset or security, it will be considered as a form of protection for the retirement of workers (in the former case), but will also be a restriction on the workers to exercise the right of "claiming the retirement pensions" (in the latter). And, to employers or other creditors, it stands to prevent the realization of the right of claims in private law, thus restricting their constitutionally protected property right. Since it involves restrictions on employers and other creditors, the issue of whether workers should have the right to claim protection of retirement pensions from transfer, offset, attachment or security, should be determined by the legislators after taking into account the objective social and economic situations and balancing the protection of retired workers' livelihood and the restrictions of the property rights against the workers, employers and other creditors.

權人之財產權行使限制而為規範。

Article 18 of the Constitution provides that the people shall have the right to hold public office, which is meant to ensure that the people who are engaged in official affairs, pursuant to the laws and regulations, shall also be entitled to the consequential right to secure such status, to request remuneration and retirement pensions, etc. (See J. Y. Interpretation No. 575). Article 83 of the Constitution and the 6th Amendment to the Constitution provide for the establishment of the governmental authority in charge of the affairs relating to public functionaries' retirement, with the intent to enact laws to ensure the livelihood of retired public officials (See the Reasoning of J. Y. Interpretation No.280). The State is a public legal entity whose intentions shall be expressed and acts be practiced by public officials of the governmental authorities. Official duties exist between public officials and the State under public law whereby the State has the obligations of paying salaries, retirement pensions to public officials and to ensure the officials' livelihood, and public officials owe the State a fiduciary duty and a duty to per-

憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務暨由此衍生之身分保障、俸給與退休金等權利（本院釋字第五七五號解釋參照）。憲法第八十三條暨憲法增修條文第六條設置國家機關掌理公務人員退休法制之事項，亦旨在立法保障公務人員退休後之生活（本院釋字第二八〇號解釋理由書參照)。按國家為公法人，其意思及行為係經由充當國家機關之公務人員為之。公務人員與國家間係公法上之職務關係，國家對公務人員有給予俸給、退休金等保障其生活之義務，公務人員對國家亦負有忠誠、執行職務等義務（本院釋字第四三三號解釋理由書參照）。然勞雇關係，則係人民相互間本諸契約自由而成立，勞工為雇主提供勞務，從事特定工作，雇主則給付勞工相當之報酬，其性質為私法上權利義務關係，惟國家基於憲法第一百五十三條保護勞工之基本國策，仍得以立法之方式介入勞雇關係，要求雇主協力保護勞工之退休生活。是公務人員與勞工之工作性質、權利義務關係不同，國家對勞工與公務人員退休生活所為之保護，方法上自亦未盡相同，公務人員退休法暨公教人員保險法中關於「養老給付」之規定等，係國家為履行憲法保障

form their public functions, etc. (See the Reasoning of J. Y. Interpretation No.433). However, employment relationships are based on the people's freedom to enter into contracts. Workers provide employers with services to do specific work and, in return, the employers pay the workers salaries or wages. The nature of such relationship concerns rights and obligations in private law. Nevertheless, under Article 153 of the Constitution, which makes the protection of workers a fundamental national policy, the State is allowed to be involved in the employment relationships through legislation, demanding that employers assist in the protection of the livelihood of retired workers. Therefore, the type of work and the rights and obligations of public officials and workers are different, and the methods utilized by the State to protect the livelihood of retired workers and that of public officials should not necessarily be the same. The provisions concerning the "retirement pensions" set forth in the Public Functionaries Retirement Act and the Government Employees and Teachers Insurance Act are so enacted by the State as to provide consti-

公務人員之退休生活而設。勞動基準法第六章「退休」暨勞工保險條例第四章第六節「老年給付」之規定等，則係國家為保護勞工退休生活而定。其間差異是否牴觸憲法平等原則，應就各種保護措施為整體之觀察，未可執其一端，遽下論斷。例如敬老福利生活津貼暫行條例第三條規定，公務人員退休後已領取公務人員月退休金或一次退休金者，即不得領取敬老福利生活津貼（同條第一項第二款參照），此乃立法者權衡公務人員及勞工退休後老年生活之保護必要，以及國家資源之合理分配，所為之設計，俾貫徹保護勞工之基本國策以及保障人民之生存權之憲法意旨。

tutional protection for the livelihood of retired public officials. The provisions contained in Chapter 6 (Retirement) of the Labor Standards Act and in Section 6, Chapter 4 (Old Age Benefits), of the Labor Insurance Act are so prescribed by the State as to protect the livelihood of retired workers. In order to decide whether the different treatments violate the constitutional principle of equality, it is important to examine without prejudgment the type of work, the rights and obligations concerned and the various measures of protection for the public officials and workers on the whole. For instance, Article 3 of the Provisional Act for Senior Citizens' Welfare Living Allowances provides that the public officials who have received monthly retirement pensions or lump-sum retirement pensions after retirement shall not claim the senior citizens' welfare living allowances (See Subparagraph 2, Paragraph I, of the same Article). It is so provided because the legislators have tried to balance the necessity of protection of the livelihood of public officials and workers after their retirement and designed a reasonable distribution of the

national resources so as to comply with the fundamental national policy of protecting workers and to ensure the implementation of the constitutional intent to protect the people's right of existence.

Article 14 of the Public Functionaries Retirement Act provides, "The right to claim retirement pensions shall not be subject to attachment, transfer or security." Although the said provision restricts the exercise of property rights of public officials and their creditors, the purpose thereof is to implement the intent of the Constitution to ensure the livelihood of public officials and to balance it with the restrictions against the public officials and their creditors on the exercise of their rights relating to the retirement pensions. The Labor Standards Act, unlike the Public Functionaries Retirement Act, fails to provide that the right to claim retirement pensions shall not be attached, transferred or secured. This different treatment, however, results not only from the legislators' deliberation of the different natures and rights and obligations between public functionaries and workers, but also from

公務人員退休法第十四條規定：「請領退休金之權利，不得扣押、讓與或供擔保。」雖限制退休公務人員及其債權人之財產權之行使，惟其目的乃為貫徹憲法保障公務人員退休生活之意旨，權衡公務人員及其債權人對其退休金行使財產上權利之限制而設。勞動基準法未如公務人員退休法規定勞工請領退休金之權利不得扣押、讓與或供擔保，係立法者考量公務人員與勞工之工作性質、權利義務關係不同，並衡酌限制公務人員請領退休金之權利成為扣押、讓與或供擔保之標的，對於公務人員及其債權人財產上權利之限制，與限制勞工請領退休金之權利成為扣押、讓與或供擔保之標的，對於勞工、雇主或其他債權人等財產權行使之限制，二者在制度設計上，所應加以權衡利益衝突未盡相同，並考量客觀社會經濟情勢，本諸立法機關對於公務人員與勞工等退休制度之形成自由，而為不同之選擇與設計，因此，無由以公務人員退休法對

such considerations as the influence of the restrictions on the right of public officials to allow the retirement pensions to be used as the objects of attachment, transfer or security over the public officials and their creditors, and the influence of the restriction on the exercise of the right of workers to allow the retirement pensions to be used as the objects of attachment, transfer or security over the workers, employers or other creditors. The conflicts of interests that should be addressed while designing the two systems concerned are not exactly the same. Based on its discretionary power over the retirement systems for public officials and workers, the legislative body, after taking into account the objective social and economic situations, has made different choices and devised different designs. Therefore, it is not sufficient to say that the constitutional intent of Article 153 of the Constitution to protect workers, as well as the principle of equality embodied under Article 7 of the Constitution, are violated for lack of sufficient protection of the livelihood of retired workers simply because different treatments exist where there is a provision in

於公務人員請領退休金之權利定有不得扣押、讓與或供擔保之規定，而勞動基準法未設明文之規定，即認為對於勞工之退休生活保護不足，違反憲法第一百五十三條保護勞工之意旨，並違反憲法第七條之平等原則。

the Public Functionaries Retirement Act that prohibits the right of public officials to claim retirement pensions from being attached, transferred or secured, but there is no such provision in the Labor Standards Act.

Article 29 of the Labor Pension Act as promulgated on June 30, 2004, provides that labor retirement pensions and the right to claim retirement pensions shall not be transferred, attached, offset or secured. The said provision was formulated by the legislators after considering the current social and economic situations that are different from the situations when the Labor Standards Act was enacted, which falls within the scope of legislative discretion and thus does not conflict with the principle of equality. In their own best interests, workers may choose between the system under the Labor Pension Act and that under the Labor Standards Act (See Article 8 of the Labor Pension Act). As an additional note, it should be pointed out that the issue of whether the provision (that the right of workers to claim retirement pensions shall not be transferred,

中華民國九十三年六月三十日公布之勞工退休金條例第二十九條規定，勞工退休金及請領退休金之權利不得讓與、扣押、抵銷或供擔保，係立法者考量當今之社會經濟情勢，與勞動基準法制定當時之不同，所採取之不同立法決定，均係立法自由形成之範圍，於平等原則亦無違背，勞工得依有利原則，自行權衡適用勞工退休金條例或勞動基準法之規定（勞工退休金條例第八條參照）。至於勞動基準法既有之勞工退休制度，是否應增訂勞工請領退休金之權利不得讓與、扣押、抵銷或供擔保之規定，則仍屬立法者自由形成之範圍，併此指明。

attached, offset or secured) should be added to the existing workers' retirement system under the Labor Standards Act still falls within the scope of legislative discretion.

Justice Syue-Ming Yu filed concurring opinion.

Justice Yih-Nan Liaw filed dissenting opinion.

Justice Tzong-Li Hsu filed dissenting opinion, in which Justice Yu-hsiu Hsu joined.

本號解釋余大法官雪明提出協同意見書；廖大法官義男提出不同意見書；許大法官宗力、許大法官玉秀共同提出不同意見書。

J. Y. Interpretation No.597（May 20, 2005）*

ISSUE: Is the directive issued by the Ministry of Finance, which states to the effect that any interest accrued after the death of a decedent should be included among the income of an inheritor and thus subject to taxation, unconstitutional?

RELEVANT LAWS:

Articles 15 and 19 of the Constitution（憲法第十五條、第十九條）; J. Y. Interpretations Nos. 420, 460 and 519（司法院釋字第四二〇號、第四六〇號、第五一九號解釋）; Articles 1-I and 14 of the Estate and Gift Taxes Act（遺產及贈與稅法第一條第一項、第十四條）; Articles 4 (xvii), the first half of the Income Tax Act (prior to the amendment thereof on June 20, 1998)（所得稅法第四條第十七款前段（民國八十七年六月二十日修正前）; Article 13 of the Income Tax Act(所得稅法第十三條); Category 4 under Article 14-I of the Income Tax Act (prior to the amendment thereof on December 30, 1997) （所得稅法第十四條第一項第四類（民國八十六年十二月三十日修正前））; Article 27 of the Enforcement Rules of the Estate and Gift Taxes Act（遺產及贈與稅法施行細則第二十七條）; Directive Reference No. TTS-861893588 issued by the Ministry of Finance on April 23, 1997（財政部八十六年四月二十三日台財稅第八六一八九三五八八號

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

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KEYWORDS:

Principle of ability to pay tax（量能課稅）, principle of equality（公平原則）, economic purposes of taxation（租稅之經濟意義）, substantive taxation（實質課稅）, principle of taxation by law（租稅法律主義）, basic rights to right to interest（利息基本權）, income from interest（利息所得）, interpretative administrative rule（釋示性行政規則）, double taxation（重複課稅）.**

HOLDING: Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the people have the duty to pay tax pursuant to statutory provisions in respect of such requisite elements of taxation as taxpaying bodies, taxable objects, tax bases, tax rates and so forth. In addition, the respective contents of applicable laws shall not conflict with the principle of the ability to pay tax, as well as the principle of equality. Article 1-I of the Estate and Gift Taxes Act provides that all property of a decedent who was an ROC citizen and resided in the ROC regularly

解釋文：憲法第十九條規定，人民有依法律納稅之義務。所謂依法律納稅，係指租稅主體、租稅客體、稅基、稅率等租稅構成要件，均應依法律明定之。各該法律之內容且應符合量能課稅及公平原則。遺產及贈與稅法第一條第一項規定，凡經常居住中華民國境內之中華民國國民死亡時遺有財產者，應就其全部遺產，依法課徵遺產稅；又所得稅法第十三條及中華民國八十六年十二月三十日修正前同法第十四條第一項第四類規定，利息應併入個人綜合所得總額，課徵個人綜合所得稅。財政部八十六年四月二十三日台財稅第八六一八九三五八八號函釋示，關於被繼承人死亡日後所孳生之利息，係屬繼承人之

shall be subject to estate tax under the said Act; furthermore, Article 13 of the Income Tax Act, as well as Category 4 under Article 14-I of the same Act prior to the amendment thereof on December 30, 1997, provides that any and all income generated from interest should be included among the consolidated income tax of an individual for the purpose of levying consolidated income tax on the individual. The Directive Reference No. TTS-861893588 as issued by the Ministry of Finance on April 23, 1997, stating to the effect that any interest accrued after the death of a decedent should be included among the income of an inheritor and thus subject to consolidated income tax, is not only in line with the legislative intents of the aforesaid Estate and Gift Taxes Act and Income Tax Act, but also consistent with the principle of taxation by law as embodied in the Constitution. Therefore, it does not go beyond the justifiable and reasonable sphere of taxation that may be imposed on the people. There is no violation of the property right guaranteed to the people under Article 15 of the Constitution.

所得，應扣繳個人綜合所得稅等語，符合前開遺產及贈與稅法與所得稅法之立法意旨，與憲法所定租稅法律主義並無牴觸，尚未逾越對人民正當合理之稅課範圍，不生侵害人民受憲法第十五條保障之財產權問題。

REASONING: Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the people have the duty to pay tax pursuant to statutory provisions in respect of such requisite elements of taxation as taxpaying bodies, taxable objects, tax bases, tax rates and so forth. In addition, the respective contents of applicable laws shall not conflict with the principle of the ability to pay tax, as well as the principle of equality. However, it is impossible to specify all the details in the law. For technical and detailed matters, necessary interpretations should be made by means of administrative orders. Accordingly, if the competent authority, when in doubt about implementing the applicable provisions of law within its authorities and powers, has elaborated on the applicable provisions based on its statutory authorities, there is no violation of the principle of taxation by law to the extent that its interpretations are in line with the legislative purposes of the respective laws, the economic purposes of taxation, and the principle of equality un-

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務。所謂依法律納稅，係指租稅主體、租稅客體、稅基、稅率等租稅構成要件，均應依法律明定之。各該法律之內容且應符合量能課稅及公平原則。惟法律之規定不能鉅細靡遺，有關課稅之技術性及細節性事項，尚非不得以行政命令為必要之釋示。故主管機關於適用職權範圍內之法律條文發生疑義者，本於法定職權就相關規定為闡釋，如其解釋符合各該法律之立法目的、租稅之經濟意義及實質課稅之公平原則，即與租稅法律主義尚無違背（本院釋字第四二〇號、第四六〇號、第五一九號解釋參照）。

der substantive taxation (See J. Y. Interpretations Nos. 420, 460 and 519).

Article 1-I of the Estate and Gift Taxes Act provides that all property of a decedent who was an ROC citizen and resided in the ROC regularly shall be subject to estate tax under the said Act; furthermore, Article 13 of the Income Tax Act, as well as Category 4 under Article 14-I of the same Act prior to the amendment thereof on December 30, 1997, provides that any and all income generated from interest should be included among the consolidated income tax of an individual for the purpose of levying consolidated income tax on the individual. In addition, the first half of Article 4 (xvii) of the Income Tax Act prior to the amendment thereof on June 20, 1998, provided that properties received by way of inheritance, bequest or gift shall be exempted from income tax.

遺產及贈與稅法第一條第一項規定，凡經常居住中華民國境內之中華民國國民死亡時遺有財產者，應就其全部遺產，依本法規定，課徵遺產稅；同法第十四條規定，遺產總額應包括被繼承人死亡時依第一條規定之全部財產。又所得稅法第十三條及八十六年十二月三十日修正公布前同法第十四條第一項第四類規定，利息應併入個人綜合所得總額，課徵個人綜合所得稅；八十七年六月二十日修正公布前所得稅法第四條第十七款前段則規定，因繼承、遺贈或贈與而取得之財產，免納所得稅。

In addition to having the right to the principal, an inheritor who inherits a time deposit bearing a pre-agreed interest will merely inherit the basic right to the pre-

繼承人繼承附有利息約定之定期存款者，除本金債權外，關於從屬本金債權之利息約定部分，僅繼承約定利息之基本權及繼承發生時已實現之利息。

agreed interest and the interest already accrued at the time of inheritance as far as the interest attendant on the right to the principal is concerned. In light of the above, Article 27 of the Enforcement Rules of the Estate and Gift Taxes Act provides that the value of a debt in respect of the time deposit inherited by an heir at the time of inheritance shall equal its amount, and that for debts bearing a pre-agreed interest rate, the amount of interest accrued for the period to the date of death of the decedent shall be added in determining the value of the debt. As regards the interest received by the inheritor subsequent to the inheritance under the contract of time deposit entered into by the decedent for the period from the day following the death of the depositor till the expiry date of the deposit, the law is silent on whether it should be included among the decedent's estate and thus subject to estate taxation or it should be deemed as the inheritor's personal income generated from interest and hence subject to consolidated income taxation for the individual inheritor. As stated above, where an inheritor inherits a time deposit bearing a

遺產及贈與稅法施行細則第二十七條規定，繼承人於繼承發生時所繼承之定期存款，其債權之估價，以其債權額為其價額，其有約定利息者，應加計至被繼承人死亡之日止已經過期間之利息額，即係本此意旨。至定期存款自存款人死亡之翌日起，至存款屆滿日止，依該被繼承人原訂定期存款契約而由繼承人於繼承開始後所取得之利息，究應認係該被繼承人之財產而計入其遺產課稅，或應認係繼承人本人之利息所得，而課繼承人個人之綜合所得稅，法律未設特別規定。衡諸前述繼承人繼承附有利息約定之定期存款者，僅繼承約定利息之基本權及繼承發生時已實現之利息，而不及於繼承發生後因期間經過所具體發生之利息，故該利息基本權縱有財產價值，與基於該利息基本權而發生之利息，性質仍迥然不同。因此定期存款自存款人死亡之翌日起，至該存款屆滿日止所生之利息，係繼承開始後，由繼承人所繼承之定期存款本金及所從屬之抽象利息基本權，隨時間經過而具體發生，故該利息並非被繼承人死亡時遺有之財產，自非屬應依遺產及贈與稅法第一條第一項規定課徵遺產稅者，亦非依八十七年六月二十日修正公布前所得稅法第四條第十七款前段規定，繼承人因

pre-agreed interest, he or she will merely inherit the basic right to the pre-agreed interest and the interest already accrued at the time of inheritance, but not the interest realized due to the lapse of time upon the occurrence of inheritance. Therefore, even if the basic right to interest has any property value, it is completely different in nature from the interest accrued from such basic right to interest. Consequently, the interest accrued from the time deposit for the period from the day following the death of the depositor till the expiry date of the deposit should be interest received by the inheritor upon occurrence of inheritance after the lapse of time that has accrued from the principal of the time deposit inherited by the inheritor, as well as the abstract basic right to interest attendant thereon. As a result, the interest at issue should not be deemed as part of the decedent's estate upon his or her death, and, as such, should not be subject to estate tax under Article 1-I of the Estate and Gift Taxes Act, nor should it be considered as the property received by an inheritor due to inheritance, bequest or gift and thus be exempted from income tax under

繼承、遺贈或贈與取得之財產而免納所得稅者，乃繼承人本人之利息所得，而應依所得稅法第十三條及八十六年十二月三十日修正公布前同法第十四條第一項第四類規定，課徵繼承人個人綜合所得稅，以符扣繳稅款與租稅客體之實質歸屬關係。財政部八十六年四月二十三日台財稅第八六一八九三五八八號函釋示，關於被繼承人死亡日後所孳生之利息，係屬繼承人本人之所得等語，乃主管機關本於法定職權，所為必要之釋示性行政規則，符合遺產及贈與稅法、所得稅法之立法目的及租稅之經濟意義，與憲法第十九條之租稅法律主義及上開法律規定均無牴觸，尚未逾越對人民正當合理之稅課範圍，不生侵害人民受憲法第十五條保障之財產權問題。又本件並無就同一租稅客體課稅二次以上之情形，故無重複課稅可言。

the first half of Article 4 (xvii) of the Income Tax Act prior to the amendment thereof on June 20, 1998. Instead, it is the inheritor's personal income generated from interest and hence should be subject to consolidated income taxation for the individual inheritor under Article 13 of the Income Tax Act and Category 4 under Article 14-I of the Income Tax Act prior to the amendment thereof on December 30, 1997, so as to fit in with the substantive correlation between the withholding tax and taxable objects. The Directive Reference No. TTS-861893588, as issued by the Ministry of Finance on April 23, 1997, stating to the effect that any interest accrued after the death of a decedent should be included among the income of an inheritor, is a necessary interpretative administrative rule made by the competent authority based on its statutory authorities, which is not only in line with the legislative intents of the aforesaid Estate and Gift Taxes Act and Income Tax Act, as well as with the economic purposes of taxation, but also consistent with the principle of taxation by law as embodied in the Constitution and the aforesaid statu-

tory provisions. Therefore, it does not go beyond the justifiable and reasonable sphere of taxation that may be imposed on the people. There is no violation of the property right guaranteed to the people under Article 15 of the Constitution. As an additional note, since there is no taxation imposed twice on the same taxable object, there is no double taxation.

J. Y. Interpretation No.598（June 3, 2005）*

ISSUE: Is the provision of the Regulation Governing Land Registration which empowers the recording organ to directly amend a recording unconstitutional?

RELEVANT LAWS:

Articles 15, 23 and 172 of the Constitution（憲法第十五條、第二十三條、第一百七十二條）; J.Y. Interpretations Nos. 268 and 406（司法院釋字第二六八號、第四〇六號解釋）; Articles 37-II, 43, 48, 59 and 69 of the Land Act（土地法第三十七條第二項、第四十三條、第四十八條、第五十九條、第六十九條）; Articles 14, 29-I (i) and 122 of the Regulation Governing Land Registration（土地登記規則第十四條、第二十九條第一項第一款、第一百二十二條）; Administrative Court Precedent A. D.72 of 1959（行政法院四十八年判字第七二號判例）; Item 7 of the Supplementary Regulations of the Amendments to Recording Acts and Regulations（更正登記法令補充規定第七點）.

KEYWORDS:

recording error（登記錯誤）, amend a recording（更正登記）, land recording（土地登記）, cadastre（地籍）, property right（財產權）, directly record（逕行登記）, authorize（授權）, principle of statutory reservation（法律保留）, preemption of statute（法律優位）, publicity system（公示制度）, public reliance effect（公信力）, identity（同一性）, loss（遺漏）, process of law（法定程序）.**

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* Translated by Jer -Shenq Shieh.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: Article 69 of the Land Act provides: "After completion of a recording, if recording officials or interested persons realize the recording is in error or the recording has been lost, unless they apply in writing and such application is approved by the upper level authority concerned, the recording can not be amended." To enforce the intent of "amending a recording" as referred to in this Article, Paragraph 1 of Article 122 of the Regulation Governing Land Registration, amended and promulgated on July 12, 1995 and enforced on September 1, 1995, provides: "After completion of a recording, recording officials or interested persons who realize the recording is in error or has been lost, shall make application to amend the recording. The recording organ, after applying to and being approved by the upper level authority concerned, can then amend such recording." Such a provision coincides with the intent of the enabling statute and does not add non-statutory restraints on the property right of the people, and thus does not conflict with Articles 15 and 23 of the Constitution.

解釋文：土地法第六十九條規定：「登記人員或利害關係人，於登記完畢後，發見登記錯誤或遺漏時，非以書面聲請該管上級機關查明核准後，不得更正」；為執行本條更正登記之意旨，中華民國八十四年七月十二日修正發布，同年九月一日施行之土地登記規則第一百二十二條第一項規定：「登記人員或利害關係人於登記完畢後，發見登記錯誤或遺漏時，應申請更正登記。登記機關於報經上級地政機關查明核准後更正之」；此一規定，符合母法意旨，且對於人民之財產權並未增加法律所無之限制，與憲法第十五條及第二十三條之規定，均無牴觸。

Paragraph 2 of Article 122 of the aforementioned Regulation Governing Land Registration provides: “Regarding the error or loss of recording mentioned in the preceding paragraph, if it is purely due to the negligence of recording officials, and evidenced by the original recording instruments, the upper level land administrative organ can authorize the recording organ to directly amend it.” Paragraph 3 of the same Article provides: “The scope of authorization for the recording organ to directly amend a recording shall be stipulated by the upper level land administrative organ.” Subparagraph 1 of Paragraph 1 of Article 29 of the same Regulation provides: “Amending a recording,” according to Paragraph 2 of Article 122, “means it can be recorded directly by the recording organ, and such organ does not have to apply for approval to the upper level land administrative organ.” These provisions of authorization exceed the scope of Paragraph 2 of Article 37 of the Land Act, amended and promulgated on July 24, 1975, conflict with Article 69 of the same Act, and violate Article 23 (principle of statutory reservation) and Article

上開土地登記規則第一百二十二條第二項規定：「前項登記之錯誤或遺漏，如純屬登記人員記載時之疏忽，並有原始登記原因證明文件可稽者，上級地政機關得授權登記機關逕行更正之」；同條第三項：「前項授權登記機關逕行更正之範圍，由其上級地政機關定之」；及同規則第二十九條第一項第一款：「依第一百二十二條第二項規定而為更正登記」者，「得由登記機關逕為登記」，無須報經上級機關之核准。此等權限授予之規定，逾越六十四年七月二十四日修正公布之土地法第三十七條第二項之範圍，並牴觸同法第六十九條之規定，與憲法第二十三條法律保留及第一百七十二條法律優位原則有違，均應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

172 (principle of preemption of statute) of the Constitution. Therefore, these provisions shall cease to be effective no later than one year after the date of promulgation of this interpretation.

REASONING: Land recording is the public system of officially documenting real property, with a public reliance effect according to law (See Article 43 of the Land Act). To deal with general land recording, the authority concerned shall ensure a strict substantial review process (e.g., investigating cadastres, publishing the locations of recording districts and recording deadlines, receiving documents, and reviewing and making official notices (See Article 48 of the Land Act). Within the period of official notice, if any interested landowner objects to such recording or finds such recording to be in error, the land administrative authority concerned shall mediate any dispute. If there is any disagreement with the result of mediation, the petitioner shall appeal to the judicial organ for determination of ownership within the designated period (See Article 59 of the Land Act). In addi-

解釋理由書：土地登記為不動產權利之公示制度，依法具有公信力（土地法第四十三條參照）。主管機關辦理土地總登記並發給書狀之前，應履行嚴謹之實質審查程序，諸如調查地籍、公布登記區及登記期限、接收文件、審查並公告等（土地法第四十八條）；公告期間內如土地權利關係人提出異議，地政主管機關應予調處；異議人如不服調處者，應於規定期間內，訴請司法機關決定權利之歸屬（土地法第五十九條）。為確保登記內容翔實無誤，土地法第六十九條並設有更正登記規定：「登記人員或利害關係人，於登記完畢後，發見登記錯誤或遺漏時，非以書面聲請該管上級機關查明核准後，不得更正」；為執行本條更正登記之意旨，內政部依土地法第三十七條第二項授權訂定之土地登記規則（內政部八十四年七月十二日台（八四）內地字第八四七七五〇六號令修正發布，同年七月二十六日台內地字第八四一一一七號令

tion, to ensure that the content of the recording is detailed and correct, Article 69 of the Land Act provides: " After completion of a recording, if recording officials or any interested persons realize the recording is in error or the recording has been lost, unless such persons apply in writing to and receive approval from the upper level authority concerned, the recording can not be amended." To enforce the intent of "amending a recording" as referred to in this Article, Paragraph 1 of Article 122 of the Regulation Governing Land Registration provides: "After completion of a recording, recording officials or interested persons who realize the recording is in error or the recording has been lost, shall apply to amend such recording. The recording organ, after applying to and receiving approval from the upper level authority concerned, can then amend such recording." The current Regulation (now Article 134) was promulgated (amended and promulgated by (86) N. T. T. Directive No. 8477506 of the Ministry of the Interior on July 12, 1995, and enforced by (86) T. N. T. Directive No. 841117 on September 1, 1995)

定自八十四年九月一日施行）第一百二十二條第一項規定：「登記人員或利害關係人於登記完畢後，發見登記錯誤或遺漏時，應申請更正登記。登記機關於報經上級地政機關查明核准後更正之」（現行土地登記規則改列為第一百三十四條）。此一更正制度之目的，係為匡正登記之錯誤與遺漏，提高土地登記之正確性，以保障人民財產權。

by the Ministry of the Interior according to the authorization of Paragraph 2 of Article 37 of the Land Act. The purpose of such an amending system is to ensure the correction of the error and prevent the loss of recording, to ensure the correctness of land recording, and to protect the property rights of the people.

The term "error and loss" in Article 69 of the Land Act, according to the aforementioned Article 14 of the Regulation Governing Land Registration, "means that the content of the recording does not match that of the original recording instruments" (The current Regulation Governing Land Registration are now Article 13, and they add "the word 'loss' means what should have been recorded but was not recorded" in the latter part.) According to empirical practice, amendment of an error in a recording is restricted to the identity of the original recording (See Administrative Court Precedent A. D.72 of 1959 and Item 7 of the Supplementary Regulations of the Amendments to Recording Acts and Regulations, promulgated by (81) T. N. T. Letter No. 8173958

土地法第六十九條所稱登記錯誤或遺漏，依上開土地登記規則第十四條規定，「係指登記之事項與登記原因證明文件所載之內容不符而言」（現行土地登記規則改列為第十三條，並於後段增訂「所稱遺漏，係指應登記事項而漏未登記者」等語）。依實務作法，登記錯誤之更正，亦以不妨害原登記之同一性者為限（參照行政法院四十八年判字第七二號判例，及內政部八十一年五月二十二日台（八一）內地字第八一七三九五八號函訂頒之更正登記法令補充規定第七點）。是土地法第六十九條之規定，係於無礙登記同一性之範圍內所為之更正登記。亦即使地政機關依法應據登記原因證明文件為翔實正確之登記，並非就登記所示之法律關係有所爭執時，得由地政機關逕為權利歸屬之判斷。上開土地登記規則第一百二十二條

of the Ministry of the Interior on May 22, 1992). Thus, the provision of Article 69 of the Land Act is to amend a recording within the scope which does not hamper the identity of such recording. That is, the land administrative organ shall maintain detailed and correct recording according to the original recording instruments, but the land administrative organ shall not directly judge the ownership when there is a dispute over a recorded legal relation. The purpose of the aforementioned Paragraph 1 of Article 122 of the Regulation Governing Land Registration is to enforce the intent of Article 69 of the Land Act, and is based on Paragraph 2 of Article 37 of the same Act, and its regulatory content does not add non-statutory restraints on the property right of the people, nor does it conflict with Article 15 (protection of property) and Article 23 (principle of statutory reservation) of the Constitution.

第一項係為執行土地法第六十九條之意旨，並有同法第三十七條第二項之依據，且其規範內容亦未對人民財產權增加法律所無之限制，與憲法第十五條財產權之保障及第二十三條之法律保留原則，均無牴觸。

Though Paragraph 2 of Article 37 of the Land Act authorizes the central land administrative organ to promulgate the Regulation Governing Land Registration, the content of the Regulation shall coin-

土地法第三十七條第二項雖授權中央地政機關訂定土地登記規則，惟其內容應符合授權意旨，並不得牴觸憲法之規定（憲法第一百七十二條，並參照本院釋字第四〇六號及第二六八號解

cide with the intent of authorization, and can not conflict with the Constitution (See Article 172 of the Constitution and J.Y. Interpretations Nos. 406 and 286). According to Article 69 of the Land Act, the error or loss of recording, "unless applied for in writing and approved by the upper level authority concerned, can not be amended." It already, according to the Act, designates the upper level authority concerned of the original recording organ as the approval organ of the amended recording, "being investigated as true and approved" as the process of law. There is no allowance for the authority concerned to authorize any other organ to perform the power by administrative order. Paragraph 2 of Article 122 of the aforementioned Regulation Governing Land Registration provides:" If the error in or loss of recording mentioned in the preceding paragraph is purely due to negligence on the part of the recording officials, and evidenced by the original recording instruments, the upper level land administrative organ can authorize such recording organ to amend it directly"; Paragraph 3 of the same Article states: "The scope of

釋）。依土地法第六十九條規定，登記錯誤或遺漏「非以書面聲請該管上級機關查明核准後，不得更正」，是已依法指定原登記機關之上級機關為得否更正登記之核准機關，且以經其「查明核准」為法定程序，並無使主管機關得以行政命令授權其他機關行使權限之餘地。上開土地登記規則第一百二十二條第二項：「前項登記之錯誤或遺漏，如純屬登記人員記載時之疏忽，並有原始登記原因證明文件可稽者，上級地政機關得授權登記機關逕行更正之」；同條第三項：「前項授權登記機關逕行更正之範圍，由其上級地政機關定之」；同規則第二十九條第一項第一款：「依第一百二十二條第二項規定而為更正登記」者，「得由登記機關逕為登記」，無須報經上級機關之核准（現行規則改列為第二十八條第一項第二款後段），雖有簡化行政程序之便，然已逾越土地法第三十七條第二項之授權範圍，且與同法第六十九條辦理更正登記應力求審慎，並應由上級機關查明核准之意旨不符，與憲法第二十三條法律保留及第一百七十二條法律優位原則有違，均應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

authorization for the recording organ to amend the recording directly shall be stipulated by the upper level land administrative organ"; Section 1 of Paragraph 1 of Article 29 of the same Regulation provides: "Amending a recording," according to Paragraph 2 of Article 122, " means that it can be recorded directly by the recording organ", and no application for approval is needed from the upper level organ (the current Regulation is now the latter part of Section 2 of Paragraph 1 of Article 28). Though they [these provisions of authorization] offer the convenience of simplifying the administrative process, they exceed the scope of the authorization of Paragraph 2 of Article 37. Besides, they do not coincide with the intent of Article 69 of the same Act, that those who amend a recording are expected to be conscientious and cautious in order to meet with the approval of the upper level organ, and as such they [these provisions of authorization] violate Article 23 (principle of statutory reservation) and Article 172 (principle of preemption of statute) of the Constitution. Therefore, these provisions shall cease to be effective no later than

one year after the date of promulgation of this interpretation.

J. Y. Interpretation No.599（June 10, 2005）*

ISSUE: Is it necessary to suspend the application of Article 8 of the Household Registration Act by issuing a preliminary injunction?

RELEVANT LAWS:

J. Y. Interpretation No. 585（司法院釋字第五八五號解釋）; Article 5-I (iii) of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第三款）; Article 8 of the Household Registration Act (as amended and promulgated on May 21, 1997)（戶籍法第八條（八十六年五月二十一日修正公布））; The Implementation Plan for the Processing of the Overall Replacement of ROC Identity Cards in 2005 (issued by the Ministry of the Interior as per Directive Ref. No. TNHT-0940072472)（九十四年全面換發國民身分證作業程序執行計畫（內政部九十四年三月四日台內戶字第〇九四〇〇七二四七二號函頒））.

KEYWORDS:

preliminary injunction（暫時處分）, effectiveness（實效性）, preventive system（保全制度）, severe harm（重大損害）, ROC identity card（國民身分證）, fingerprints（指紋）, imminent necessity（急迫必要性）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: The Council of Grand Justices is empowered by the Constitution to exercise its authority independently to interpret the Constitution and hold constitutional trials. The preventive system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or trials, or concerns civil, criminal or administrative litigations. The Grand Justices, in exercising the power of constitutional interpretation, may grant the declaration of a preliminary injunction in the event that the continuance of doubt or dispute as to the constitutional provisions at issue, the application of the law or regulation in dispute, or the enforcement of the judgment for the case at issue may cause irreparable or virtually irreparable harm to any fundamental right of the people, fundamental constitutional principle or any other major public interest, that the granting of a preliminary injunction on the motion of a petitioner prior to the delivery of an interpretation for the case at issue may be imminently

解釋文：司法院大法官依據憲法獨立行使憲法解釋及憲法審判權，為確保其解釋或裁判結果實效性之保全制度，乃司法權核心機能之一，不因憲法解釋、審判或民事、刑事、行政訴訟之審判而異。如因系爭憲法疑義或爭議狀態之持續、爭議法令之適用或原因案件裁判之執行，可能對人民基本權利、憲法基本原則或其他重大公益造成不可回復或難以回復之重大損害，而對損害之防止事實上具急迫必要性，且別無其他手段可資防免時，即得權衡作成暫時處分之利益與不作成暫時處分之不利益，並於利益顯然大於不利益時，依聲請人之聲請，於本案解釋前作成暫時處分以定暫時狀態。據此，聲請人就戶籍法第八條第二項及第三項規定所為暫時處分之聲請，應予准許。戶籍法第八條第二項、第三項及以按捺指紋始得請領或換發新版國民身分證之相關規定，於本案解釋公布之前，暫時停止適用。本件暫時處分應於本案解釋公布時或至遲於本件暫時處分公布屆滿六個月時，失其效力。

necessary to prevent any harm, that no other means is available to prevent such harm, and that, after weighing the advantages for granting a preliminary injunction and the disadvantages for not granting the same, the granting of the injunction obviously has more advantages than disadvantages. Accordingly, Article 8-II and III of the Household Registration Act, as well as other relevant provisions stating to the effect that the new ROC identity card will not be issued or replaced without the applicant being fingerprinted, shall cease to take effect for the time being until an interpretation is given for the case at issue. This preliminary injunction shall cease to be in effect either upon the delivery of the interpretation for the case at issue or, at the latest, upon the expiry of six months as of the date of declaration of the said injunction.

It should be noted, furthermore, that as regards those people who, by law, shall or may apply for an ROC identity card as of July 1, 2005, or who, for any other justifiable cause, apply for the reissue or replacement of the same, the authorities

另就中華民國九十四年七月一日起依法應請領或得申請國民身分證，或因正當理由申請補換發之人民，有關機關仍應製發未改版之國民身分證或儘速擬定其他權宜措施，俾該等人民於戶籍法第八條第二項及第三項停止效力期間

concerned shall still produce and issue the ROC identity card in its present version, or promptly devise other alternative and expedient measures so as to enable such people to receive identity cards while the application of Article 8-II and III of the Household Registration Act is suspended.

仍得取得國民身分證明之文件，併此指明。

The petition filed by the Petitioners for a preliminary injunction in respect of Paragraph I of Article 8 of the Household Registration Act shall thus be overruled.

聲請人就戶籍法第八條所為暫時處分之聲請，於同條第一項之部分應予駁回。

REASONING: The Council of Grand Justices is empowered by the Constitution to independently exercise its authority to interpret the Constitution and hold constitutional trials. The preventive system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or trials, or concerns civil, criminal or administrative litigations. The Grand Justices, in exercising the power of constitutional interpretation, may grant the declaration of a preliminary

解釋理由書：司法院大法官依據憲法獨立行使憲法解釋及憲法審判權，為確保其解釋或裁判結果實效性之保全制度，乃司法權核心機能之一，不因憲法解釋、審判或民事、刑事、行政訴訟之審判而異。如因系爭憲法疑義或爭議狀態之持續、爭議法令之適用或原因案件裁判之執行，可能對人民基本權利、憲法基本原則或其他重大公益造成不可回復或難以回復之重大損害，而對損害之防止事實上具急迫必要性，且別無其他手段可資防免時，即得權衡作成暫時處分之利益與不作成暫時處分之不利益，並於利益顯然大於不利益時，依聲請人之聲請，於本案解釋前作成暫時

injunction in the event that the continuance of doubt or dispute as to the constitutional provisions at issue, the application of the law or regulation in dispute, or the enforcement of the judgment for the case at issue may cause irreparable or virtually irreparable harm to any fundamental right of the people, fundamental constitutional principle or any other major public interest, that the granting of a preliminary injunction on the motion of a petitioner prior to the delivery of an interpretation for the case at issue may be imminently necessary to prevent any harm, that no other means is available to prevent such harm, and that, after weighing the advantages for granting a preliminary injunction and the disadvantages for not granting the same, the granting of the injunction obviously has more advantages than disadvantages. The same rationale has been made clear by J. Y. Interpretation No. 582. This matter has been brought to the attention of this Court because more than one-third of the legislators have doubts about the constitutionality of Article 8 of the Household Registration Act and thus have petitioned this Court for a constitutional interpretation.

處分以定暫時狀態，本院釋字第五八五號解釋足資參照。本件係三分之一以上立法委員認戶籍法第八條有牴觸憲法之疑義，而依司法院大法官審理案件法第五條第一項第三款之規定，向本院聲請解釋憲法，聲請人並同時請求本院先行宣告系爭戶籍法第八條暫時停止適用。

tion in respect thereof pursuant to Article 5-I (iii) of the Constitutional Interpretation Procedure Act and, meanwhile, have also petitioned this Court for the declaration of a preliminary injunction against the application of Article 8 of the Household Registration Act.

Fingerprints are a major feature of the human body, and a fingerprint check affords an infallible means of personal identification. Article 8 of the Household Registration Act as amended and promulgated on May 21, 1997 provides, "Any national who reaches fourteen years of age shall apply for an ROC identity card; any national who is under fourteen years of age may apply for the same (Paragraph I thereof). While applying for an ROC identity card pursuant to the preceding paragraph, the applicant shall be fingerprinted for the record; provided that no national who is under fourteen years of age will be fingerprinted until he or she reaches fourteen years of age, at which time he or she shall then be fingerprinted for the record (Paragraph II thereof). No ROC identity card will be issued unless

指紋為個人之身體上重要特徵，比對指紋亦為人別之辨識方法。中華民國八十六年五月二十一日修正公布之戶籍法第八條規定：「人民年滿十四歲者，應請領國民身分證；未滿十四歲者，得申請發給（第一項）。依前項請領國民身分證，應捺指紋並錄存。但未滿十四歲請領者，不予捺指紋，俟年滿十四歲時，應補捺指紋並錄存（第二項）。請領國民身分證，不依前項規定捺指紋者，不予發給（第三項）。」前開規定可否為國家定時全面換發國民身分證之依據？全面換發國民身分證時是否亦有第二項、第三項之適用？國民身分證之發給可否以按捺指紋為要件？以及事實上強制錄存指紋是否對人民受憲法保障之基本權利構成侵害？均可能導致憲法解釋上之重大爭議。茲內政部以九十四年三月四日台內戶字第〇九四〇〇七二四七二號函頒九十四年全面換發

the applicant is fingerprinted pursuant to the preceding paragraph (Paragraph III thereof).” Major disputes relating to constitutional interpretations may arise when there are questions about whether the foregoing provisions may be the basis of periodic and overall replacement of identity cards by the state, whether the aforesaid Paragraphs II and III will apply during the period of overall replacement of identity cards, whether the issuance of identity cards may be contingent upon fingerprinting, and whether compulsory fingerprinting for the purpose of record infringes upon the people’s fundamental rights as guaranteed by the Constitution. The Ministry of the Interior issued the Implementation Plan for the Processing of the Overall Replacement of ROC Identity Cards in 2005 as per its Directive Ref. No. TNHT-0940072472 dated March 4, 2005, whereby the replacement of identity cards will begin as of July 1, 2005. Consequently, starting from July 1, 2005, the people must be fingerprinted in order to receive the new ROC identity cards. Therefore, any harm that may result therefrom is in fact all-inclusive and imminent,

國民身分證作業程序執行計畫，訂於九十四年七月一日起展開國民身分證換證作業，故人民自九十四年七月一日起即須按捺指紋，始能取得新版國民身分證。其因此可能發生之損害，事實上已屬全面且急迫，而別無其他手段足資防免，並不能以換發新版國民身分證之期間頗長，不擬按捺指紋者得俟釋憲結果後方為申請，而否定全國人民於九十四年七月一日後皆有隨時依法請領或換發新版國民身分證之權利與事實上需要，自不能據以認定，按捺指紋可能造成之損害無急迫性。茲因立法機關尚未就釋憲程序明定保全制度，本院大法官行使釋憲權時，即應本於本院釋字第五八五號解釋之意旨，審酌是否准予宣告暫時處分之聲請。本件倘戶籍法第八條第二項及第三項嗣後經本院為違憲之解釋，前揭主管機關錄存人民指紋之既成事實，如已對人民基本權利造成重大損害，其損害可謂不可回復或難以回復；況國家執行指紋檔案之錄存，本須付出一定之人力、物力等行政成本，錄存之指紋檔案若因所依據之法律違憲而須事後銷毀，其耗損大量之行政資源，對公益之影響亦堪稱重大。

which is not to be forestalled by any other means. Since it is impossible to deny the lawful right and factual need of the people who, by law, may at any time apply for an ROC identity card or apply for the replacement of the same as of July 1, 2005, by contending that those who are reluctant to subject themselves to fingerprinting may await the results of the constitutional interpretation in respect thereof in view of the long period for the overall replacement of new identity cards, hence it is impossible to infer that any harm that may result from the fingerprinting at issue is not imminent. In light of the fact that the legislature has yet to propose a preventive system in respect of the constitutional interpretation procedure, this Court, in exercising its right to interpret the Constitution, shall then consider whether the petition for a preliminary injunction should be granted while following the purport of J. Y. Interpretation No. 585. Assuming for this matter that the provisions of Article 8-II and III of the Household Registration Act are later found to be unconstitutional by this Court, it may well be said that the fact that the authorities concerned will

have fingerprinted the people may cause irreparable or virtually irreparable harm to the fundamental rights of the people. Besides, while implementing the storage and safekeeping of the fingerprint dossiers, the state will inevitably expend administrative costs in manpower, material resources and so forth. If the fingerprint dossiers are to be destroyed subsequently due to the unconstitutionality of the law at issue, the considerable amount of administrative resources so wasted may well affect the public interest to a great extent.

On the other hand, the suspension of the application of Article 8-II and III of the Household Registration Act prior to the delivery of the interpretation for the case at issue is, as a matter of fact, a mere extension of the status quo for the household administration. Even if this Court reaches the conclusion that the statutory provisions at issue are constitutional after arguing the substantive disputes for the case, no major interruption or harm will be done so far as the household administration is concerned. As regards those people who already hold ROC identity

反之，戶籍法第八條第二項及第三項於本案解釋作成前暫時停止適用，實為戶政現況之延伸，即便本院就本案之實體爭議嗣後為系爭條文合憲之解釋，於戶籍管理尚無重大妨礙或損害情事，對現已持有國民身分證之人民而言，亦不致對其日常生活造成妨害；且有關機關縱須擬就若干權宜措施，致令行政成本有所增加，惟與人民基本權利之侵害相較，仍屬較小之損害。又暫時處分期間，人民依本解釋意旨，僅得請領或換發未改版之身分證明文件，故系爭法令如經本院大法官解釋為合憲時，主管機關即應依法辦理請領及換發新版

cards, their daily activities will not be adversely affected. Besides, even if the authorities concerned must devise other alternative and expedient measures, thus resulting in increase of administrative costs, the potential damage remains relatively insignificant when compared with the infringement upon the fundamental rights of the people. In addition, because the people may simply apply for the issuance or replacement of ROC identity cards in their present form as per the purport of this interpretation, the authorities concerned shall have to process the issuance and replacement of new identity cards in the event that the law at issue is found to be constitutional by this Court. As such, no issue shall occur when it comes to fingerprinting those who receive the identity card in its present version. Given the above, the petition filed by the Petitioners for a preliminary injunction in respect of the provisions of Article 8-II and III of the Household Registration Act shall be granted. Accordingly, Article 8-II and III of the Household Registration Act, as well as other relevant provisions stating to the effect that the new ROC identity

國民身分證作業，並不發生無法取得領取未改版身分證明文件者指紋之問題。據此，聲請人就戶籍法第八條第二項及第三項規定所為暫時處分之聲請，應予准許。戶籍法第八條第二項、第三項及以按捺指紋始得請領或換發新版國民身分證之相關規定，於本案解釋公布之前，暫時停止適用。本件暫時處分應於本案解釋公布時或至遲於本件暫時處分公布屆滿六個月時，失其效力。

card will not be issued or replaced without the applicant being fingerprinted, shall cease to take effect for the time being until an interpretation is given for the case at issue. This preliminary injunction shall cease to be in effect either upon the delivery of the interpretation for the case at issue or, at the latest, upon the expiry of six months as of the date of declaration of the said injunction.

It should be noted, furthermore, that as regards those people who, by law, shall or may apply for an ROC identity card as of July 1, 2005, or who, for any other justifiable cause, apply for the reissue or replacement of the same, the authorities concerned shall still produce and issue the ROC identity card in its present version, or promptly come up with other alternative and expedient measures so as to enable such people to receive identity cards while the application of Article 8-II and III of the Household Registration Act is suspended.

另就九十四年七月一日起依法應請領或得申請國民身分證，或因正當理由申請補換發之人民，有關機關仍應製發未改版之國民身分證或儘速擬定其他權宜措施，俾該等人民於戶籍法第八條第二項及第三項停止效力期間仍得取得國民身分證明之文件，併此指明。

An identity card is an important means of personal identification for the

國民身分證為人民身分之重要識別依據，尚未持有或因故喪失持有國民

people. For those people who have yet to receive an ROC identity card or who lose possession of such a card, the inability to acquire an identity card may cause them immediate and significant inconveniences. Furthermore, Article 8-I of the Household Registration Act merely provides the ages in general for those who have the obligation and right to obtain an ROC identity card, and the Petitioners have failed to elaborate on how the provisions of Article 8-I of the Household Registration Act infringe upon constitutionally protected rights and interests. Given the above, the petition filed by the Petitioners for a preliminary injunction in respect of Paragraph I of Article 8 of the Household Registration Act shall be overruled.

身分證之人民若不能依法取得，對其社會生活將構成立即而重大之不便，且戶籍法第八條第一項僅就人民取得國民身分證之義務及權利為年齡上之一般規定，聲請人亦未具體指陳戶籍法第八條第一項之規定如何侵害憲法保障之權益，故聲請人就戶籍法第八條所為暫時處分之聲請，於同條第一項之部分應予駁回。

J. Y. Interpretation No.600（July 22, 2005）*

ISSUE: Are the provisions of the Regulation Governing Land Registration with respect to the initial survey and registration of divisionally owned buildings unconstitutional?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）; J. Y. Interpretation No. 400（司法院釋字第四〇〇號解釋）; J. Y. Interpretation Yuan Tze No.1956（司法院院字第一九五六號解釋）; Articles 758, 759, 799 and 817, Paragraph 2 of the Civil Code（民法第七百五十八條、第七百五十九條、第七百九十九條、第八百十七條第二項）; Articles 5, 37, 38, Paragraph 2, 43 and 47 of the Land Act（土地法第五條、第三十七條、第三十八條第二項、第四十三條、第四十七條）; Article 3, Subparagraphs 2, 3 and 4 of the Condominiums and Residential Buildings Act（公寓大廈管理條例第三條第二款、第三款、第四款）; Article 75, Subparagraph 1 of the Regulation Governing Land Registration (Article 81, Subparagraph 1, as amended on September 14, 2001)（土地登記規則第七十五條第一款（八十四年七月十二日修正發布，九十年九月十四日修正為第八十一條第一款））; Article 279, Paragraph 1, of the Regulation Governing the Implementation of

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

Cadastral Surveys (as amended on February 11, 1998)（地籍測量實施規則第二百七十九條第一項（八十七年二月十一日修正發布））.

KEYWORDS:

divisionally owned building（區分所有建築物）, individual owner（區分所有人）, registration of ownership（所有權登記）, ownership in common（共有）, cadastral survey（地籍測量), initial survey and registration（第一次測量及登記）, right over an immovable（不動產物權）, effect of public notice and credibility（公示力及公信力）, exclusively owned portion（專有部分） , common area; area in common use（共用部分）, security in transactions（交易安全）**

HOLDING: As registration of rights over immovables under the Land Act has the effect of public notice and creditability, the content registered must certainly be true and accurate to protect the people's property right and to maintain security in transactions. The so-called immovables include land and buildings. Because a divisionally owned building is by nature a real property owned by a multiple number of persons of whom each owns a part, there exists a close and com-

解釋文：依土地法所為之不動產物權登記具有公示力與公信力，登記之內容自須正確真實，以確保人民之財產權及維護交易之安全。不動產包括土地及建築物，性質上為不動產之區分所有建築物，因係數人區分一建築物而各有其一部，各所有人所享有之所有權，其關係密切而複雜，故就此等建築物辦理第一次所有權登記時，各該所有權客體之範圍必須客觀明確，方得據以登記，俾貫徹登記制度之上述意旨。內政部於中華民國八十四年七月十二日修正

plex relationship among all owners in terms of their ownerships. Therefore, at the time of initial application for the registration of ownerships to such building, the scope of the object of each ownership must be clear and precise before the registration can be effected, so that the above purpose of the system of registration may be thoroughly realized. The Regulation Governing Land Registration as amended on July 12, 1995, and the Regulation Governing the Implementation of Cadastral Surveys as amended on February 11, 1998, were both established by the Ministry of Interior under the authorization granted by the Land Act, Article 37, Paragraph 2, and Article 47, respectively. The Registration Regulation provide in Article 75, Subparagraph 1, for registration of the common area in a divisionally owned building, and Article 279, Paragraph 1, of the Survey Regulation is intended to determine the area and position of each part under individual ownership of a divisionally owned building as well as the part thereof in common use and the person to whom such individual ownership of the building belongs after transfer thereof, as

發布之土地登記規則與八十七年二月十一日修正發布之地籍測量實施規則分別係依土地法第三十七條第二項及第四十七條之授權所訂定。該登記規則第七十五條第一款乃係規定區分所有建築物共用部分之登記方法。上開實施規則第二百七十九條第一項之規定，旨在確定區分所有建築物之各區分所有權客體及其共用部分之權利範圍及位置，與建築物區分所有權移轉後之歸屬，以作為地政機關實施區分所有建築物第一次測量及登記之依據。是上開土地登記規則及地籍測量實施規則之規定，並未逾越土地法授權範圍，亦符合登記制度之首開意旨，為辦理區分所有建築物第一次測量、所有權登記程序所必要，且與民法第七百九十九條、第八百十七條第二項關於共用部分及其應有部分推定規定，各有不同之規範功能及意旨，難謂已增加法律所無之限制，與憲法第十五條財產權保障及第二十三條規定之法律保留原則及比例原則，尚無牴觸。

a basis on which the land administration office may conduct the initial survey and registration of the divisionally owned building. Consequently, the provisions set forth in both Regulations have not gone beyond the scope of authorization granted by the Land Act and are consistent with the purpose of the registration system as stated above. They are essential for carrying out the procedure of the initial survey and registration of the ownership to a divisionally owned building, and have different normative functions and purposes from the provisions of the Civil Code, Article 799 and Article 817, Paragraph 2, with respect to presumed common use and the presumed equal share. It follows that such provisions should not be deemed to constitute restrictions not provided by law; nor do they conflict with the provision with respect to the protection of property right under Article 15 of the Constitution or the principle of reservation of law and the doctrine of proportionality embodied in Article 23 of the Constitution.

Like land, buildings (including divi- 建築物（包含區分所有建築物）

sionally owned buildings) are in law important real property. However, there is a lack of comprehensive protection of the people's property right as required by the Constitution because no specific provisions are included in the Land Act and other relevant laws with respect to the procedure of registration of ownership in a building and the procedure of survey, wherein important matters in connection with the right and obligations of the people are involved, such as identification of the common area for individual owners to a divisionally owned building, distribution of right attributable to individual owners and the proportion of the shares, and the mechanism for resolving disagreements or disputes between parties over the registered rights. Therefore, review and improvements must be made by way of clear and specific provisions to be prescribed by law.

與土地同為法律上重要不動產之一種，關於其所有權之登記程序及其相關測量程序，涉及人民權利義務之重要事項者，諸如區分所有建築物區分所有人對於共用部分之認定、權屬之分配及應有部分之比例、就登記權利於當事人未能協議或發生爭議時之解決機制等，於土地法或其他相關法律未設明文，本諸憲法保障人民財產權之意旨，尚有未周，應檢討改進，以法律明確規定為宜。

REASONING: Article 15 of the Constitution, which provides for the protection of the people's property right, is intended to ensure that individuals may exercise their right and power to make

解釋理由書：憲法第十五條規定，人民之財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能（本院釋字第四〇〇號解釋參照）。立法機關為確保人

free use of, receive benefits from and dispose of their property in the condition as it exists (See J. Y. Interpretation No. 400). To protect the people's property right and to safeguard in the meantime other persons' freedom and the public interest, the legislature may, to the extent consistent with the doctrine of proportionality under Article 23 of the Constitution, establish various property systems to regulate the exercise of such right, by enacting laws or conferring upon administrative agencies clear authority to establish regulations for such purposes. The right over immovables is a property right protected by the Constitution. The Civil Code provides in Article 758 that: "A right over immovables, which is acquired, created, lost or altered in consequence of a juristic act, is not effective unless it is duly registered." The Code also provides in Article 759: "A person who has acquired a right over an immovable by succession, compulsory execution, expropriation or a judgment of the court before registration, may not dispose of such right unless it is duly registered." Thus, registration of the right is a requisite to alteration to or disposal of a

民財產權，並兼顧他人自由與公共利益之維護，得在符合憲法第二十三條比例原則之範圍內，制定法律或明確授權行政機關訂定法規命令，形成各種財產制度予以規範。不動產物權為憲法上所保障之財產權，民法第七百五十八條規定：「不動產物權，依法律行為而取得、設定、喪失及變更者，非經登記，不生效力。」同法第七百五十九條規定：「因繼承、強制執行、公用徵收或法院之判決，於登記前已取得不動產物權者，非經登記，不得處分其物權。」是不動產物權登記為不動產物權變動或處分之要件。土地法及其授權訂定之法令乃設有登記制度，以為辦理不動產物權登記之準據。依土地法令所設程序辦理上開不動產物權登記，足生不動產物權登記之公示力與公信力（土地法第四十三條、本院院字第一九五六號解釋參照），為確保個人自由使用、收益及處分不動產物權之重要制度，故登記須遵守嚴謹之程序，一經登記，其登記內容更須正確真實，俾與不動產上之真實權利關係完全一致，以保障人民之財產權及維護交易之安全。

right over an immovable, and a registration system is established by the Land Act and the regulations enabled thereby to govern the registration of rights over immovables. The registration of a right over an immovable perfected pursuant to the procedure required by such land law and regulations results in sufficient effect of public notice and credibility of the registration of such right. (See the Land Act, Article 43, and our Interpretation Yuan Tze No.1956). It is an important system for ensuring that all persons may exercise their right and power to make free use of, receive benefits from and dispose of their property. The registration must therefore be effectuated according to strict procedures, and the contents registered must undoubtedly be true and accurate to the extent that they agree completely with the true jural relations pertaining to the real property so that the people's property right may be protected and the security in transactions may be maintained.

The so-called immovables include land and buildings. A divisionally owned building is by nature a real property

不動產包含土地及建築物，性質上為不動產之區分所有建築物係數人區分一建築物而各有其一部，各區分所有

owned by a multiple number of persons of whom each owns a part, and each individual owner has not only a title to the part belonging to him or her exclusively but also co-ownership to the part other than the exclusive parts of the building and its accessories, namely the part in common use, in the share to which he is entitled. (See the Civil Code, Article 799, and the Condominiums and Residential Buildings Act, Article 3, Subparagraphs 2, 3 and 4), and such part in common use varies in position and area, depending upon the structure, design and function of the buildings as well as whether it is a part for common use by all individual owners because it is under co-ownership of all individual owners or it is a part for common use by some of the individual owners. The objects of ownerships of individual owners to the building being physically connected with each other and inseparable so far as their use is concerned, there exists a close and complex relationship among all owners in terms of their ownerships to the common area as well as their exclusive portions. Therefore, at the time of initial application for the registra-

人不僅對其專有部分享有所有權，並對該建築物專有部分以外之其他部分及其附屬物亦即共用部分，依一定之應有部分而共有之（民法第七百九十九條、公寓大廈管理條例第三條第二、三、四款參照），而共用部分不僅因建築物結構、形式或功用之不同致其位置、範圍有異，且又因是否為全部區分所有人所共有，而有全部區分所有人之共用部分及部分區分所有人之共用部分之別；建築物區分所有人對各該所有權之客體，於物理上相互連接，在使用上亦屬密不可分，各所有人所享有之專有部分及共用部分，彼此間之權利關係密切而錯綜複雜。於辦理區分所有建築物第一次所有權登記時，各該所有權客體即專有部分及共用部分之範圍及位置等自須客觀明確，地政機關方得據以登記，俾貫徹登記制度之上述意旨。

tion of ownerships to a divisionally owned building, the scope of the object of such ownerships, namely the area and position of each exclusively owned part and the common area, must be clear and precise before the registration can be effected, so that the above purpose of the system of registration may be thoroughly realized.

While the Civil Code provides in Article 799 and Article 817, Paragraph 2, for a rule of presumption in substantive law with respect to the part of a building under co-ownership and the individual shares thereto, more specific technical regulation of the registration procedure provided in the Act of Registration of Rights over immovables in respect of the procedure of registration of rights over immovables and survey is certainly allowable to ensure the accuracy and truthfulness of registration. In other words, while the rights of the individual owners are protected by the Civil Code, as cited above, if the common area of a divisionally owned building is not yet registered or is under dispute, the procedure of registration established by the Act of Registration of Rights over immov-

民法第七百九十九條、第八百十七條第二項關於共用部分及其應有部分雖設有推定之實體法原則規定，但為確保登記內容正確真實，關於規定不動產物權登記與測量程序之不動產物權登記程序法，就其登記程序自非不得為較具體之技術性規範。易言之，區分所有建築物之共用部分若尚未登記或有爭執者，區分所有人之權利固受民法上開規定之保障，然若辦理登記時，為求登記權利內容之詳實，則仍應依不動產物權登記程序法所設之登記程序為之。內政部八十四年七月十二日修正發布之土地登記規則與八十七年二月十一日修正發布之地籍測量實施規則係分別依當時之土地法第三十七條第二項及第四十七條之授權所訂定。上開實施規則第二百七十九條第一項規定：「申請建物第一次測量，應填具申請書，檢附建物使用執

ables must be followed when processing the registration of the right to such common area to ensure accurate registration of the right. The Regulation Governing Land Registration as amended on July 12, 1995, and the Regulation Governing the Implementation of Cadastral Surveys as amended on February 11, 1998, were both established by the Ministry of Interior under the authorization granted by the Land Act, Article 37, Paragraph 2, and Article 47, then in force. Said Survey Regulation provide in Article 279, Paragraph 1, that "To apply for initial survey of a building, the applicant shall fill out an application form and submit the same together with the building use license and a layout drawing of the completed building and a photocopy thereof. In any of the following circumstances, the applicant shall submit such documents and photocopies thereof as may be required by applicable provisions: 1) A written agreement of distribution signed by all builders if the scope and position in a divisionally owned building to which the applicant is entitled is not identifiable based on the use license (Subparagraph 1); and 2) A trans照、竣工平面圖及其影本，其有下列情形之一者，並應依各該規定檢附文件正本及其影本：一、區分所有建物，依其使用執照無法認定申請人之權利範圍及位置者，應檢具全體起造人分配協議書（第一款）。二、申請人非起造人者，應檢具移轉契約書或其他證明文件（第二款）。」前者（第一款）係在建築物使用執照無從確定申請人之建築物區分所有權、共用部分之客體範圍及位置時，由建築物區分所有人全體依協議確認各該客體之權利範圍及位置，以確定各建築物區分所有權及共用部分分別共有之內容；後者（第二款），則係為確定建築物區分所有權如具有移轉原因後，其所有權之歸屬狀態，均在以之作為地政機關實施測量與登記時客觀明確之程序依據。又該登記規則第七十五條第一款（九十年修正為第八十一條第一款）規定：「區分所有建物之共同使用部分，應另編建號，單獨登記，並依左列規定辦理：一、同一建物所屬各種共同使用部分，除法令另有規定外，應視各區分所有權人實際使用情形，分別合併，另編建號，單獨登記為各相關區分所有權人共有。但部分區分所有權人不需使用該共同使用部分者，得予除外。」係在規定區分所有建築物共用部

fer agreement or other documents if the applicant is not a builder (Subparagraph 2).” Subparagraph 1 is intended to ascertain the scope and position of the individual area owned by the applicant as well as the area under ownership in common in a building based on the agreement of all individual owners, if they are not identifiable by looking at the use license, and Subparagraph 2 is intended to identify the person to whom the ownership belongs in the case of any cause of transfer of the individual ownership to a divisionally owned building. Both are intended to provide the land administration office with an objective and precise legal basis for carrying out the survey and processing the registration. Furthermore, the Regulation Governing Land Registration provide in Article 75, Subparagraph 1 (re-numbered Article 81, Subparagraph 1, as amended in 2001): “The common area in a building shall be assigned a separate building number and separately registered, and shall be dealt with pursuant to the following provisions: 1) Unless otherwise prescribed by law, each type of common area in the same building shall be combined

分之登記方法。至其所稱共同使用部分，應視各區分所有權人實際使用情形，登記為各相關區分所有權人共有之規定，乃在提供認定是否為區分所有建築物共用部分之準據，亦即係以該部分之固有使用方法，性質上為建築物區分所有人利用該建築物所必要者而言。上開各規定均係基於區分所有建築物之專有部分及共用部分彼此間所有關係之複雜性，以及地政機關就登記內容所涉權利之有無，並無實體之判斷權（土地法第三十四條之一第六項、第四十六條之二第二項、第五十六條、第五十九條參照）而設，應未逾越土地法之授權範圍，且符合登記制度之前開意旨，為辦理區分所有建築物第一次測量、所有權登記程序上所必要，與民法第七百九十九條、第八百十七條第二項關於共用部分及其應有部分推定規定，兩者各有不同之規範功能及意旨，前開規則之規定難謂已增加法律所無之限制，與憲法第十五條財產權保障及第二十三條規定之法律保留原則及比例原則，尚無牴觸。

and separately numbered and shall be separately registered as being co-owned by individual owners interested therein by taking into consideration the actual use made by such individual owners; provided however that the individual owners who do not need to use such common areas may be excluded." The purpose of this subparagraph is to specify the practice of registration of the common areas of buildings under divided ownership. The requirement that the common area shall be registered as being co-owned by individual owners interested therein by taking into consideration the actual use made by such individual owners is intended to provide a basis for determining whether the area is a common area of a divisionally owned building; namely, whether the area, by its nature, is essential to the use of the building by its individual owners in light of the inherent usage of that part. The above provisions are made in view of the complex relations between the titles to the individual part and the common area of a divisionally owned building and the fact that the land administration agency has no power to make substantive judg-

ment on the existence or non-existence of the right for which registration is applied (See the Land Act, Article 34-1, Paragraph 6; Article 46-2, Paragraph 2; Articles 56 and 59) within the scope of authority granted by the Land Act, and are consistent with the aforementioned purposes of the system of registration and essential to the procedure of ownership registration as well as the initial survey of divisionally owned buildings. Such provisions differ in normative functions and purposes from the presumptive provisions set forth in the Civil Code, Article 799 and Article 817, Paragraph 2, with respect to the part in common use and the individual shares, and should not be deemed to be imposing restrictions not provided for by law; nor are they contrary to Article 15 or the Constitution, which accords protection to property rights, or the principle of reservation of law and the principle of proportionality under Article 23 thereof.

Like land, buildings (including divisionally owned buildings) are in law important real property. While the Land Act defines in Article 5 the meaning of con-

建築物（包含區分所有建築物）與土地同為法律上重要不動產之一種，土地法雖於第五條就建築改良物設定義規定，繼於第三十七條第一項，指明該

structional improvements and provides specifically in Article 37, Paragraph 1, that land registration means the registration of the ownership to and other rights over land and constructional improvements thereon, no specific provisions, similar to those regulating the general registration of land, are included in the Land Act or in any other relevant laws with respect to the procedure of registration of ownership in a building and the procedure of survey or such important matters in connection with the right and obligations of the people with respect to identification of the common area by individual owners of a building under divided ownership, distribution of right attributable to individual owners and the proportion of the shares, the mechanism for resolving disagreements or disputes between parties over the registered rights (See the Land Act, Article 38, Paragraph 2, and Articles 48 to 71. This part of the text does not mention buildings), or such matters are being regulated by legal orders instead of laws (See the Regulation Governing Land Registration, Articles 78 to 84). Hence, there is a lack of comprehensive protec-

法之土地登記，係謂土地及建築改良物之所有權與他項權利之登記，然關於建築物所有權之登記程序及其相關測量程序，不僅缺乏原則規定之明文，且涉及人民權利義務之重要事項者，諸如區分所有建築物區分所有人對於共用部分之認定、權屬之分配及應有部分之比例、就登記權利於當事人未能協議或發生爭議時之解決機制等，亦未如土地總登記於土地法或其他相關法律設相當之規範（土地法第三十八條第二項、第四十八條至第七十一條參照，此部分建築物則未及之），或完全委諸法規命令（土地登記規則第七十八條至第八十四條參照），本諸憲法保障人民財產權之意旨，均有未周，自應檢討改進，以法律明確規定為宜。

tion of the people's property right as required by the Constitution. Therefore, review and improvements must be made by way of clear and specific provisions to be prescribed by law.

Justice Yih-Nan Liaw filed dissenting opinion.

本號解釋廖大法官義男提出不同意見書。

J. Y. Interpretation No.601（July 22, 2005）*

ISSUE: Is it unconstitutional for the Legislative Yuan to delete the budget appropriated as a specialty premium for the Justices?

RELEVANT LAWS:

Articles 63, 78, 79, 80, 81, 170 and 171-II of the Constitution（憲法第六十三條、第七十八條、第七十九條、第八十條、第八十一條、第一百七十條、第一百七十一條第二項）; Articles 5, 6-II and 7-II of the Amendment to the Constitution（憲法增修條文第五條、第六條第二項、第七條第二項）; J.Y. Interpretations Nos. 177, 185, 188, 371, 392, 396, 530, 572, 585 and 590（司法院釋字第一七七號、第一八五號、第一八八號、第三七一號、第三九二號、第三九六號、第五三〇號、第五七二號、第五八五號、第五九〇號解釋）; Article 5-IV, the first half of the Organic Act of the Judicial Yuan（司法院組織法第五條第四項前段）; Articles 37, 38-II, 39 and 40-III and of the Act Governing Judicial Personnel（司法人員人事條例第三十七條、第三十八條第二項、第三十九條、第四十條第三項）; Articles 2, 3, 5-I and -II, 7-I(ii) of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第二條、第三條、第五條第一項、第二項、第七條第一項第二款）; Articles 2 and 3-I of the Provisional Act Governing the Salary and Allowance for

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

the President, Vice-President and Special Political Appointees（總統副總統及特任人員月俸公費支給暫行條例第二條、第三條第一項）; Article 5-I (iii) of the Budget Act（預算法第五條第一項第三款）; Articles 32 and 33 of the Administrative Procedure Act（行政程序法第三十二條、第三十三條）; Article 17 of the Public Functionary Service Act（公務員服務法第十七條）; Articles 19 and 20 of the Administrative Proceedings Act（行政訴訟法第十九條、第二十條）; Article 32 of the Code of Civil Procedure（民事訴訟法第三十二條）; Article 17 of the Code of Criminal Procedure（刑事訴訟法第十七條）; Article 28 of the Public Functionaries Disciplinary Act（公務員懲戒法第二十八條）; Article 16 of the Directives for the Operational Procedure of the Commission on the Disciplinary Sanction of Functionaries（公務員懲戒委員會處務規程第十六條）; Section 1-I and 2 of the Standards for Advanced Payment of Allowances for Judicial Personnel of Various Courts and the Ministry of Judicial Administration per Executive Yuan Directive T-(41)-S.S.T.-51（行政院臺（四一）歲三字第五一號代電司法院及司法行政部之司法人員補助費支給標準第一項第一款、第二項）.

KEYWORDS:

judicial independence（審判獨立）, specialty premium for judicial personnel（司法人員專業加給）, statutory fund（法定經費）, recusal system（迴避制度）, salary decrease（減俸）, principle of judicial independence（司法獨立原則）, separation of powers（權力分立）, constitutional review（違

憲審查）, constitutional structure of free democracy（自由民主憲政秩序）, judicial power（司法權）, security of status（身分保障）, institutional protection（制度性保障）, political personnel（政務人員）, principle of substantive equality（實質平等原則）, grounds for discipline（懲戒事由）, systematic construction（體系解釋）, judge in the constitutional context（憲法上法官）, budgetary bill（預算案）.**

HOLDING: The Justices are nominated by the President of the Republic and appointed by the same upon confirmation by the Legislative Yuan, and are judges under Article 80 of the Constitution, as has been made clear by past opinions delivered by this Court, including J.Y. Interpretations Nos. 392, 396, 530 and 585. In order to carry through the intent of Article 80 of the Constitution, which reads, "Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference," a Justice, regardless of his or her profession or occupation prior to taking the office, shall be protected during the term of his or her office by Article 81 of the Constitution, providing, inter alia,

解釋文：司法院大法官由總統提名，經立法院同意後任命，為憲法第八十條規定之法官，本院釋字第三九二號、第三九六號、第五三〇號、第五八五號等解釋足資參照。為貫徹憲法第八十條規定「法官須超出黨派以外，依據法律獨立審判，不受任何干涉」之意旨，大法官無論其就任前職務為何，在任期中均應受憲法第八十一條關於法官「非受刑事或懲戒處分，或禁治產之宣告，不得免職。非依法律，不得停職、轉任或減俸」規定之保障。法官與國家之職務關係，因受憲法直接規範與特別保障，故與政務人員或一般公務人員與國家之職務關係不同。

that no judge shall be removed from office unless he or she has been guilty of a criminal offense or subjected to disciplinary action, or declared to be under interdiction, nor shall he or she, except in accordance with law, be suspended or transferred or have his or her salary diminished. As the office of a judge in relation to the State is directly regulated and specially protected by the Constitution, it is different from that of either a political appointee or an ordinary public functionary.

In respect of the provision of Article 81 of the Constitution that no judge shall, except in accordance with law, have his or her salary diminished, it shall be construed based on the constitutional guarantee that a judge shall hold trials independently, and thus shall mean that no constitutional organ may diminish the salary of a judge for grounds other than those subject to disciplinary action as prescribed by legislation mentioned in Article 170 of the Constitution.

In view of such various provisions as

憲法第八十一條關於法官非依法律不得減俸之規定，依法官審判獨立應予保障之憲法意旨，係指法官除有懲戒事由始得以憲法第一百七十條規定之法律予以減俸外，各憲法機關不得以任何其他理由或方式，就法官之俸給，予以刪減。

司法院大法官之俸給，依中華民

Article 2 of the Provisional Act Governing the Salary and Allowance for the President, Vice-President and Special Political Appointees promulgated on January 17, 1949, the first half of Article 5-IV of the Organic Act of the Judicial Yuan, as well as Articles 40-III and 38-II of the Act Governing Judicial Personnel, the remuneration for a Justice shall consist of base salary, public expense and specialty premium, all of which are statutory funds paid and received pursuant to law. While reviewing the Central Government's general budgets for the 2005 fiscal year, the Legislative Yuan deleted the budget for the specialty premiums for judicial personnel to be paid to the Justices, thus decreasing the existing remuneration for the Justices. The Legislative Yuan, in so doing, has acted against the constitutional intent as mentioned above.

國三十八年一月十七日公布之總統副總統及特任人員月俸公費支給暫行條例第二條規定及司法院組織法第五條第四項前段、司法人員人事條例第四十條第三項、第三十八條第二項之規定以觀，係由本俸、公費及司法人員專業加給所構成，均屬依法支領之法定經費。立法院審議九十四年度中央政府總預算案時，刪除司法院大法官支領司法人員專業加給之預算，使大法官既有之俸給因而減少，與憲法第八十一條規定之上開意旨，尚有未符。

Under Article 5 of the Amendments to the Constitution, the President and Vice-President of the Judicial Yuan serve concurrently as Justices, who shall receive the specialty premiums for judicial personnel as other Justices, the budget for

司法院院長、副院長，依憲法增修條文第五條第一項規定，係由大法官並任，其應領取司法人員專業加給，而不得由立法院於預算案審議中刪除該部分預算，與大法官相同；至司法院秘書長職司者為司法行政職務，其得否支領

which shall not be deleted by the Legislative Yuan while deliberating on budgetary bills. It should also be noted that, as for the Secretary General of the Judicial Yuan, who is responsible for judicial administration, one should turn to the provisions of Article 39 of the Act Governing Judicial Personnel and other applicable laws and regulations to determine whether he or she may receive the specialty premiums for judicial personnel.

司法人員專業加給，自應依司法人員人事條例第三十九條等相關法令個案辦理，併予指明。

REASONING:

解釋理由書：

I. Procedure for Acceptance of the Petition At Issue

壹、受理程序

Firstly, it should be noted that the petition for an interpretation of Article 81 of the Constitution has been duly filed with this Court by the petitioners pursuant to Article 5-I (iii) of the Constitutional Interpretation Procedure Act as they had doubts as to the constitutionality of the Legislative Yuan's act in deleting the budget for the specialty premiums for judicial personnel payable to the President, Vice-President, Justices and Secretary General of the Judicial Yuan while deliberating on the Central Government's gen-

本件聲請意旨，以立法院於審議九十四年度中央政府總預算案時，刪除司法院院長、副院長、大法官及秘書長九十四年度司法人員專業加給之預算，認有違憲疑義，並聲請本院解釋憲法第八十一條規定等語，符合司法院大法官審理案件法第五條第一項第三款規定之程序，應予受理，合先說明。

eral budgets for the 2005 fiscal year.

A judge shall independently perform his or her constitutionally and legally mandated duties in good conscience while hearing a legally accepted case. Except as expressly provided by law, no person shall recuse the judge without due cause, nor shall the judge himself or herself refuse to hear the case for any personal reason. The phrase "expressly provided by law" shall refer to, in the context of procedural law, the recusal system, in addition to "jurisdiction."

法官就其依法受理之案件，均應本諸良知，獨立完成憲法與法律所賦予之職責，除有法律明文之規定外，其他之人固不得任意將之拒卻於所受理案件之外，法官本人亦不得任意以個人之原因拒絕為該案件之審理。茲所謂「法律明文規定」，其於訴訟法，則除「管轄」之外，即為「迴避制度」。

In respect of the exercise of any public authority by the State, conflicts of interest on the part of the person implementing his or her official duty should always be prevented so as not to affect the governmental agency's soundness and neutrality in performing its functions. Therefore, an adequate recusal system is a necessity where similar circumstances so exist as in the case of judges who are in charge of trials. (See Articles 32 and 33 of the Administrative Procedure Act, as well as Article 17 of the Public Functionary

國家任何公權力之行使，本均應避免因執行職務人員個人之利益關係，而影響機關任務正確性及中立性之達成，是凡有類似情形即有設計適當迴避機制之必要，原不獨以職掌司法審判之法院法官為然（行政程序法第三十二條、第三十三條、公務員服務法第十七條參照）。惟司法審判係對爭議案件依法所為之終局判斷，其正當性尤繫諸法官執行職務之公正與超然，是迴避制度對法院法官尤其重要。司法院大法官行使職權審理案件，自亦不能有所例外。司法院大法官審理案件法第三條規定，

Service Act). Nonetheless, since a judicial trial is the final judgment passed on a matter in dispute according to law, the legitimacy of the judgment, above all, hinges upon the impartiality and neutrality of a judge while he or she is performing his or her duties. By the same token, the Justices, while exercising their authority and hearing various cases, are no exceptions. Article 3 of the Constitutional Interpretation Procedure Act provides that the applicable provisions of the Administrative Proceedings Act shall apply mutatis mutandis in respect of the grounds for the recusal of a Justice. In light of Article 19 of the Administrative Proceedings Act, which provides the grounds for a judge to recuse himself or herself, Subparagraphs 2 through 6 of the said Article do not concern the petition at issue. As for Subparagraph 1 thereof, which provides, "where any of the situations described in Subparagraphs 1 through 6 of Article 32 of the Code of Civil Procedure occurs," only the first subparagraph of the said Article may require further inquiry, which provides, "where the judge is a party to the case at issue." According to Article 5-I

大法官審理案件之迴避事由，準用行政訴訟法。依行政訴訟法第十九條規定，關於法官應自行迴避之事由中，其第二款至第六款之情形，與本聲請釋憲案均無何關涉。至於該法條第一款所稱「有民事訴訟法第三十二條第一款至第六款情形之一者」，亦僅第一款「法官為該訴訟事件當事人者」，或尚有探究之必要。按司法院大法官審理案件法第五條第一項第三款規定，立法委員現有總額三分之一以上，就其行使職權適用憲法發生疑義或適用法律發生有牴觸憲法之疑義者，得聲請解釋憲法。其當事人應係指聲請人，聲請解釋對象則為發生疑義之憲法規定或有牴觸憲法疑義之法律規定。故其重在客觀憲法秩序之維護，而非立法委員個人或其他國民主觀權利之救濟。因是，釋憲機關之大法官依據此等立法委員之聲請而為之憲法解釋，縱因此使部分國民（包括立法機關與釋憲機關之成員）經濟上利益有所增加或減少，亦僅屬該憲法解釋之反射作用所間接形成之結果，其既非聲請解釋之對象，自不能執此而謂該等經濟上利益增加或減少之人亦同為聲請釋憲案之當事人。

(iii) of the Constitutional Interpretation Procedure Act, when one-third or more of the legislators have any doubt as to the meanings of a constitutional provision governing their functions and duties, or any question on the constitutionality of a statute at issue, a petition for interpretation of the Constitution may be initiated. The parties to such a petition shall be the petitioners, whereas the subject matter of the petition shall be the constitutional provision or statutory provision in question. Therefore, the focus is rather on the preservation of the objective constitutional order than on the subjective remedy of the rights of the legislators or any other nationals. Consequently, even if certain nationals (including the legislators and members of the constitution-interpreting organ) enjoy increase of, or endure decrease, of their economic benefits as a result of the constitutional interpretation made by the Justices, as the organ entrusted with the duty to interpret the Constitution, based on the petition initiated by the legislators, it is merely the indirect outcome of the constitutional interpretation out of reflective action. Since those

who experience increase or decrease of their economic benefits are not the subject matter of the petition for interpretation, they should not be considered as parties to the petition at issue accordingly.

The recusal system is designed to prevent conflicts of interest on the part of a government employee or public functionary while performing his or her official duty. If the mission of an agency is likely to result in gains or losses on the part of the government employees or public functionaries no matter whom is assigned to perform the duty, it will not be necessary to recuse any such government employee or public functionary, nor will it be possible to do so. There is no solving the issues in relation to reflective interests unless adequate arrangements are made as to the exercise of authorities by the agency concerned. For instance, while the Executive Yuan is formulating an annual plan to adjust the salaries of public functionaries, it is not necessary for the person exercising such authority to recuse himself or herself even if he or she, too, will thereby be benefited. Another example

迴避制度之設計原僅為避免執行職務之個別公職或公務人員，與其職務間之利益衝突。倘機關之任務無論由何人擔任，均可能與擔任職務之公職或公務人員之利害相關，則無迴避必要，亦無迴避可能，蓋除非對機關職權之行使別有安排，否則無從解決反射性之利害關聯問題。例如行政院釐定公務員年度調薪方案，縱行使此項職權之人員亦受其利，仍無迴避之必要。又如立法院審議中央政府總預算案自包含立法院之預算在內，要無使立法院迴避審議此部分預算之理。

would be the Legislative Yuan deliberating on the Central Government's general budgets, which inevitably will include the budgets for the Legislative Yuan itself. It goes without saying that the Legislative Yuan need not recuse itself from reviewing the budgets concerned in such a case.

"Recusal" in the context of procedural law is a system under which a judge is precluded on the motion of his own or a party to a case, as provided by law, from hearing the case so that justice may be ensured. Therefore, the subject of recusal is a particular judge, rather than the organ to which the judge belongs, i.e., the court. In other words, only an individual judge is recusable. The thesis has been made clear by the applicable provisions of the various procedural laws regarding recusal, prescribing that "judges" be the subject of recusal. (See Articles 19 and 20 of the Administrative Proceedings Act; Article 32 et seq. of the Code of Civil Procedure; and Article 17 of the Code of Criminal Procedure). Thus a motion to recuse the court, which is an organ of the State in nature, should not be recognized under the

訴訟法上之「迴避」，係為確保司法之公正，透過法律之規定，或以自行迴避之原因或於當事人有所聲請時，將該法官從其所受理之案件予以排除之一種制度。是其對象乃特定之法官，非法官所屬之機關－法院，亦即僅對於法官個人而為者始可，此觀諸訴訟法關於迴避之規定，均以「法官」為規範之對象即明（行政訴訟法第十九條、第二十條、民事訴訟法第三十二條以下、刑事訴訟法第十七條以下參照）。其對性質上屬於國家機關之法院為迴避之聲請者，要非迴避制度之所許。至其聲請最高法院（或最高行政法院、公務員懲戒委員會）全體法官或司法院大法官全體迴避者，非特因此等之全體法官或大法官如予迴避即已無其他機關可予審判，其迴避之本身亦無他人可為裁定，乃有違迴避制度之本質。聲請迴避如此，其自行迴避者尤然。況且個別法官之迴

system of recusal. As for the motion to recuse the judges en bloc of the Supreme Court (or the Supreme Administrative Court or the Commission on the Disciplinary Sanction of Functionaries), it will run counter to the nature of the recusal system not only because no other organ may take over the function of hearing the trial in case of recusal of the judges or justices en bloc, but also because no other person may give a ruling as to the motion for recusal. The foregoing is true when it involves a motion for recusal, so is it true in the case where a judge recuses himself. In addition, if and when a particular judge is recused, another competent judge must take his or her place to perform his or her duty by continuing the trial so as to preserve the trial functions of the court. If no judge is to be left to exercise the authority to try a case due to recusal of judges, the trial may not be denied for reason of recusal.

避，仍須有其他適於執行職務之法官續行審理，俾以維持法院審判功能於不墜；倘有因法官之迴避致已無法官可行使審判權之情形，即不能以迴避為由而拒絕審判。

The petition for the interpretation at issue involves Articles 63, 80 and 81 of the Constitution, as well as Article 5 of the Amendments to the Constitution. The

本件聲請解釋案涉及憲法第六十三條、第八十條、第八十一條及憲法增修條文第五條之解釋，具體之爭點包括司法院大法官是否為憲法上之法官？大

relevant issues include, inter alia: whether the Justices are judges in the constitutional context; whether Articles 80 and 81 of the Constitution apply to the Justices; and whether the principle of judicial independence should serve as constitutional limits on the Legislative Yuan in exercising its power to review government budgets. All of the foregoing issues are essential questions about the fundamental constitutional system in relation to separation of powers, judicial independence and constitutional review. Under Articles 78, 79, and 171-II of the Constitution and Article 5-IV of the Amendments to the Constitution as amended and promulgated on June 10, 2005, the Justices shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders, to engage in constitutional review, as well as to hear matters regarding the impeachment of the President and Vice President and dissolution of a political party violating the Constitution. In a case that falls within the purview of their authority, e.g., the case at issue, the Justices are in indeed the final and only competent authority to interpret or hear it. If the Jus-

法官是否適用憲法第八十條及第八十一條之規定？司法獨立原則是否為立法院行使預算審議權之憲法界限等，均係關乎權力分立、司法獨立及違憲審查等基本憲政制度之重要憲法問題。司法院大法官依憲法第七十八條、第七十九條、第一百七十一條第二項及九十四年六月十日修正公布之憲法增修條文第五條第四項規定，行使解釋憲法、統一解釋法令、違憲審查及審理總統、副總統之彈劾與政黨違憲解散事項之權。就其職權範圍內之案件如本案者，大法官實為最終且唯一之有權解釋或裁判機關。本院大法官倘執憲法解釋之反射作用所間接形成之結果而自行迴避，則無異於凡涉及司法權與行政權、立法權等間爭議之類似案件，或涉及全國人民（當然包括大法官）利害之法規違憲審查案件，均無從透過司法機制予以解決。此種結果已完全失卻迴避制度之本旨，而必然癱瘓憲法明文規定之釋憲制度，形同大法官對行使憲法上職權之拒絕，自無以維持法治國家權力分立之基本憲法秩序。

tices opt to recuse themselves from hearing the case due to the indirect outcome of the constitutional interpretation out of reflective action, it is tantamount to a total failure of the judicial system to resolve any dispute between the judicial power and the executive or legislative power, or any case on the review of the constitutionality of a law or regulation involving every citizen (including, of course, the Justices). If such were the case, the purpose of the recusal system would be outright defeated and thus the system of constitutional interpretation expressly prescribed under the Constitution would inevitably be paralyzed, which would be no different from the Justices refusing to exercise their constitutional authority. As a result, the fundamental constitutional order of separation of powers as contemplated by a constitutional state would no longer exist.

For fifty years, the remuneration for the Justices has been paid out pursuant to laws or orders prescribed by the competent authorities. Since the applicable laws or orders are neither amended nor re-

大法官之俸給，五十餘年來均依主管機關訂定之法律或命令支給。相關法令既未修正或廢止，則立法院於審議九十四年度中央政府總預算案時，是否得刪除大法官九十四年度司法人員專業

pealed, the question as to whether the Legislative Yuan, while deliberating on the Central Government's general budgets for the 2005 fiscal year, may delete the budget for the specialty premiums for judicial personnel to be paid to the Justices for the 2005 fiscal year, will involve a dispute as to the applicable constitutional provisions described above. The case at issue involves a dispute arising out of applicable provisions of the Constitution that has been brought to the Justices' attention pursuant to statutory procedure, which is an objective review conducted for the purpose of preserving the constitutional order. It was not the Justices that took the initiative by giving any interpretation regarding their remuneration, nor would the outcome of the interpretation increase in any manner the remuneration payable to the Justices under existing laws and orders. Thus, it should be rightfully differentiated from the situation where a competent agency, for the benefit of the agency itself or any individual of the agency, makes a decision on its own initiative and authority that increase its gains.

加給之預算，乃前述憲法相關規定之解釋爭議。本件係大法官被動、依法定程序，就憲法相關規定之爭議，為維護憲法秩序之客觀審查，既非主動就大法官俸給事項自為解釋，而解釋之結果，對大法官依現行有效法令所應支給之俸給，亦無任何增益，自與權責機關為該機關或該機關個人之利益，而自行依職權為增益決定之情形，不容相提並論。

The subject of the petition at issue is the "Resolution of the Budgetary Bill" with respect to the specialty premiums for judicial personnel to be paid to the President, Vice President and Justices of the Judicial Yuan, listed under the "Personnel Expenses" in the first category of "General Administration" for the "Judicial Yuan," falling within the fifth subparagraph of the Central Government's general budgets for the 2005 fiscal year, i.e., "Budget for Matters relating to the Judicial Yuan." The purport of the petition at issue indicates that the Petitioners believed that the Legislative Yuan, in deleting the budget for the specialty premiums for judicial personnel to be paid to the President, Vice President, Justices and Secretary General of the Judicial Yuan for the 2005 fiscal year while reviewing the Central Government's general budgets for the 2005 fiscal year, may have violated the Constitution and thus petitioned this Court for an interpretation of Article 81 of the Constitution. Even if the remuneration for the Justices is affected by the indirect outcome of the constitutional interpretation at issue out of reflective action, the

本件聲請釋憲對象為九十四年度中央政府總預算案第五款「司法院主管部分」，第一項「司法院」中第一目「一般行政」「人事費」下司法人員專業加給院長、副院長、大法官部分「預算案之議決」。聲請意旨，以立法院於審議九十四年度中央政府總預算案時，刪除司法院院長、副院長、大法官及秘書長九十四年度司法人員專業加給之預算，認有違憲疑義，並聲請本院解釋憲法第八十一條規定等語。縱大法官俸給受本件憲法解釋反射作用所間接形成結果之影響，但大法官並非本件聲請案當事人，且大法官依現行有效法令所應支給之俸給並不因本件解釋而有所增益，均如前述。揆諸上開說明，大法官於本件聲請釋憲案尚不生自行迴避之問題。

Justices themselves still are not parties to the petition at issue. Furthermore, as mentioned earlier, the outcome of the interpretation would not increase in any manner the remuneration payable to the Justices under existing laws and orders. In view of the foregoing explanations, there is no issue of recusal as to the Justices for the petition at issue.

II. The Justices Are Judges in the Constitutional Context

The purpose of constitutional interpretation is to ensure the supremacy of the Constitution in the hierarchy of all laws in a democratic and constitutional state, where a binding judicial judgment will be made to protect fundamental human rights, as well as to preserve such basic constitutional values as the constitutional structure of free democracy. In order to realize the people's right of instituting legal proceedings, to protect their constitutional or legal rights, and to preserve the constitutional order, the Justices, based on the petitions made by the people or the governmental agencies in respect of individual cases, will render final and conclu-

貳、司法院大法官為憲法上法官

大法官憲法解釋之目的，在於確保民主憲政國家憲法之最高法規範地位，就人民基本權利保障及自由民主憲政秩序等憲法基本價值之維護，作成有拘束力之司法判斷。大法官為具體實現人民訴訟權、保障其憲法或法律上之權利，並維護憲政秩序，而依人民或政府機關聲請就個案所涉之憲法爭議或疑義作成終局之判斷，其解釋並有拘束全國各機關與人民之效力，屬國家裁判性之作用，乃司法權之核心領域，故與一般法官相同，均為憲法上之法官，迭經本院釋字第三九二號、第三九六號、第五三〇號、第五八五號等解釋有案。

sive judgment on the constitutional dispute or doubt as to such cases, whose interpretations will bind all the agencies, as well as all the people, of the State. The effects are, in nature, the adjudicative function of the State, which is the core area of the judicial power. Therefore, the Justices, like ordinary judges, are judges in the constitutional context, as has been made clear by this Court in J.Y. Interpretations Nos. 392, 396, 530 and 585.

Article 80 of the Constitution expressly provides, among other things, that judges shall, in accordance with law, hold trials independently. However, since the force and effect of the Constitution prevails over that of laws, judges shall be obligated to follow the Constitution over all laws. As such, in a trial over a particular case, a judge shall always interpret and construe the applicable law as dictated by the constitutional intent so that the application of the law will fit in with the fundamental values of the Constitution in its entirety, and shall, further, review the constitutionality of the law and, once he or she firmly believes that the law is uncon-

法官依據法律獨立審判，憲法第八十條定有明文。惟憲法之效力既高於法律，法官有優先遵守之義務，因此法官於個案審判中，應對所擬適用之法律為合乎憲法意旨之解釋，以期法律之適用能符合整體憲法基本價值，並得進而審查該法律之合憲性，一旦形成該法律違憲之確信，依司法院大法官審理案件法第五條第二項及本院釋字第三七一號、第五七二號、第五九〇號解釋意旨，各級法院得以之為先決問題裁定停止訴訟程序，聲請大法官解釋。俟大法官就該先決問題作成有拘束力之憲法上判斷後，審理原因案件之法院始得以之作為裁判基礎，續行個案之審理程序。又依司法院大法官審理案件法第五條第

stitutional, the court at various levels may regard the constitutionality, or unconstitutionality, of the law as a prerequisite issue, and decide to suspend the litigation procedure and then petition this Court for constitutional interpretation pursuant to Article 5-II of the Constitutional Interpretation Procedure Act, as well as J.Y. Interpretations Nos. 371, 572 and 590. The court hearing the case at issue may not resume the procedure to try the case based on the prerequisite issue until the Justices reach a binding, constitutional judgment on such issue. Furthermore, under Article 5-I (ii) of the Constitutional Interpretation Procedure Act, when an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has any question on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment, a petition for interpretation of the Constitution may be initiated. Where the Justices conclude in an interpretation that the law or regulation applied to a final and binding judgment is contrary to the Constitution,

一項第二款規定，人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得聲請解釋憲法，而確定終局裁判所適用之法律或命令，經大法官解釋認為與憲法意旨不符，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由並拘束受訴法院，業經本院釋字第一七七號、第一八五號解釋有案；同法第七條第一項第二款規定，人民、法人或政黨於其權利遭受不法侵害，認確定終局裁判適用法律或命令所表示之見解，與其他審判機關之確定終局裁判，適用同一法律或命令時所已表示之見解有異者，得聲請統一解釋，而引起歧見之該案件，如經確定終局裁判，其適用法令所表示之見解，經大法官解釋為違背法令之本旨時，是項解釋得據為再審或非常上訴之理由並拘束受訴法院，亦經本院釋字第一八八號解釋有案。是依我國現行司法制度，各級法院（包括公務員懲戒委員會）就具體個案之審理而適用法律時，固為憲法解釋作用之一環；而大法官就人民、法人或政黨提起之法規違憲審查、統一解釋，以及就法院提起之具體規範審查、統一解釋，雖未直接涉及個案之事實

the party prejudiced by such final and binding judgment may file a motion for retrial or extraordinary appeal on the basis of such interpretation, which shall bind the court receiving the case. The foregoing has been put on record through J.Y. Interpretations Nos. 177 and 185. Additionally, according to Article 7-I (ii), when an individual, a legal entity, or a political party, whose right was infringed upon and remedies provided by law for such infringement had been exhausted, opines in good conscience that the court rendering its final decision has construed the law or regulation at issue differently from another judicial body in its previous decision that has applied the same law or regulation, a petition for uniform interpretation of the law or regulation at issue may be made. If a final and conclusive adjudication has been made in respect of the case giving rise to such difference in opinions and the view expressed by the court on the application of any law or regulation is held by an interpretation of this Court to be inconsistent with the intention of such law or regulation, the relevant interpretation of this Court may be

認定，惟亦同為個案審判之一環，至為明顯。至憲法第七十九條第二項及憲法增修條文第五條第四項明定，司法院大法官具有憲法與法令之最終解釋權，則僅為制度上不同法院間之職務分工，於大法官及法官均係被動依法定程序對個案之憲法、法律或事實上爭議，獨立、中立作成終局性、權威性之憲法或法之宣告之本質，則無二致，故同屬行使司法權之憲法上法官。

invoked to support a motion for retrial or extraordinary appeal. The foregoing has been made clear by J.Y. Interpretation No. 188. Accordingly, it goes without saying that, under the current judicial system of the ROC, courts at various levels (including the Commission on the Disciplinary Sanction of Functionaries) are a link in the chain of constitutional interpretation when it comes to the application of law to a particular case. And, it is clear that, in the case of the Justices, the constitutional review or uniform interpretation of the law or regulation in response to the petition initiated by an individual, a legal entity or a political party, as well as the review or uniform interpretation of the law based on the petition made by a court of law, albeit not directly concerned with the determination of facts in a particular case, are also links in the chain of trial of a specific case. With respect to Article 79-II of the Constitution and Article 5-IV of the Amendments to the Constitution, which expressly provide that the Justices shall have the final authority to interpret and construe the Constitution and laws and regulations, they merely stipulate a divi-

sion of labor among different courts under the judicial system, which makes no difference as to the fact that Justices and judges alike react passively to a case brought to their attention pursuant to statutory procedure and independently and neutrally deliver a final, authoritative opinion as to the Constitution or law in respect of the constitutional, legal or factual issues in a particular case. Consequently, the Justices, like ordinary judges, are also judges in the constitutional context who are mandated to exercise the judicial power.

Article 5-II of the Amendments to the Constitution unambiguously provides, inter alia, that the Justices shall serve a term of eight years and may not be reappointed for a consecutive term. Article 5-III thereof further provides that, among the Justices nominated by the President in the year 2003, eight of them shall serve for a term of four years. Although the aforesaid provisions regarding terms of service are different from Article 81 of the Constitution, which provides that judges shall hold office for life, the definite terms

憲法增修條文第五條第二項明定大法官任期八年，並不得連任。同條第三項規定九十二年總統提名之大法官，其中八位大法官任期四年。上開有關任期之規定，雖與憲法第八十一條法官為終身職之規定有別，但大法官有一定任期，與法官為終身職，皆同為一種身分之保障，自不能因大法官有任期而謂其非法官。大法官雖亦為中央、地方機關或立法院行使職權適用憲法發生疑義時之最終解釋權責機關，然尚不得因大法官亦審理此類案件，即否定其為行使司法裁判權之法官，而影響其為法官之地

for the Justices, as well as the indefinite term for judges, are both designed to protect their status. It should not be inferred that the Justices are not judges simply because they hold office for a definite term. Despite the fact that the Justices are also the final authorities to interpret the Constitution when a central or local governmental agency or the Legislative Yuan has any doubt as to the application of the Constitution while performing their duties, the judgeship of the Justices shall not be denied and affected because they are empowered to hear the aforesaid type of cases. Article 2 of the Constitutional Interpretation Procedure Act reads, "The Justices of the Judicial Yuan shall be in session en masse and adjudge the petitions concerning interpretation of the Constitution and uniform interpretation of laws and regulations; the Justices may form as well a Constitutional Court to declare the dissolution of a political party whenever it violates the Constitution." There are two ways for the Justices to exercise their powers and authorities, namely, in the form of meetings or open courts, both of which, however, are, in nature, designed

位。司法院大法官審理案件法第二條固規定：「司法院大法官，以會議方式，合議審理司法院解釋憲法與統一解釋法律及命令之案件；並組成憲法法庭，合議審理政黨違憲之解散案件」。是大法官行使職權雖有會議或法庭方式之不同，惟其均為合議審理依法受理案件之本質，則無二致；而解釋與裁判，亦僅名稱之不同，其具有主文與理由之形式且被動依法定程序作成具有最終拘束力之司法決定，則無差異，自不能因大法官依據法律規定，以會議方式行使職權，或其有拘束力之司法決定稱為解釋，即謂其非屬裁判，進而否定大法官為法官。公務員懲戒委員會處務規程第十六條規定：「本會委員辦理懲戒案件，以審議會議決行之」；其合議作成有拘束力之司法決定，依公務員懲戒法第二十八條規定，稱為議決書，然均無礙於公務員懲戒委員會委員乃法官之身分，亦為適例。至憲法增修條文第五條第一項後段「司法院大法官除法官轉任者外，不適用憲法第八十一條及有關法官終身職待遇之規定」，僅就非由法官轉任大法官者卸任後之身分保障為排除規定，其未設合理之替代規定，雖有未合；惟此一規定，係以大法官亦為憲法上之法官為前提，否則即無設此排除規

to try and hear legally received cases en masse. Besides, interpretations and adjudications are different from each other as far as their names are concerned; however, they are no different when it comes to the form—both of them consist of holding and reasoning. Additionally, the Justices and judges alike react passively to a case brought to their attention pursuant to statutory procedure and deliver a final and binding judicial decision in respect of the case. The judgeship of the Justices shall not be denied because they exercise their powers and authorities in the form of meetings, nor because the binding judicial decisions they make are called interpretations, rather than judgments. Another suitable example would be the Commission on the Disciplinary Sanction of Functionaries. Article 16 of the Directives for the Operational Procedure of the Commission on the Disciplinary Sanction of Functionaries reads, "Any and all disciplinary matters handled by a member of this Commission shall be resolved in a review meeting." A binding judicial decision made by the said Commission is, under Article 28 of the Public Functionaries

定之必要，自無執此而否定大法官為法官之理由。因此九十年五月二十三日修正公布之司法院組織法第五條第四項前段規定「大法官任期屆滿而未連任者，視同停止辦理案件之法官，適用司法人員人事條例第四十條第三項之規定」，即以大法官與一般法院法官所行使職權之本質並無不同為基礎。

Disciplinary Act, called a resolution. However, the aforesaid provisions do not affect the judgeship of members of the Commission on the Disciplinary Sanction of Functionaries. As for the second half of Article 5-I of the Amendments to the Constitution, which provides, "Except those Justices who are transferred from the bench, a Justice shall not enjoy life-time tenure protection as provided in Article 81 of the Constitution," it is merely intended to exclude the status protection for those Justices who are not transferred from the bench after they leave the office. Although it is not advisable to omit a reasonable alternative provision, the aforesaid provision, however, has been set forth on the premise that the Justices are also judges in the constitutional context. Otherwise, the exclusionary provision would not be necessary. It is not plausible to deny the Justices their judgeship for the aforesaid reason. Therefore, the first half of Article 5-IV of the Organic Act of the Judicial Yuan as amended and promulgated on May 23, 2001, provides, "Any Justice who, upon expiration of his or her term, is not reappointed, shall be deemed

as a judge who has ceased taking cases, to whom the provisions of Article 40-III of the Act Governing Judicial Personnel shall apply." The said provision is formulated on the basis that the Justices, in essence, exercise the same powers and authorities as judges of ordinary courts do.

Article 5-IV of the Amendments to the Constitution as amended and promulgated on June 10, 2005, further provides that the Justices shall form a Constitutional Court to hear matters regarding the impeachment of the President and Vice President and dissolution of a political party violating the Constitution. Under the provisions of the mid-section of Article 5-I (i) and –(iii) of the Constitutional Interpretation Procedure Act, the Justices also serve as the judicial mechanism to resolve any dispute arising between the central and local governmental agencies or between the minority and majority of the Legislative Yuan with respect to the Constitution. Therefore, the Justices will not be able to make a final and binding judicial adjudication independently as to any particular case according to the Constitu-

九十四年六月十日修正公布之憲法增修條文第五條第四項復規定，大法官應組成憲法法庭審理總統、副總統之彈劾及政黨違憲之解散事項；司法院大法官審理案件法第五條第一項第一款中段及第三款規定，大法官同時亦為中央或地方機關間或立法院少數與多數間憲政爭議之司法解決機制，則除非肯定大法官之法官地位，大法官始得依據憲法與法律獨立就個案爭議作成有拘束力之最終司法判斷，否則其權限之行使，將嚴重欠缺實質正當性，自與憲法上權力分立原則之本旨不符。

tion and the laws unless their judgeship is recognized. Failing such recognition, the Justices' exercise of powers and authorities will be seriously flawed for lack of substantive legitimacy, which, of course, will be in conflict with the constitutional principle of separation of powers.

Given the above, there is no doubt that the Justices are judges in the constitutional context in view of the applicable constitutional and statutory provisions, as well as interpretations of this Court.

綜上所述，自憲法與法律相關規定及大法官解釋觀之，司法院大法官為憲法上法官，無可置疑。

III. The Legislative Yuan, in Deleting the Budget for the Specialty Premiums for Judicial Personnel Payable to the Justices, Has Acted against the Constitutional Intent of Article 81 of the Constitution

參、立法院刪除司法院大法官支領司法人員專業加給之預算，與憲法第八十一條規定意旨尚有未符

As the office of a judge in relation to the State is directly regulated and specially protected by the Constitution, it is different from that of either a political appointee or an ordinary public functionary. In order to enable judges to withstand pressures of all sorts from all directions while making a final and conclusive adju-

法官與國家之職務關係，因受憲法直接規範與特別保障，故與政務人員或一般公務人員與國家之職務關係不同。為使法官作成最終有拘束力之憲法與法律上判斷時，足以抗拒來自各個層面之各種壓力，因而民主法治國家對法官審判獨立，莫不予以制度性保障。憲法第八十條規定：「法官須超出黨派以

dication as to the Constitution and the laws, every democratic and constitutional state has offered institutional protection to judges. Article 80 of the Constitution reads, “Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference.” The said provision is intended to require a judge to exercise his or her authorities independently and justly in conducting trials so that the parties seeking judicial relief can be certain that the person entrusted with the power to adjudicate, regardless of whether his or her title is “judge” or “justice”, is a neutral third party who is objective, detached and able to pass a good judgment as long as he is accorded adequate institutional protection. In particular, more often than not, a state organ is a party to a case heard by the Justices, who must especially regard the provisions of Article 80 of the Constitution as their constitutional obligations so as to facilitate a fair trial and preclude any interference. Nevertheless, as judicial independence and status protection are closely connected with each other, Article 81 of the Constitution provides, “Judges shall

外，依據法律獨立審判，不受任何干涉。」旨在要求法官必須獨立、公正行使審判職權，使尋求司法救濟之當事人確信職司審判權者，乃客觀、超然及受適當之制度保障而較能作出正確判斷之中立第三者，既不因其職稱為法官或大法官而有異，尤其大法官審理案件，常以國家機關為當事人，為期裁判公正，排除干涉，尤須以遵守憲法第八十條規定為其憲法上義務。惟審判獨立與身分保障之關係，密不可分，故憲法第八十一條規定：「法官為終身職，非受刑事或懲戒處分，或禁治產之宣告，不得免職。非依法律，不得停職、轉任或減俸」。又憲法增修條文第五條第一項後段「司法院大法官除法官轉任者外，不適用憲法第八十一條及有關法官終身職待遇之規定」，僅就非由法官轉任大法官者卸任後之身分保障為排除規定，究其意旨，並非謂憲法第八十一條關於法官「非受刑事或懲戒處分，或禁治產之宣告，不得免職。非依法律，不得停職、轉任或減俸」之規定，不適用於大法官，此乃基於司法獨立原則，對上開憲法增修條文規定所應為之解釋，否則豈非謂由法官轉任之大法官依憲法規定，非依法律不得懲戒、減俸；而對其餘大法官仍可任意為之？故大法官無論

hold office for life, and no judge shall be removed from office unless he or she has been guilty of a criminal offense or subjected to disciplinary action, or declared to be under interdiction, nor shall he or she, except in accordance with law, be suspended or transferred or have his or her salary diminished." Furthermore, the second half of Article 5-I of the Amendments to the Constitution provides, "Except those Justices who are transferred from the bench, a Justice shall not enjoy lifetime tenure protection as provided in Article 81 of the Constitution." It is merely aimed to exclude the status protection for those Justices who are not transferred from the bench after they leave the office. Having considered the intention of the provision, it does not mean the provision that "[no judge] shall be removed from office unless he or she has been guilty of a criminal offense or subjected to disciplinary action, or declared to be under interdiction, nor shall he or she, except in accordance with law, be suspended or transferred or have his or her salary diminished" should not apply to the Justices. It is, in fact, an interpretation of the afore

就任前職務為何，為貫徹憲法第八十條之意旨，於任期中均受憲法第八十一條有關法官職務及俸給之保障。

said provision of the Amendments to the Constitution based on the principle of judicial independence. Otherwise, will it not mean that those Justices who are transferred from the bench may not be subjected to disciplinary action or have their salaries diminished except in accordance with law, but that other Justices may be disciplined or undergo salary decrease at will? Consequently, all Justices, regardless of their profession or occupation prior to taking the office, shall be protected during the term of their offices by the provisions of Article 81 of the Constitution regarding the protection of the status and remuneration of judges.

A literal reading of Article 81 of the Constitution, providing, inter alia, that no judge shall have his or her salary diminished except in accordance with law, would lead to the conclusion that a judge's salary may not be diminished except in accordance with a law referred to in Article 170 of the Constitution. No contrary construction is allowed to so interpret the said provision as to infer that a judge's salary may be diminished as long

憲法第八十一條關於法官非依法律不得減俸之規定，依其文義，係指關於法官之減俸，必須依憲法第一百七十條規定之法律為之，本不得反面解釋為只須有法律依據，即可對法官減俸；尤其該規定乃為貫徹法官審判獨立之身分保障而設，自不得違反制憲目的，將之解釋為授權國家機關，得以事後制定或消極不制定法律之形式，使法官既有俸給金額因而減少。換言之，凡關於法官之俸給，形式上固非依憲法第一百七十

as such reduction is done pursuant to law. In particular, since the said provision is designed to ensure the security of the status of a judge for the purpose of judicial independence, it shall not be so construed as to run counter to the constitutional purpose by enabling a state organ to decrease a judge's existing remuneration through ex post facto law or by non-enactment of any law. In other words, where it concerns the remuneration for a judge, the existing amount thereof shall not be diminished except in accordance with a law referred to in Article 170 of the Constitution, as the formality so requires; and, in substance, any and all laws so enacted shall follow the constitutional intent to afford institutional protection to judges so as to ensure judicial independence. Additionally, in light of the constitutional intent of Articles 80 and 81 of the Constitution to provide institutional protection to judges for the purpose of judicial independence, the provision of Article 81 of the Constitution that no judge shall have his or her salary diminished except in accordance with law, shall mean that no constitutional organ may delete or dimin-

條規定之法律，不得使其既有金額有所減少；實質上各該法律並應符合法官審判獨立應予制度性保障之意旨。又依憲法第八十條及第八十一條規定法官審判獨立應予制度性保障之意旨，則憲法第八十一條關於法官非依法律不得減俸之規定，應係指對於法官除有懲戒事由始得以憲法第一百七十條規定之法律予以減俸外，各憲法機關不得以任何其他理由或方式，就法官之俸給，予以刪減。司法人員人事條例第三十七條規定：「實任司法官非依法律受降級或減俸處分者，不得降級或減俸」，即係本此意旨。否則國家機關如得以任何其他理由，依其職權或制定法律或消極不制定相關法律，使法官既有之俸給金額因而減少，則憲法規定法官審判獨立應予制度性保障之意旨，即無以實現（例如美國聯邦憲法第三條第一項後段、澳大利亞憲法第七十二條第一項第三款、日本國憲法第七十九條第六項、第八十條第二項、大韓民國憲法第一百零六條第一項、南非憲法第一百七十六條第三項等，亦皆設有法官於任職期間不得減俸或非受懲戒處分不得減俸之明文或相同意旨之規定，均為確保司法獨立之適例）。

ish the remuneration for a judge unless there is any ground for discipline, in which case the salary of a judge may be diminished in accordance with a law referred to in Article 170 of the Constitution. Article 37 of the Act Governing Judicial Personnel provides, "A commissioned judge may not be demoted or have his or her salary diminished unless so disciplined in accordance with law." The said provision is designed by following the foregoing intent. Otherwise, if a state organ may, for any other reason, decrease a judge's existing remuneration either on its initiative, or through ex post facto law or by non-enactment of any law, it will be impossible to realize the constitutional intent to provide institutional protection to judges so as to ensure their independence. (International examples include the latter part of Article III, Section I, of the Constitution of the United States; Article 72-I (iii) of the Australian Constitution; Articles 79-VI and 80-II of the Constitution of Japan; Article 106-I of the Constitution of the Republic of Korea; and Article 176-III of the Constitution of South Africa. In order to ensure judicial independence,

express provisions are set forth by the aforesaid constitutions to the effect that the remuneration of judges may not be reduced during their offices, or that their remuneration shall not be diminished except for disciplinary action.)

The appointment of a public functionary is not necessarily connected with the function of his or her office. For instance, under Articles 5-I, 6-II and 7-II of the Amendments to the Constitution, the President, Vice-President and Justices of the Judicial Yuan, the President, Vice-President and Examiners of the Examination Yuan, as well as the President, Vice-President and Ombudsmen of the Control Yuan, shall be nominated and, upon confirmation of the Legislative Yuan, appointed by the President of the Republic. It does not mean, however, that all those public functionaries who are so appointed have the same functions of office. The Justices, who are nominated and, upon confirmation of the Legislative Yuan, appointed by the President, are judges, as referred to in Article 80 of the Constitution. Although the appointment procedure

公務員之任命程序與職務並無必然關聯，如憲法增修條文第五條第一項、第六條第二項、第七條第二項規定，司法院院長、副院長、大法官、考試院院長、副院長、考試委員、監察院院長、副院長、監察委員，均由總統提名，經立法院同意任命之。但並非謂經此一特別任命程序任命之公務員，其職務之性質即完全相同。司法院大法官由總統提名，經立法院同意後任命，為憲法第八十條規定之法官。其任命程序、職位雖與一般法官不同，但其職務與一般法官並無二致，應受憲法第八十條及第八十一條之規範與保障，均如前述，故與政務人員必須隨政黨進退、政策變更而定去留、或其他因政治性之需要為主要考量而依特別程序任命者不同。如以大法官為特任公務員而非法官；或以大法官為法官而不得為特任；或以大法官係依特別任命程序任命，故為政務人員，皆係就大法官之任命程序、職位與

and position of the Justices are different from those of ordinary judges, the function of the Justices' offices is no different from that of ordinary judges, which, as described above, should be regulated and protected under Articles 80 and 81 of the Constitution. As such, they are not the same as those political appointees who must take and leave office due to change of government between political parties or change of governmental policies, or those who are primarily appointed through special procedure for political needs and considerations. Various misunderstandings arise out of confusion as to the appointment procedure, position and function of the Justices. For instance, one may regard the Justices as specially appointed public functionaries, instead of judges; another may believe that the Justices are judges and thus may not be specially appointed; and still others may deem the Justices as political appointees because they are appointed through a special appointment procedure.

職務相互混淆而有所誤會。

In order to honor the legal principle that the remuneration of a public func-

大法官之俸給，為符合公務人員之俸給與其身分、職務必須相當之法

tionary must be commensurate with his or her status and office, the remuneration of the Justices must either be included in a special law or in a special chapter of the law, or be expressly prescribed by law that the laws governing the remuneration for specially appointed public functionaries or judges shall apply mutatis mutandis thereto. Nonetheless, if the competent authority in charge of the preparation of budgets, at a time when the relevant legal framework remains to be built, having considered the status, position and function of the Justices in the hierarchy of public functionaries as a whole, prescribes by law and/or regulation the remuneration legally receivable by the Justices in accordance with the applicable provisions of the existing and valid laws governing the remunerations for public functionaries, it will not be contrary to the Constitution and/or the laws so long as such law and/or regulation serves the purpose of the laws governing the remunerations, as well as the constitutional intent.

理，須以專法或法律專章為特別規定，或以法律明定分別準用特任公務員之俸給法及適用法官之俸給法。惟國家編列預算之主管機關，於法制未備時，依現時有效之公務人員俸給法令相關規定，本於司法院大法官在整體公務人員中之身分、職位與職務，以法令確認司法院大法官依法所應具領之俸給，若該法令符合俸給法令之支給目的及憲法意旨，即非憲法與法律所不許。

In order to establish a solid and sound system for the remuneration of ju-

行政院為健全司法人員之俸給體制，於四十一年四月二日以行政院臺

dicial personnel, the Executive Yuan issued the Standards for Advanced Payment of Allowances for Judicial Personnel of Various Courts and the Ministry of Judicial Administration per Executive Yuan Directive T-(41)-S.S.T.-51 on April 2, 1952. Section 1-I thereof provides, "The allowances for judicial personnel shall be payable to the following personnel only: (1) Justices, Administrative Court judges and Commissioners of the Commission on the Disciplinary Sanction of Functionaries..." Accordingly, the allowances for judicial personnel have been paid to the Justices based on the nature of their function in exercising the judicial power. On the other hand, Section 2 thereof provides that, "Any person referred to in the first and second subsections of the preceding section with "senior commission or above" shall receive a monthly allowance of two hundred and eighty New Taiwan dollars..." The said provision has formulated the scope of application and standards of payments for the Justices based on the status of the Justices in the hierarchy of the entire judicial personnel, as well as the stature they should enjoy un

（四一）歲三字第五一號代電司法院及司法行政部之司法人員補助費支給標準第一項第一款規定，司法人員補助費應以後列人員為限：(1)大法官、行政法院評事及公務員懲戒委員會委員。……乃以司法院大法官行使司法權之職務性質，作為其應具領司法人員補助費之依據；其第二項規定：前項一、二兩款簡任及「簡任以上」人員，月各支領補助費新台幣二百八十元……。則以大法官在整體司法人員職位體系上之地位及憲法上應有之職位，訂其適用範圍及支領標準，既副司法人員補助費之支給目的，無違於相同職務應領取相同工作補助費之實質平等原則，與大法官之憲法上職位亦無牴觸。司法院大法官依此支領司法人員補助費（嗣改稱司法人員專業加給），自屬有據。且此一法規經行政院、立法院及司法院等憲法機關五十餘年先後反覆適用，而被確信具有法效力之規範。

der the Constitution. Not only is it in line with the purpose of the allowances payable to judicial personnel, which is not in conflict with the principle of substantive equality requiring that those with identical duties should receive identical allowances, but it is also consistent with the constitutional position of the Justices. It is not groundless for the Justices to receive the allowances for judicial personnel (later renamed as the specialty premium for judicial personnel). In addition, since such constitutional organs as the Executive Yuan, the Legislative Yuan and the Judicial Yuan have repeatedly applied the said law for a period of more than five decades, thus the law is believed to be a legally valid norm.

The first half of Article 5-IV of the Organic Act of the Judicial Yuan as amended and promulgated on May 23, 2001 provides, "Any Justice who, upon expiration of his or her term, is not reappointed, shall be deemed as a judge who has ceased taking cases, to whom the provisions of Article 40-III of the Act Governing Judicial Personnel shall apply."

九十年五月二十三日修正公布之司法院組織法第五條第四項前段規定「大法官任期屆滿而未連任者，視同停止辦理案件之法官，適用司法人員人事條例第四十條第三項之規定」。依該規定之體系解釋及法官審判獨立應予身分保障之憲法意旨，其任期已屆滿未辦理案件之大法官既得適用司法人員人事條例第四十條第三項之規定領取專業加

Based on the systematic construction of the said provision and the constitutional intent of offering security of status to judges to ensure judicial independence, since a Justice who ceases to take cases upon expiration of his or her term may receive the specialty premium for judicial personnel pursuant to the provisions of Article 40-III of the Act Governing Judicial Personnel, those incumbent Justices who are still handling cases, as required by the Constitution to try and hear cases independently, should receive such specialty premium for judicial personnel under the same law. Otherwise, if an incumbent Justice who is still handling judicial trials cannot receive any specialty premium for judicial personnel, whereas a retired Justice who ceases to take any cases upon expiration of his term may instead receive such specialty premium for judicial personnel, it will inevitably defeat the purpose of paying the specialty premium to judicial personnel and violate the constitutional principle of equality, thus leading to an imbalance of the systems in respect of the status, function and remuneration of judges.

給，則任期未屆滿仍在辦理案件之大法官基於憲法要求獨立審判之本旨，自亦應以同一規定為領取司法人員專業加給之法律依據。否則現任大法官辦理司法審理業務但不得領取司法人員專業加給，而卸任之大法官不再辦理司法審理業務反得領取司法人員專業加給，即不免有違司法人員專業加給之給付目的與憲法上之平等原則，而造成法官身分、職務與俸給體系之失衡。

Article 2 of the Provisional Act Governing the Salary and Allowance for the President, Vice-President and Special Political Appointees promulgated on January 17, 1949, provides, “The monthly remuneration for a special political appointee, Justice and Examiner shall be eight hundred New Taiwan dollars.” Article 3-I thereof further provides, “The monthly allowance for the Premier, Presidents of the Judicial Yuan and of the Examination Yuan, respectively, shall be two thousand New Taiwan dollars; for the Vice Premier, Vice Presidents of the Judicial Yuan and of the Examination Yuan, respectively, one thousand New Taiwan dollars; for any other special political appointee, Justice and Examiner, eight hundred New Taiwan dollars.” The foregoing provisions, when read together with the first half of Article 5-IV of the Organic Act of the Judicial Yuan, as well as Articles 40-III and 38-II of the Act Governing Judicial Personnel, shall be constitutionally interpreted to mean that the remuneration for a Justice shall consist of base salary, public expense and specialty premium, all of which are statutory funds paid and received pursuant

司法院大法官之俸給，依三十八年一月十七日公布之總統副總統及特任人員月俸公費支給暫行條例第二條規定「特任人員、大法官、考試委員月俸定為八百元」、第三條第一項規定「行政院、司法院、考試院院長公費定為二千元，行政院、司法院、考試院副院長公費定為一千元；其他特任人員、大法官、考試委員公費定為八百元。」及司法院組織法第五條第四項前段、司法人員人事條例第四十條第三項、第三十八條第二項規定之合憲解釋，係由本俸、公費及司法人員專業加給所構成，符合大法官在整體公務人員中職務與地位相當之俸給給與，均屬依法支領之法定經費（預算法第五條第一項第三款參照）。立法院審議九十四年度中央政府總預算案時，既非本於法律，尤非本於懲戒性法律，而逕以預算刪除之方式改變行之五十餘年之大法官俸給結構，如為憲法所許，無異促使預算權責機關藉年度預算案審議而影響大法官職權之行使。職司司法違憲審查權之大法官，倘無明確穩定之俸給保障，年年受制於預算權責機關，將嚴重影響民主憲政秩序之穩定與健全，與大法官依據憲法及法律獨立行使職權以維護自由民主憲政秩序、保障人民基本權利，故應受法官審

to law (See Article 5-I (iii) of the Budget Act). While reviewing the Central Government's general budgets for the 2005 fiscal year, the Legislative Yuan altered the remuneration structure for the Justices which had existed for more than fifty years by deleting the budget for the specialty premiums for judicial personnel payable to the Justices. The Legislative Yuan has not done so according to any law, let alone any disciplinary law. If the Constitution should allow such act, it would be tantamount to encouraging the authority in charge of the preparation of budgets, through the review of annual budgetary bills, to influence the Justices in exercising their powers. If the Justices, who are empowered to conduct judicial review of the Constitution, do not have any adequate guarantee of their remuneration, but instead are at the beck and call of the authority in charge of the preparation of budgets year after year, the stability and soundness of the democratic and constitutional order will be in jeopardy, which is not consistent with the constitutional intent to render institutional protection to judges to ensure their independ-

判獨立制度性保障之憲法意旨，尚有未符。

ence in holding trials as the Justices should independently exercise their authorities under the Constitution and the law to preserve the constitutional structure of free democracy and protect fundamental human rights.

Article 5 of the Amendments to the Constitution provides, “The Judicial Yuan shall have fifteen Justices, including a Chief Justice and a Deputy Chief Justice, who shall be nominated and, upon confirmation of the Legislative Yuan, appointed by the President of the Republic. The aforesaid provision shall take effect from the year 2003...” Accordingly, the incumbent President and Vice-President of the Judicial Yuan serve concurrently as Justices, who shall receive the specialty premiums for judicial personnel as other Justices, the budget for which shall not be deleted by the Legislative Yuan while deliberating on budgetary bills. It should also be noted that, as for the Secretary General of the Judicial Yuan, who is responsible for judicial administration, one should turn to the provisions of Article 39 of the Act Governing Judicial Personnel

憲法增修條文第五條第一項規定「司法院設大法官十五人，並以其中一人為院長、一人為副院長，由總統提名，經立法院同意任命之，自中華民國九十二年起實施」，是現任司法院院長、副院長，係由大法官並任，其應領取司法人員專業加給，而不得由立法院於預算案審議中刪除該部分預算，與大法官相同；至司法院秘書長職司者為司法行政職務，其得否支領司法人員專業加給，自應依司法人員人事條例第三十九條等相關法令個案辦理，併予指明。

and other applicable laws and regulations to determine whether he or she may receive the specialty premiums for judicial personnel.

Justice Jen-Shou Yang filed concurring opinion, in which Justice Ho-Hsiung Wang joined.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Tzu-Yi Lin filed concurring opinion in part.

Justice Feng-Zhi Peng filed concurring opinion, in which Justice Tzong-Li Hsu joined.

本號解釋楊大法官仁壽、王大法官和雄共同提出協同意見書；許大法官玉秀提出協同意見書；林大法官子儀提出部分協同意見書；彭大法官鳳至與許大法官宗力共同提出協同意見書。

J. Y. Interpretation No.602（July 29, 2005）*

ISSUE: (1) Are Article 23, Paragraph 1, and Article 35 of the Fair Trade Act in contravention to either the principle of legal reservation under Article 23 of the Constitution, or the constitutional guarantees of personal freedom and property rights under Articles 8 and 15 of the Constitution?

(2) Does Article 5 of the Supervisory Regulation Governing Multi-level Sales exceed the statutory authorization and thus contravention the principle of legal reservation under Article 23 of the Constitution?

RELEVANT LAWS:

Articles 8, 14, 15, 22 and 23 of the Constitution（憲法第八條、第十四條、第十五條、第二十二條、第二十三條）; J. Y. Interpretations Nos. 432, 476, 521, 551, 576 and 594（司法院釋字第四三二號、第四七六號、第五二一號、第五五一號、第五七六號、第五九四號解釋）; Articles 23 and 35 of the Fair Trade Act（公平交易法第二十三條、第三十五條）; Articles 250, 254, 255, 256, 259, 260,263, 359, 362 and 363 of the Civil Code（民法第二百五十條、第二百五十四條、第二百五十五條、第二百五十六條、第二百五十九條、第二百六十條、第二百六十三條、第三百五十九條、第三百六十二條、第三百六十三條）; Article 5 of the Su-

* Translated by Professor Chun-Jen Chen.

** Contents within frame, not part of the original text, are added for reference purpose only.

pervisory Regulation Governing Multi-level Sales（多層次傳銷管理辦法第五條）; Fair Trade Commission Interpretation Kung-Yen-Hse-Tze No. 008 of March 23, 1992（八十一年三月二十三日行政院公平交易委員會公研釋字第〇〇八號解釋）.

KEYWORDS:

multi-level sale, pyramid scheme（多層次傳銷）, commission（佣金）, bonus（獎金）, economic benefit（經濟利益）, judicial review（司法審查）, principle of clarity and definiteness of law（法律明確性原則）, elements of crime（犯罪構成要件）, nullum crimen sine lege, nulla poena sine lege（罪刑法定原則）, principle of clarity and definiteness of elements of a crime（構成要件明確性原則）, principle of the punishment fitting the crime（罪刑相當原則）, in contravention to（牴觸）, public authority（公權力）, personal freedom（人民身體自由）, property right（財產權）, exceed（逾越）, doctrine of reservation to law（法律保留原則）, central governing authority（中央主管機關）, indefinite concept of law（不確定法律概念）, service（勞務）, dummy（人頭）, freedom of contract（契約自由）, right of contract rescission（契約解約權）, terminate（終止）, claim（請求權）, rescind（解除）, compensation（賠償）, penalty（違約金）, mutates mutandis（準用）.**

HOLDING: Article 23, Paragraph 1, of the Fair Trade Act, enacted and implemented on February 4, 1991,

解釋文：中華民國八十年二月四日制定公布之公平交易法第二十三條第一項規定：「多層次傳銷，其參加人

prescribes that, “No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses or other economic benefits mainly from recruiting others to join, rather than from the marketing or sale of the goods or services at reasonable market prices.” The terms, “mainly” and “reasonable market price”, used in the foregoing quoted paragraph are ascertainable by judging the sources of participant’s economic benefits and the prices of participants’ marketing or sale of the goods or services. Besides, since the management plan, structure, and coordination of sales are mostly set up by the enterprises conducting multi-level sales, those who engage in illegal multi-level sales are aware of the economic benefits mainly coming from recruiting others to join rather than from the marketing or sale of the goods or services at reasonable market prices, and such facts are not unforeseeable to them, according to their professional knowledge and common sense. Thus, the standards provided by the foregoing quoted paragraph are subject to judicial review as they are provided for the courts to ascertain and judge against

如取得佣金、獎金或其他經濟利益，主要係基於介紹他人加入，而非基於其所推廣或銷售商品或勞務之合理市價者，不得為之。」其中所稱「主要」、「合理市價」之認定標準，係以參加人取得經濟利益之來源，推廣或銷售商品或勞務之價格為判斷，其範圍應屬可得確定。且多層次傳銷之營運計畫或組織之訂定，傳銷行為之統籌規劃，係由多層次傳銷事業為之，則不正當多層次傳銷事業之行為人，對於該事業之參加人所取得之經濟利益，主要係基於介紹他人加入，而非基於參加人所推廣或銷售商品或勞務之合理市價，依其專業知識及社會通念，非不得預見，並可由司法審查予以認定及判斷，符合法律明確性原則。又同法第三十五條明定，以違反上開第二十三條第一項規定為犯罪構成要件，與罪刑法定原則中之構成要件明確性原則及罪刑相當原則尚無不符，且為維護社會交易秩序，健全市場機能，促進經濟之安定與繁榮所必要，並未牴觸憲法第二十三條之規定，與憲法第八條、第十五條保障人民身體自由及財產權之意旨，尚無違背。

the facts, and hence the foregoing quoted paragraph is consistent with the principle of clarity and definiteness of law. Moreover, under Article 35 of the same act, those who violate the regulations of the foregoing quoted paragraph are subject to criminal punishment fitting the nature of the crime [as Article 23, Paragraph 1, becomes the element of the crime prescribed The meaning of this clause is unclear]. Article 35 is consistent with the principle of clarity and definiteness of law and the principle of the punishment fitting the crime, both derived from nullum crimen sine lege, nulla poena sine lege, and is necessary to maintain social transactional orders, to enhance market functions and to facilitate economic stability and prosperity. Accordingly, Article 23, Paragraph 1, and Article 35 are neither in contravention to Article 23 of the Constitution, nor to the constitutional guarantees of personal freedom and property rights under Articles 8 and 15 of the Constitution.

On the other hand, Article 23, Paragraph 2, of the Fair Trade Act provides that, “Regulations governing the supervi-

上開公平交易法第二十三條第二項規定：「多層次傳銷之管理辦法，由中央主管機關定之。」中央主管機關行

sion of multi-level sales are to be promulgated by the central governing authority." According to this statutory authorization, the central governing authority, the Fair Trade Commission of the Executive Yuan (hereinafter "the Commission"), promulgated and implemented the Supervisory Regulation Governing Multi-level Sales on February 28, 1992 (hereinafter the "Supervisory Regulation"). Article 5 of the Supervisory Regulation, now deleted, touches upon the rights and obligations of people who withdraw from multi-level sale plans or structures and is not simply a supervisory regulation promulgated by the administrative organization exercising public authority. Thus, it is clear that Article 5 of the Supervisory Regulation exceeds the statutory authorization of the foregoing Article 23, Paragraph 2, of the Fair Trade Act, is in contravention to the doctrine of reservation to law under Article 23 of the Constitution, and hence shall no longer be applicable.

政院公平交易委員會依據上開授權，於八十一年二月二十八日訂定發布多層次傳銷管理辦法，其第五條（已刪除）規定，涉及人民退出多層次傳銷計畫或組織之權利義務事項，已非單純行政機關對事業行使公權力之管理辦法，顯然逾越上開公平交易法第二十三條第二項授權之範圍，違背憲法第二十三條規定之法律保留原則，應不予適用。

REASONING:

I. Article 23, Paragraph 1, and Article 35 of the Fair Trade Act, enacted and im-

解釋理由書：

一、八十年二月四日制定公布之公平交易法（以下簡稱舊公平交易

plemented on February 4, 1991 (hereinafter the "former Fair Trade Act"), are not in contravention to Articles 8, 15 and 23 of the Constitution.

法）第二十三條第一項及第三十五條與憲法第八條、第十五條及第二十三條並無牴觸

Articles 8 and 15 of the Constitution guarantee people's personal freedom and property rights. However, such constitutional guarantees are subject to restrictions of law prescribing concrete elements of crimes and legal effects to prohibit antisocial behavior, provided such law is in accordance with Article 23 of the Constitution. (See J. Y. Interpretations Nos. 476, 551, and 594) Moreover, the requirement of clarity and definiteness of law does not merely require the statutory languages to be concrete and comprehensible; they must also be prescribed and their application must be appropriate in individual cases. The lawmakers may, taking into account the complexity of modern society, utilize indefinite concepts of law to enact law. According to nullum crimen sine lege, nulla poena sine lege, criminal punishments are imposed by statutory law. The statutory law nature of crimes is indivisibly associated with the clarity and

人民身體之自由與財產權應予保障，固為憲法第八條、第十五條所明定；惟國家以法律明確規定犯罪之構成要件與法律效果，對於特定具社會侵害性之行為施以刑罰制裁而限制人民之身體自由或財產權者，倘與憲法第二十三條規定之意旨無違，即難謂其牴觸憲法第八條及第十五條之規定（本院釋字第四七六號、第五五一號、第五九四號解釋參照）。又法律明確性之要求，非僅指法律文義具體詳盡之體例而言，立法者於立法定制時，仍得衡酌法律所規範生活事實之複雜性及適用於個案之妥當性，適當運用不確定法律概念而為相應之規定。在罪刑法定之原則下，處罰犯罪必須依據法律為之，犯罪之法定性與犯罪構成要件之明確性密不可分。有關受規範者之行為準則及處罰之立法使用抽象概念者，苟其意義非難以理解，且個案事實是否屬於法律所欲規範之對象，為一般受規範者所得預見，並可經由司法審查加以認定及判斷者，即無違反法律明確性原則（本院釋字第四三二

definiteness of the crimes' elements. If their meanings are comprehensible, and people can foresee whether their behaviors are subject to the prohibitions, and the standards provided are subject to judicial review as they are provided for the courts to ascertain and judge against the facts in individual cases, the abstract concepts utilized by the lawmakers to prescribe people's behavior and to impose criminal punishments for violations are hence consistent with the principle of clarity and definiteness of law. (See J. Y. Interpretations Nos. 432, 521, and 594).

號、第五二一號、第五九四號解釋參照）。

A multi-level sale refers to a selling or a marketing plan, or an organization in which a participant pays a certain consideration fee in exchange for the right to sell or to promote the sale of goods or services and the right to recruit other persons to join the plan or organization, and therefore obtains a commission, monetary award or other economic benefits. (See Article 8, Paragraph 1, of the former Fair Trade Act; see also, Article 8, Paragraph 1, of the Fair Trade Act, as amended on February 6, 2002.) A multi-level sale

多層次傳銷係指就推廣或銷售之計畫或組織，參加人給付一定代價，以取得推廣、銷售商品或勞務及介紹他人參加之權利，並因而獲得佣金、獎金或其他經濟利益之行銷方式（舊公平交易法第八條第一項參照，又九十一年二月六日修正公布之公平交易法第八條第一項規定亦同）。多層次傳銷，如其參加人取得佣金、獎金或其他經濟利益，主要係基於介紹他人加入其計畫或組織，而非基於參加人所推廣或銷售商品或勞務之合理市價，乃屬不正當之多層次傳銷，蓋此種主要以介紹他人參加而獲利

becomes condemnable when participants' commissions, monetary awards or other economic benefits are mainly derived from recruiting others to join rather than from the marketing or sale of the goods or services at reasonable market prices. It is so because such a profit sharing scheme provides strong incentives to participants to endeavor to recruit others to join, and causes the number of participants to increase exponentially. Eventually, participants will suffer economic losses because the entire scheme fails to meet the needed number of newly introduced "dummies" in order to maintain an operational cash flow. The founders or promoters of such a scheme, on the other hand, are risk free and enjoy excessive profits. They also distort the market function and seriously impair economic stability and prosperity. Therefore, Article 23, Paragraph 1, of the former Fair Trade Act prescribed that, "No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses or other economic benefits mainly from recruiting others to join, rather than from the marketing or sale of the foods or services at reasonable market

之設計，將成為參加人更加速介紹他人參加之誘因，而使後參加人成幾何倍數之增加，終至後參加人將因無法覓得足夠之「人頭」而遭經濟上之損失，其發起或推動之人則毫無風險，且獲暴利，破壞市場機能，嚴重妨害經濟之安定與繁榮。是舊公平交易法第二十三條第一項規定：「多層次傳銷，其參加人如取得佣金、獎金或其他經濟利益，主要係基於介紹他人加入，而非基於其所推廣或銷售商品或勞務之合理市價者，不得為之。」又同法第三十五條規定，違反前開第二十三條第一項之規定者，處行為人三年以下有期徒刑、拘役或科或併科新台幣一百萬元以下罰金，顯在維護社會交易秩序，健全市場機能，促進經濟之安定與繁榮，其目的洵屬正當。立法機關衡酌前述多層次傳銷事業統籌規劃行為人之不正當傳銷方式，對於參加人之利益、社會交易秩序、經濟之安定與發展危害甚鉅，乃對該不正當傳銷之行為施以刑罰制裁；並考量法益受侵害之程度及態樣，而選擇限制人身自由或財產之刑罰手段，與罪刑法定原則中之構成要件明確性原則及罪刑相當原則尚無不符，並未逾越必要之範圍，符合憲法第二十三條之規定，與憲法第八條、第十五條保障人民身體自由及財產權之

prices." Moreover, Article 35 of the same statute made it a criminal offense for anyone who violates the foregoing quoted Article 23, Paragraph 1, to be subject to imprisonment of not more than three years, a detention, and/or a fine of not more than one million New Taiwan dollars. Thus, it is clear that Article 35 was properly enacted with a view to maintain social transactional orders, to enhance market functions, and to facilitate economic stability and prosperity. The legislative branch may consider the organizers, promoters, and/or coordinators of the condemnable multi-level sales enterprises to have infringed on participants' benefits, social transactional orders and economic stability and prosperity and impose criminal punishments on them, and at the same time take into account the degrees and kinds of legitimate legal interests thus infringed to determine the means and measures of criminal punishments taken to limit personal freedom and private property rights. Accordingly, the criminal punishment prescribed thereunder is consistent with the principle of clarity and definiteness of law and the principle of

意旨，尚無違背。

the punishment fitting the crime under nullum crimen sine lege, nulla poena sine lege, and does not exceed the scope of necessity mandated by Article 23 of the Constitution, and is not in contravention to the constitutional guarantees of personal freedom and property rights under Articles 8 and 15 of the Constitution.

The terms, "mainly" and "reasonable market price", used in Article 23, Paragraph 1, of the former Fair Trade Act are judged by the sources of participant's economic benefits and the prices of participants' marketing or sale of the goods or services. Their scopes are ascertainable. Besides, since the management plan, structure, and coordination of sales are mostly set up by the enterprises conducting multi-level sales, those who engage in illegal multi-level sales are aware of their economic benefits mainly coming from recruiting others to join rather than from the marketing or sale of the goods or services at reasonable market prices, and such facts are not unforeseeable to them, based on their professional knowledge and common sense. Thus, the standards

舊公平交易法第二十三條第一項規定所謂「主要」、「合理市價」之認定標準，係以參加人取得經濟利益之來源，推廣或銷售商品或勞務之價格為判斷，其範圍應屬可得確定。且多層次傳銷之營運計畫或組織之訂定，傳銷行為之統籌規劃，係由多層次傳銷事業為之，則不正當多層次傳銷事業之行為人，對於該事業之參加人所取得之經濟利益，主要係基於介紹他人加入，而非基於參加人所推廣或銷售商品或勞務之合理市價，依其專業知識及社會通念，非不得預見，並可由司法審查予以認定及判斷，無悖於罪刑法定原則中之構成要件明確性原則，符合法治國原則對法律明確性之要求。又八十一年三月二十三日行政院公平交易委員會公研釋字第〇〇八號解釋，就公平交易法第二十三條「主要」及「合理市價」之認定標準

provided by the foregoing quoted paragraph are subject to judicial review as they are provided for the court to ascertain and judge against the facts, and hence the foregoing quoted paragraph is consistent with the principle of clarity and definiteness of law. Moreover, with respect to the interpretation of the terms, "mainly" and "reasonable market price", used in Article 23, Paragraph 1, of the former Fair Trade Act, Fair Trade Commission Interpretation Kung-Yen-Hse-Tze No. 008 of March 23, 1992 provides that, "I. 'MAINLY': A. If the Sources of Participants' Profits of a Multi-Level Sale Can Be Clearly Divided into Two Areas, Those Purely Coming from Recruiting Others to Join and Those Coming from the Marketing or Sale of the Foods or Services: The Commission shall first ascertain participants' sources of profits. If the profits come from recruiting others to join, then there will be a violation of Article 23, Paragraph 1, of the former Fair Trade Act. With regard to how to interpret the term "mainly", the U.S. courts treat it as a synonym of "apparently", apply the fifty percent rule, and then come to a rea-

案，其研析意見：「一、『主要』－(一)多層次傳銷，其參加人利潤來源若可清楚劃分為二，一為單純來自介紹他人加入，一為來自所推廣或銷售商品或勞務之價格，此時先認定其利潤來源，若主要係來自介紹他人加入，即違反公平交易法第二十三條第一項之規定。至於『主要』如何認定，美國法院解釋『主要』為『顯著地』，並曾以五〇%作為判定標準之參考，屆時再依個案是否屬蓄意違法及檢舉受害層面和程度等實際狀況做一合理認定。(二)多數之多層次傳銷，參加人利潤來源無法明確分割多少純係來自介紹他人，多少純係來自推廣或銷售商品或勞務，即兼含此兩種報酬，此時欲判斷其是否符合公平交易法第二十三條第一項之規定，應從其商品售價是否係『合理市價』判定之。二、『合理市價』－(一)市場有同類競爭商品或勞務：此時欲認定是否係『合理市價』時，國內外市場相同或同類產品或勞務之售價、品質應係最主要之參考依據，此外，多層次傳銷事業之獲利率，與以非多層次傳銷方式行銷相同或同類產品行業獲利率之比較其他考慮因素尚包括成本、特別技術及服務水準等。(二)市場無同類競爭商品或勞務：此時因無同類商品或勞務可資比較，認

sonable conclusion in accordance with the participant's state of mind and the degree and extent of the harm he or she caused in individual cases. B. If the Sources of Participants' Profits of a Multi-level Sale Can Not Be Clearly Divided into Two Areas, Those Purely Coming from Recruiting Others to Join and Those Coming from the Marketing or Sale of the Foods or Services; i.e., Those Two Areas Are Commingled: The Commission shall ascertain whether the goods or services are marketed or sold at 'reasonable market prices'. II. 'REASONABLE MARKET PRICE': A. If the Same or Similar Competing Goods or Services Are Available in the Market: The Commission shall rely on the prices of the same or similar goods or services of the same or similar quality sold in domestic or international markets. Besides, the Commission may rely on and compare with the earning ratios of a multi-level sale enterprise and its competitor in the same market not involving any multi-level sale. The Commission may also take into account other factors such as costs, special skills, and quality of service. B. If the Same or Similar Com-

定『合理市價』較為困難，不過只要多層次傳銷事業訂有符合多層次傳銷管理辦法退貨之規定，並確實依法執行，則其所推廣或銷售商品或勞務之價格，基本上應可視為『合理市價』。」其有關「主要」部分之研析意見，與舊公平交易法第二十三條第一項之規定，尚無不合。惟有關市場無同類商品或勞務可資比較，只要多層次傳銷事業訂有符合多層次傳銷管理辦法退貨之規定，並確實依法執行，則其所推廣或銷售商品或勞務之價格，基本上應可視為「合理市價」部分之研析意見，與上開條項規定之意旨則有未符，併此指明。

peting Goods or Services Are not Available in the Market: When the same or similar goods or services are not available in the market, it is relatively difficult to ascertain whether the goods or services of a multi-level sale enterprise are sold at 'reasonable market prices'. However, if a multi-level sales enterprise follows a set of rules for handling its participants' requests for returning goods following the Commission's Supervisory Regulation and implements those rules faithfully, its selling prices for goods and services are basically presumed to be 'reasonable market prices'". With regard to the first part of the foregoing Interpretation of the Commission in interpreting the term "mainly", it is consistent with Article 23, Paragraph 1, of the former Fair Trade Act. Nevertheless, with regard to the second part of the foregoing Interpretation stating that a multi-level sales enterprise's selling prices for goods and services are basically presumed to be 'reasonable market prices' as long as it follows a set of rules for handling its participants' requests for returning goods following the Commission's Supervisory Regulation and implements

those rules faithfully, this part may be viewed as a partial interpretation of the term "reasonable market price" and is not consistent with Article 23, Paragraph 1, of the former Fair Trade Act.

II. Article 5 of the Supervisory Regulation promulgated on February 28, 1992, is in contravention to the doctrine of reservation to law and shall no longer be applicable.

二、八十一年二月二十八日訂定發布之多層次傳銷管理辦法第五條規定違反法律保留原則，應不予適用

According to Article 23 of the Constitution, any restriction or limitation on people's rights shall be prescribed by law. For those laws restricting or limiting people's rights and authorizing the administrative branch to promulgate supplementary regulations, such supplementary regulations can be promulgated only when the purposes, contents and scopes of the authorizations are concrete and clear. Besides, the freedom of contact is the most important mechanism of personal autonomic development and personal fulfillment and the basis of the self-governance of private law. Depending on its substance, the freedom of contract falls into

人民權利之限制，依憲法第二十三條規定，應以法律定之。其得由法律授權以命令補充規定者，則授權之目的、內容及範圍應具體明確，始得據以發布命令。又契約自由為個人自主發展與實現自我之重要機制，並為私法自治之基礎。契約自由，依其具體內容分別受憲法各相關基本權利規定保障，例如涉及財產處分之契約內容，應為憲法第十五條所保障，又涉及人民組織結社之契約內容，則為憲法第十四條所保障；除此之外，契約自由亦屬憲法第二十二條所保障其他自由權利之一種（本院釋字第五七六號解釋參照）。

several relevant categories of constitutional guarantees. For instance, contacts involving the disposition of private property are under the protection of Article 15 of the Constitution; contracts involving people's freedom of association are under the protection of Article 14 of the Constitution. Furthermore, the freedom of contract also falls into the constitutionally guaranteed other rights and freedom under Article 22 of the Constitution (See J.Y. Interpretation No. 576).

Article 23, Paragraph 2, of the former Fair Trade Act provided that, "Regulations governing the supervision of multi-level sales are to be promulgated by the central governing authority." According to this statutory authorization, the central governing authority, the Commission, issued the Fair Trade Commission Ordinance Kung-Mi-Fa-Tze No. 003 of February 28, 1992, to promulgate and implement the Supervisory Regulation. Article 5 of the Supervisory Regulation (now deleted and added into Articles 23-1, 23-2 and 23-3 of the Fair Trade Act, as amended on February 3, 1999) stated that,

舊公平交易法第二十三條第二項規定：「多層次傳銷之管理辦法，由中央主管機關定之。」中央主管機關行政院公平交易委員會依據上開授權，於八十一年二月二十八日以（八一）公秘法字第〇〇三號令訂定發布多層次傳銷管理辦法，其第五條（已刪除，業於八十八年二月三日增訂為公平交易法第二十三條之一至第二十三條之三）規定：「前條第一項第八款（即多層次傳銷事業於參加人加入其傳銷計畫或組織前，應告知參加人退出計畫或組織之條件及因退出而生之權利義務）所定內容，應包括左列事項：一、參加人得自訂約日起十四日內以書面通知多層次傳銷事業

"The contents required under Article 4, Paragraph 1, Subparagraph 8, of the Supervisory Regulation (namely, the conditions and rights of withdrawal of participants of a multi-level sales enterprise, about which the participants shall be informed before joining the multi-level sales enterprise or organization) shall include the following: (i) any participant in a multi-level sales enterprise may rescind his or her participation agreement by giving the multi-level sales enterprise a written notice within fourteen days after entering into such an agreement; (ii) within a period of thirty days after the rescission of the participation agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for return of goods, collect or accept goods returned by the participant, and refund all payments for the goods made upon purchase and any other fees paid upon participation accumulated from the date of rescission to the participant; (iii) in refunding the payments made by the participant according to the preceding subparagraph, the multi-level sales enterprise may deduct upon the time of return of

解除契約。二、多層次傳銷事業應於契約解除生效後三十日內，接受參加人退貨之申請，取回商品或由參加人自行送回商品，並返還參加人於契約解除時所有商品之進貨價金及其他加入時給付之費用。三、多層次傳銷事業依前款規定返還參加人所為之給付時，得扣除商品返還時已因可歸責於參加人之事由致商品毀損滅失之價值，及已因該進貨而對參加人給付之獎金或報酬。前款之退貨如係該事業取回者，並得扣除取回該商品所需運費。四、參加人於第一款解約權期間經過後，得隨時以書面終止契約，退出多層次傳銷計畫或組織。五、參加人依前款規定終止契約後三十日內，多層次傳銷事業應以參加人原購價格百分之九十買回參加人所持有之商品，但得扣除已因該項交易而對參加人給付之獎金或報酬，及取回商品之價值有減損時，其減損之價額。六、參加人依第一款及第四款行使解除權或終止權時，多層次傳銷事業不得向參加人請求因該契約解除或終止所受之損害賠償或違約金（第一項）。前項第二款、第三款及第五款關於商品之規定，於提供勞務者準用之（第二項）。」其中關於參加人契約解除權，多層次傳銷事業對於參加人應負接受退貨、返還價金及加入

goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for his or her purchase of such goods; if the returned goods as referred to in the preceding subparagraph are collected by the multi-level sales enterprise, the enterprise may deduct the necessary shipping costs for such collection; (iv) after the statute of limitation charge of participant's right of contract rescission as prescribed in subparagraph (i) of this Article, the participant may still terminate his or her participation agreement in writing and withdraw himself or herself from the multi-level sales enterprise; (v) within thirty days from the termination of the participation agreement in accordance with the subparagraph (iv) of this Article, the multi-level sales enterprise shall buy back all goods in the participant's possession at ninety percent of the original purchasing price, but the multi-level sales enterprise may deduct the bonuses or other remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods; and (vi) when the participant exer-

費用之義務，參加人契約終止權，多層次傳銷事業負買回商品之義務，且不得對參加人請求因契約解除或終止所受之損害賠償或違約金等規定，增加民法所無之參加人得自訂約起十四日內以書面任意解除契約（民法第二百五十四條至第二百五十六條、第三百五十九條、第三百六十二條、第三百六十三條參照），或於訂約十四日後，得隨時以書面任意終止契約之規定，且變更民法有關契約解除或終止之效力規定（民法第二百五十九條、第二百六十條、第二百六十三條、十八年十一月二十二日制定、十九年五月五日施行之民法第二百五十條參照），涉及人民退出多層次傳銷計畫或組織之權利義務事項，已非單純行政機關對事業行使公權力之管理辦法，顯然逾越上開公平交易法第二十三條第二項授權之範圍，違背憲法第二十三條規定之法律保留原則，應不予適用。

cises the right of contract rescission and the right of contract termination conferred by the foregoing subparagraphs (i)-(iv), the multi-level sales enterprise may not claim damages or levy penalties against the participant for such rescission and termination. (Paragraph 1) Subparagraphs (ii), (iii) and (v) of the foregoing paragraph prescribing the return and refund of the sale goods shall be mutatis mutandis applicable to the supply of services. (Paragraph 2)" The participant's right of contract rescission, the multi-level sales enterprise's obligations to accep and collect the returned goods and refund the original purchasing price and participation fees, participant's right of contract termination, the multi-level sales enterprise's obligations to buy back the sold goods and the prohibition against claiming damages and levying penalties due to the participant's contract rescission or termination as so conferred and prescribed by the foregoing quoted Article 5 of the Supervisory Regulation create a contracting party's right of contract rescission freely exercisable upon a written notice within fourteen days after entering into a con-

tract, which can not be found anywhere in the Civil Code (See Articles 254-56, 359, 362 and 363 of the Civil Code). This procedure is the same as that of the right of contract termination at will by written notification fourteen days after entering into a participation contract as so created by Article 5 of the Supervisory Regulation; Article 5 not only conferred upon a contract party a right which can not be found anywhere in the Civil Code but altered the legal effects of contract rescission and contract termination prescribed by the Civil Code. (See Articles 259, 260, and 263 of the Civil Code. See also, Article 250 of the Civil Code, enacted on November 22, 1929, and implemented on May 5, 1930.) Therefore, Article 5 of the Supervisory Regulation touches upon the rights and obligations of people to withdraw from multi-level sale plans or structures, and these are not simply supervisory regulations promulgated by the administrative organization exercising public authority. It is clear that Article 5 of the Supervisory Regulation exceeds the statutory authorization of the foregoing Article 23, Paragraph 2, of the Fair Trade

Act, is in contravention to the doctrine of reservation to law under Article 23 of the Constitution, and hence shall no longer be applicable.

J. Y. Interpretation No.603（September 28, 2005）*

ISSUE: Are the relevant provisions of Article 8-II and III of the Household Registration Act, stating to the effect that the new ROC identity card will not be issued without the applicant being fingerprinted, unconstitutional?

RELEVANT LAWS:

Articles 22 and 23 of the Constitution（憲法第二十二條、第二十三條）; J. Y. Interpretation Nos. 575, 585 and 599（司法院釋字第五七五號、第五八五號、第五九九號解釋）; Articles 7-I, 1st half, 8-II and -III of the Household Registration Act（戶籍法第七條第一項前段、第八條第二項及第三項）; Article 5-I（iii） of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第三款）; Article 21 of the Public Officials Election and Recall Act（公職人員選舉罷免法第二十一條）; Article 14 of the Presidential and Vice Presidential Election and Recall Act（總統副總統選舉罷免法第十四條）; Article 20-III, 1st half of the Enforcement Rules of the Household Registration Act（戶籍法施行細則第二十條第三項前段）; Article 10 of the Enforcement Rules of the Referendum Act（公民投票法施行細則第十條）; Article 8 of the Enforcement Rules of the Passport Act（護照條例施行細則第八條）; Article 37 of the En-

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

forcement Rules of the Labor Pension Act（勞工退休金條例施行細則第三十七條）; Article 3 of the Regulation Governing Examination Sites（試場規則第三條）; Article 5 of the Regulation Governing the Supervision of Business Registration for Business Passenger Vehicle（營業小客車駕駛人執業登記管理辦法第五條）.

KEYWORDS:

fingerprints（指紋）, right of privacy（隱私權）, right of information privacy（資訊隱私權）, database（資料庫）, principle of clarity and definiteness of law（法律明確性原則）, principle of proportionality（比例原則）, ROC identity card（國民身分證）, identity verification（身分辨識）.**

HOLDING: To preserve human dignity and to respect free development of personality is the core value of the constitutional structure of free democracy. Although the right of privacy is not among those rights specifically enumerated in the Constitution, it should nonetheless be considered as an indispensable fundamental right and thus protected under Article 22 of the Constitution for purposes of preserving human dignity, individuality and moral integrity, as well as preventing invasions of personal privacy and main-

解釋文：維護人性尊嚴與尊重人格自由發展，乃自由民主憲政秩序之核心價值。隱私權雖非憲法明文列舉之權利，惟基於人性尊嚴與個人主體性之維護及人格發展之完整，並為保障個人生活私密領域免於他人侵擾及個人資料之自主控制，隱私權乃為不可或缺之基本權利，而受憲法第二十二條所保障（本院釋字第五八五號解釋參照）。其中就個人自主控制個人資料之資訊隱私權而言，乃保障人民決定是否揭露其個人資料、及在何種範圍內、於何時、以何種方式、向何人揭露之決定權，並保

taining self-control of personal information. (See J. Y. Interpretation No. 585) As far as the right of information privacy is concerned, which regards the self-control of personal information, it is intended to guarantee that the people have the right to decide whether or not to disclose their personal information, and, if so, to what extent, at what time, in what manner and to what people such information will be disclosed. It is also designed to guarantee that the people have the right to know and control how their personal information will be used, as well as the right to correct any inaccurate entries contained in their information. Nevertheless, the Constitution does not make the right of information privacy absolute, which means that the State may impose appropriate restrictions on such right by enacting unambiguous laws as far as such laws do not transgress the scope contemplated by Article 23 of the Constitution.

障人民對其個人資料之使用有知悉與控制權及資料記載錯誤之更正權。惟憲法對資訊隱私權之保障並非絕對，國家得於符合憲法第二十三條規定意旨之範圍內，以法律明確規定對之予以適當之限制。

Fingerprints are important information of a person, who shall have self-control of such fingerprinting information, which is protected under the right of in-

指紋乃重要之個人資訊，個人對其指紋資訊之自主控制，受資訊隱私權之保障。而國民身分證發給與否，則直接影響人民基本權利之行使。戶籍法第

formation privacy. However, the issuance of ROC identity cards will directly affect the people's exercise of their fundamental rights. Article 8-II of the Household Registration Act provides, "While applying for an ROC identity card pursuant to the preceding paragraph, the applicant shall be fingerprinted for record keeping; provided that no national who is under fourteen years of age will be fingerprinted until he or she reaches fourteen years of age, at which time he or she shall then be fingerprinted for record keeping." Article 8-III thereof provides, "No ROC identity card will be issued unless the applicant is fingerprinted pursuant to the preceding paragraph." Refusal to issue an ROC identity card to one who fails to be fingerprinted according to the aforesaid provisions is no different from conditioning the issuance of an identity card upon compulsory fingerprinting for the purpose of record keeping. The failure of the Household Registration Act to specify the purpose thereof is already inconsistent with the constitutional intent to protect the people's right of information privacy. Even if it may achieve such objectives as

八條第二項規定：依前項請領國民身分證，應捺指紋並錄存。但未滿十四歲請領者，不予捺指紋，俟年滿十四歲時，應補捺指紋並錄存。第三項規定：請領國民身分證，不依前項規定捺指紋者，不予發給。對於未依規定捺指紋者，拒絕發給國民身分證，形同強制按捺並錄存指紋，以作為核發國民身分證之要件，其目的為何，戶籍法未設明文規定，於憲法保障人民資訊隱私權之意旨已有未合。縱用以達到國民身分證之防偽、防止冒領、冒用、辨識路倒病人、迷途失智者、無名屍體等目的而言，亦屬損益失衡、手段過當，不符比例原則之要求。戶籍法第八條第二項、第三項強制人民按捺指紋並予錄存否則不予發給國民身分證之規定，與憲法第二十二條、第二十三條規定之意旨不符，應自本解釋公布之日起不再適用。至依據戶籍法其他相關規定換發國民身分證之作業，仍得繼續進行，自不待言。

anti-counterfeit or prevention of false claim or use of an identity card, or identification of a roadside unconscious patient, stray imbecile or unidentified corpse, it fails to achieve balance of losses and gains and uses excessively unnecessary means, which is not in line with the principle of proportionality. The relevant provisions of Article 8-II and III of the Household Registration Act, providing to the effect that no ROC identity card will be issued unless an applicant is fingerprinted for record keeping, are inconsistent with the intent of Articles 22 and 23 of the Constitution, and thus shall no longer apply as of the date of this Interpretation. Needless to say, the replacement of ROC identity cards, which follows the remaining applicable provisions of the Household Registration Act, may still carry on.

Where it is necessary for the State to engage in mass collection and storage of the people's fingerprints and set up databases to keep same for the purposes of any particular major public interest, it shall not only prescribe by law the pur-

國家基於特定重大公益之目的而有大規模蒐集、錄存人民指紋、並有建立資料庫儲存之必要者，則應以法律明定其蒐集之目的，其蒐集應與重大公益目的之達成，具有密切之必要性與關聯性，並應明文禁止法定目的外之使用。

poses of such collection, which shall be necessary and relevant to the achievement of the purposes of such major public interest, but also prohibit by law any use other than the statutory purposes. Having taken into account the contemporary development of relevant technologies, the competent authority shall engage in the aforesaid collection in a manner that is sufficient to ensure the accuracy and safety of the information, and take any and all necessary protective measures both organizationally and procedurally as to the files of fingerprints so collected so as to be in line with the constitutional intent to protect the people's right of information privacy.

主管機關尤應配合當代科技發展，運用足以確保資訊正確及安全之方式為之，並對所蒐集之指紋檔案採取組織上與程序上必要之防護措施，以符憲法保障人民資訊隱私權之本旨。

REASONING: This matter has been brought to the attention of this Court because eighty-five members of the Legislative Yuan, including Lai Ching-de, were of the opinion that Article 8 of the Household Registration Act as promulgated and implemented in 1997 is in violation of Articles 22 and 23 of the Constitution. They have, therefore, duly initiated a petition for constitutional interpretation

解釋理由書：本件因立法委員賴清德等八十五人，認中華民國八十六年公布施行之戶籍法第八條違反憲法第二十二條及第二十三條，爰依司法院大法官審理案件法第五條第一項第三款規定聲請解釋憲法，同時聲請本院於本案作成解釋前，宣告暫時停止戶籍法第八條之適用。

in accordance with Article 5-I (iii) of the Constitutional Interpretation Procedure Act. Simultaneously, they have petitioned this Court for a preliminary injunction before an interpretation is delivered for this matter, declaring to the effect that the application of Article 8-I of the Household Registration Act be suspended for the time being.

In respect of the petition for the preliminary injunction, this Court has suspended the application of Article-II and -III of the Household Registration Act and dismissed the petition for the preliminary injunction regarding Article 8-I thereof by delivering J. Y. Interpretation No. 599 on June 10, 2005. Whereas, in respect of the petition for the constitutional interpretation, this Court invited the representatives of the Petitioners, the agencies concerned, scholars and experts and civilian organizations to appear at a hearing held on June 30 and July 1, 2005 in accordance with Article 13-I of the Constitutional Interpretation Procedure Act. In addition, representatives of the Petitioners and their agents ad litem, as well as the representa-

本院就聲請人聲請暫時處分部分，已於九十四年六月十日作成釋字第五九九號解釋，暫停戶籍法第八條第二項及第三項之適用，並駁回聲請人就戶籍法第八條第一項為暫時處分之聲請。就聲請解釋憲法部分，本院依司法院大法官審理案件法第十三條第一項規定，邀請聲請人代表、關係機關、學者專家及民間團體於九十四年六月三十日、七月一日在司法院舉行說明會，並通知聲請人代表及訴訟代理人、關係機關行政院代表及訴訟代理人，於同年七月二十七日、二十八日在憲法法庭舉行言詞辯論，並邀請鑑定人到庭陳述意見。聲請人聲請解釋之範圍，經聲請人減縮為戶籍法第八條第二、三項規定是否違憲之審查，合先敘明。

tives and agents ad litem of the agency concerned, namely, the Executive Yuan, were also ordered to appear before the Constitutional Court for oral arguments on July 27 and 28, 2005. Expert witnesses were also invited to appear before this Court to present their opinions. It should be noted that, as for the scope of the interpretation, the Petitioners have narrowed it to the review of the constitutionality of Article 8-II and -III of the Household Registration Act.

The Petitioners have argued summarily that: (1) The petition at issue should be heard because it meets the requirements of Article 5-I (iii) of the Constitutional Interpretation Procedure Act. (2) Article 8-II of the Household Registration Act, in requiring that any national over the age of fourteen be fingerprinted at the time of applying for an ROC identity card, is unconstitutional for infringement of fundamental rights such as human dignity, personal freedom, right of privacy, personal rights and right to autonomous control of information, and for violation of the principles of proportionality, legal

本件聲請人主張略稱：一、本件聲請符合司法院大法官審理案件法第五條第一項第三款規定，應予受理。二、戶籍法第八條第二項強制十四歲以上國民於請領身分證時按捺指紋，因侵犯人性尊嚴、人身自由、隱私權、人格權及資訊自主權等基本權利，並違反比例原則、法律保留、法律明確性及正當法律程序原則而違憲：(一)指紋資料構成抽象人格一部分，為人格權之保障範圍，且基於指紋資料可資辨識個人身分等屬性，其公開與提供使用為個人有權決定事項，應受憲法上隱私權及資訊自主權之保障。戶籍法第八條第二項強制採集人民指紋，建立資料庫，不僅侵入個人

reservation, clarity and definiteness of law, as well as due process of law: (i) Fingerprinting information is part of abstract personality that is protected as one of the personal rights. Moreover, since fingerprinting information may be used in verifying a person's identity, the disclosure and provision of such information are to be determined at the discretion of that person, which should be constitutionally guaranteed under the right of privacy and right to autonomous control of information. Article 8-II of the Household Registration Act, in compulsorily taking the people's fingerprints and establishing databases, has not only trespassed upon one's private life and domain where he or she may sculpt his or her own personality, thus infringing on the people's personal rights, but also has imposed restrictions on the people's right to autonomous control of their information, as well as their right of privacy. (ii) Article 8-II of the Household Registration Act, in failing to specify the purpose of taking fingerprints while requiring that any and all nationals over the age of fourteen be fingerprinted, is against the principle that any law limit-

自主型塑其人格之私人生活領域，侵犯人民人格權，並限制人民對其個人資訊之自主權、隱私權。(二)戶籍法第八條第二項要求所有十四歲以上國民按捺指紋，卻未明定蒐錄指紋之目的，違反限制基本權利之法律須於法律中明示其目的之原則。其所稱「增進戶籍管理人別辨識」之立法目的並非實質重要，亦過於概括廣泛。且強制按捺指紋並錄存，無法有效達成內政部所稱「辨識身分」、「防止身分冒用」等立法目的，亦非達成目的之最小侵害手段，其所能達成之效益與所造成之損害間不合比例，違反比例原則。(三)強制人民按捺指紋並錄存為影響人民權利重大之公權力行為，應以法律為明確之規定。現行戶籍法第八條之立法目的、按捺並錄存指紋之用途不明確。且戶籍法第八條第二項之規定，只適用於年滿十四歲第一次請領身分證者，若使所有年滿十四歲國民於全面換發身分證時均適用，則違反法律保留原則。(四)強制按捺指紋性質上屬於強制處分，須依憲法第八條及刑事訴訟相關法律始得為之，現行法使行政機關得事前逕予蒐錄人民指紋資料，違背正當法律程序原則。(五)世界各國要求指紋與證件結合之實例，往往限定於特定用途之證件，用來便利查核

ing any fundamental right must spell out the purposes thereof. The so-called legislative purpose of "enhancing personal identity verification in household administration" is not substantially important and, moreover, is overly generalized and broad. Additionally, compulsory fingerprinting and keeping of such information may not effectively serve such legislative purposes as "identity verification" and "prevention of false claim of another's identity" as alleged by the Ministry of the Interior, nor is it the least intrusive means to achieve such purposes. Therefore, it fails to keep a balance between the potential advantages it may gain and the damages it may cause and thus is in violation of the principle of proportionality. (iii) Compulsory fingerprinting and record keeping is an exercise of governmental power that substantially affect the people's rights, which should be clearly prescribed by law. The legislative purposes of Article 8 of the Household Registration Act, as well as the uses of the fingerprinting and record keeping at issue, are vague and obscure. Besides, the provisions of Article 8-II of the Household Registration

身分或資格之有無，即使在蒐集和使用國民生物特徵資料的國家，對於是否建立集中型的生物特徵資料庫，通常採取否定的態度。生物特徵資料庫的使用，就其目前的發展程度，僅屬一正在發展當中的趨勢，並非具有全面普及性或必然性的國際趨勢。三、戶籍法第八條第三項之規定因違反不當連結禁止原則、比例原則及平等保護原則而違憲：(一)戶籍法第八條第三項以發給身分證為條件強制人民按捺指紋，然國民身分證與指紋錄存間無實質關聯，以不捺指紋為由拒絕發給國民身分證，違反不當連結禁止原則。(二)為達到強制人民按捺指紋之手段中，有較不發給身分證侵害更小之手段，且以按捺指紋作為發給身分證之條件，所欲追求之利益與人民因此造成之不利益間，不合比例。(三)在身分識別文件發給事項上，國家基於憲法所不許之理由拒絕部分國民領取身分證，違反憲法平等保護原則等語。

Act are merely applicable to those who reach the age of fourteen and apply for an ROC identity card for the first time. In the event that such provisions apply to all nationals over the age of fourteen at the time of overall replacement of identity cards, the principle of legal reservation will be violated. (iv) Compulsory fingerprinting is, in essence, a form of compulsory measure that must not be done unless in accordance with Article 8 of the Constitution and applicable criminal procedural laws. The existing provisions of the law, which enable an administrative agency to collect fingerprinting information of the people, is in violation of the principle of due process of law. (v) Global instances of consolidating fingerprints and certificates as required by other countries are more often than not limited to those certificates that serve particular purposes so as to facilitate the verification of identifications or qualifications. Even for those countries in favor of collection and use of biometric data of their people, they usually take the stance against a centralized biometric database. At present, the use of a biometric database is at best a trend in

the making, rather than a universal and inevitable path taken by the international community. (3) Article 8-III of the Household Registration Act is unconstitutional for violation of the principle against irrational basis, as well as the principles of proportionality and equal protection: (i) Article 8-III of the Household Registration Act has compelled the people to be fingerprinted by conditioning the issuance of ROC identity cards on such fingerprinting. However, since ROC identity cards are not rationally related to the taking of fingerprints, it is in violation of the principle against irrational basis if the refusal to issue an identity card is due to the refusal to be fingerprinted. (ii) In compelling the taking of fingerprints, less intrusive means are available than non-issuance of an identity card. Besides, by conditioning the issuance of identity cards on the taking of fingerprints, the interests to be achieved and the damages to be caused to the people are not proportional. (iii) In respect of the issuance of an identity-verifying document, the State's refusal to issue an identity card to certain classes of people on unconstitutional

grounds is in violation of the constitutional principle of equal protection.

The agency concerned, namely, the Executive Yuan, has argued summarily that: (1) The petition at issue fails to meet the requirements for filing such a petition and thus should be dismissed because it does not involve the doubt about the meanings of constitutional provisions governing the functions and duties of the Legislators, nor does it concern any question as to the constitutionality of the application of any law. The Household Registration Act was passed and came into force in 1997, the implementation of which is the executive branch's authority and does not involve the functions and duties of the Legislators, nor concerns any law to be applied by the Legislators. Thus, the petition at issue is not legal. (2) Article 8-II of the Household Registration Act is not inconsistent with the principles of proportionality, legal reservation and clarity and definiteness of law: (i) One's fingerprints are a form of personal data protected under personal rights, the right of privacy, as well as the right to autono-

關係機關行政院略稱：一、本件聲請無關立法院行使職權適用憲法發生疑義，或適用法律發生有牴觸憲法之疑義，不合聲請要件，應不受理。戶籍法於八十六年即通過施行，其執行為行政機關之職權，與立法委員之職權無關，亦非立法委員適用之法律，其聲請不合法。二、戶籍法第八條第二項與比例原則、法律保留原則及明確性原則無違：(一)指紋為受人格權、隱私權及資訊自決權保護之個人資料，國家對之蒐集與利用，於公眾有重大利益，而符合比例原則之前提下，得以法律為之。(二)戶籍法第八條之立法目的係在建立全民指紋資料，以「確認個人身分」、「辨識迷失民眾、路倒病患、失智老人及無名屍體」，並可防止身分證冒用，為明確且涉及重大公益之立法目的。(三)指紋因其人各有別、終身不變之特性，可以有效發揮身分辨識之功能，為確保國民身分證正確性之要求之適當手段；指紋為經濟且可靠安全之辨識方法，與其他生物辨識方法相比，為侵害較小而有效之手段；其立法可以保障弱勢、穩定社會秩序，有重大立法利益，與可能造成

mous control of information. The State may collect and use such data by enacting a law if it is necessary to a compelling public interest and is consistent with the principle of proportionality. (ii) The legislative goal of Article 8 of the Household Registration Act is to establish fingerprinting data of all the people so as to "verify personal identity," "to identify stray people, roadside patients, feebleminded senior citizens and unidentified corpses," as well as to prevent false claim of another's identity card. Thus, the legislative purpose is clearly related to a compelling public interest. (iii) Fingerprints are characterized by personal uniqueness and lifetime unchangeability. As such, they may effectively perform the function of identity verification and serve as adequate means to ensure the accuracy of ROC identity cards. Fingerprints are an economical, reliable and secure method of identifying a person, and are less intrusive but more effective when compared with other biometric means. The said legislation is capable of protecting the underprivileged, stabilizing social order and serving compelling legislative interests, 之侵害相較，尚合比例。(四)以按捺指紋為請領國民身分證之要件，為戶籍法第八條所明定，符合法律保留原則之要求。且法條文義並非難以理解，並為受規範者所得預見，事後亦可由司法加以審查確認。至於指紋資料之傳遞、利用與管理，則有「電腦處理個人資料保護法」規定補充，符合法律明確性原則。(五)按捺指紋為多數民意所贊成：行政院研考會、TVBS 民調中心及內政部都曾於九十年、九十一年及九十二年，分別進行民意調查，結果約有八成民眾贊成於請領國民身分證時應按捺指紋，此乃多數民意之依歸。世界各國有要求全民按捺指紋者，有只要求外國人按捺者，但無論如何規定，運用個人所擁有之生物特徵加以錄存，以呈現個人身分之真實性，並強化身分辨識之正確性，是各國共同之趨勢。而聯合國國際民航組織中，有四十餘國將在二〇〇六年底前，在護照上加裝電腦晶片，增加指紋、掌紋、臉部或眼球虹膜等個人生物特徵辨識功能。愈來愈多的國家與民眾願意接受錄存個人生物特徵資料以作比對，顯然是國際潮流與趨勢。三、戶籍法第八條第三項，並不違憲：(一)按捺指紋為國民身分證明之要件內涵，與身分證上顯性身分證明基本資料，均屬於

which is not unproportionate when compared with the potential harm, if any. (iv) Article 8 of the Household Registration Act unambiguously requires that issuance of an ROC identity card be conditioned on the taking of fingerprints, which is consistent with the principle of legal reservation. Furthermore, the meaning of the said provision is not difficult to apprehend, is reasonably foreseeable for those who are subject to the regulation, and is subject to ex post facto judicial review. As for the transmission, utilization and management of the fingerprinting information, the applicable provisions of the Computer-Processed Personal Data Protection Act will supplement the aforesaid provision, thus making it in line with the principle of clarity and definiteness of law. (v) Public opinion is in favor of the taking of fingerprints: The Research, Development and Evaluation Commission, Executive Yuan, TVBS Poll Center, and the Ministry of the Interior conducted polls in 2001, 2002 and 2003, respectively, showing that about eighty percent (80%) of the people approved of being fingerprinted at the time of applying for an ROC identity card.

辨識之基礎。國家在法律要件合致時，應依法發給國民身分證，若國民身分證之人別辨識基礎欠缺，則不具規定之要件，自應不予發給，以落實按捺指紋規定之執行，為適當之手段。不發給身分證為不踐行程序要件之附隨效果，並非處罰。其對人民生活或權利行使產生不便利，乃人民選擇不履行相對法律義務之結果，並非主管機關侵害人民權利。且指紋為電腦處理個人資料保護法所規範之個人資料之一，其處理運用有相關法律規範，與比例原則無違。(二)國民身分證為個人身分識別之重要憑證，國家發給時應確認領證人與該身分證所表彰之身分相符，而指紋因其無可變造之特性，可以輔助身分辨識功能之發揮並確保身分之正確性，二者具合理關聯等語。

Therefore, the taking of fingerprints is where the public opinion lies. Some countries require that all persons be fingerprinted, whereas others compel only aliens to be fingerprinted. Regardless, it is an international trend to make use of an individual's biometric data to verify the true identity of him or her, as well as to reinforce the accuracy of identity verification. Forty member states of the International Civil Aviation Organization (ICAO), an agency of the United Nations, will install computer chips on their passports by the end of 2006, adding such biometric data as an individual's fingerprints, palm prints, facial or iris. More and more countries and their people are willing to accept the taking of fingerprints for purposes of cross-checking, which is obviously an international tide and trend. (3) Article 8-III of the Household Registration Act is not unconstitutional: (i) The taking of fingerprints is a prerequisite for a national's identification, which is as much a basis of verification as those identifying information appearing on an ROC identity card. The State shall issue an identity card by law if and when the legal

requirements are met. On the other hand, if the basis of personal identification required of an identity card is lacking and thus is short of any legal requisite, no identity card shall be issued so that the provisions regarding fingerprinting can be duly enforced. The non-issuance of an ROC identity card is an effect incidental to the non-fulfillment of procedural requirements, rather than a punishment. The inconveniences, if any, caused to the people in their daily lives or exercise of their rights are the results of the people's choice of not fulfilling their counter obligations at law, but not any infringement inflicted by the authorities on the people's rights. In addition, fingerprints are one of the personal data that are protected under the Computer-Processed Personal Data Protection Act, whose process and utilization are regulated by applicable laws. As such, there is no violation of the principle of proportionality. (ii) An ROC identity card is an important proof of personal identity. In issuing an ROC identity card, the State should make sure that the individual claiming the identity card is the person identified on that particular card.

And, because of the infallibility of fingerprints, they may help substantially in implementing identity verification and ensuring the accuracy of identification. Therefore, they are rationally related to each other.

Having taken into consideration the whole intentions of the arguments, this Court has delivered this Interpretation. The reasons are as follows:

本院斟酌全辯論意旨，作成本解釋，理由如下：

As is clearly prescribed by Article 5-I (iii) of the Constitutional Interpretation Procedure Act, the Legislators may, by more than one third of the incumbent members of the Legislative Yuan, duly initiate a petition for constitutional interpretation in respect of the doubt as to the meanings of constitutional provisions governing their functions and duties, as well as of the question as to the constitutionality of the law to be applied by same. Therefore, if more than one third of the incumbent members of the Legislative Yuan, in exercising their authority of enacting a law, believe that the law reviewed and passed by the majority of their fellow

立法委員就其行使職權，適用法律發生有牴觸憲法之疑義時，得由現任立法委員總額三分之一以上聲請解釋憲法，司法院大法官審理案件法第五條第一項第三款定有明文。是三分之一以上立法委員行使其法律制定之權限時，如認經多數立法委員審查通過、總統公布生效之法律有違憲疑義；或三分之一以上立法委員行使其法律修正之權限時，認現行有效法律有違憲疑義而修法未果，聲請司法院大法官為法律是否違憲之解釋者，應認為符合前開司法院大法官審理案件法第五條第一項第三款規定之意旨。

Legislators and promulgated by the president may be unconstitutional, or if more than one third of the incumbent members of the Legislative Yuan, in exercising their authority of amending a law, believe that the existing and valid law may be unconstitutional but fail to so amend the law, they may duly initiate a petition for constitutional interpretation in respect of the constitutionality of the law because this Court opines that it is in line with the intent of the aforesaid Article 5-I (iii) of the Constitutional Interpretation Procedure Act.

The provisions at issue, i.e., Article 8-II and -III of the Household Registration Act, were added on May 21, 1997 when the said Act was amended and promulgated. The Executive Yuan has twice proposed amendments to Article 8 of the Household Registration Act before the Legislative Yuan in 2002 and 2005, respectively, suggesting deletion of Paragraphs II and III of the said article, on the ground that Article 8-II and -III of the Household Registration Act is likely to infringe upon fundamental rights of the

本件戶籍法第八條第二、三項係於八十六年五月二十一日修正公布時所增訂。行政院以系爭戶籍法第八條第二、三項有侵害人民基本權利之虞，於九十一年及九十四年兩次向立法院提出戶籍法第八條修正案，建議刪除該條第二、三項。立法院第六屆第一會期程序委員會決議，擬請院會將本案交內政及民族、財政兩委員會審查。立法院第六屆第一會期第九次會議（九十四年四月二十二日）決議照程序委員會意見辦理，交內政及民族、財政兩委員會審查。惟第十次會議（九十四年五月三

people. A resolution passed by the Procedure Committee of the sixth Legislative Yuan at its first session proposed that the plenary session of the said Yuan pass the bill to the Home and Nations Committee and the Finance Committee for purposes of review. Following the advice of the Procedure Committee, a resolution was passed at the ninth meeting of the sixth Legislative Yuan's first session (on April 22, 2005), passing the bill to the Home and Nations Committee and the Finance Committee for purposes of review. Nevertheless, at the tenth meeting (on May 3, 2005), the Chinese Nationalist Party's Legislative Yuan Caucus proposed to submit the bill for reconsideration pursuant to the Regulation of the Legislative Yuan Proceedings on the grounds that members of the fifth Legislative Yuan from both the ruling party and the opposition parties unanimously resolved that Article 8 of the Household Registration Act would not be amended, that no consensus was reached between members of the ruling party and the opposition parties during the negotiations, that further dispute should be avoided before the overall

日），立法院國民黨黨團以戶籍法第八條修正案於第五屆委員會審查時，朝野立法委員一致決議不予修正在案，且未於朝野協商時達成共識，為避免再生爭議及七月一日起實施身分證換發時程，浪費公帑危害治安等為由，依立法院議事規則相關規定提請復議，經院會決議該復議案「另定期處理」。第十四次會議（九十四年五月三十一日），國民黨黨團再次提出復議，仍作成「另定期處理」之決議。立法委員賴清德等八十五人認戶籍法第八條第二、三項有違憲疑義，乃聲請解釋。查戶籍法第八條第二、三項修正案經立法院程序委員會提報立法院院會，立法院院會一次決議交內政及民族、財政兩委員會審查，兩次就復議案決議另定期處理。本件聲請乃立法委員行使其法律修正之權限時，認經立法院議決生效之現行法律有違憲疑義而修法未果，故聲請司法院大法官為法律是否違憲之解釋，符合前開司法院大法官審理案件法第五條第一項第三款規定，應予受理。

replacement of ROC identity cards was to be implemented as of July 1, and that public funds would be squandered and social security jeopardized, etc. Consequently, the plenary session of the Legislative Yuan resolved that the bill for reconsideration be "discussed and reviewed on a date to be determined later." At the fourteenth meeting (on May 31, 2005), the Chinese Nationalist Party's Legislative Yuan Caucus once again proposed to submit the bill for reconsideration, resulting in another resolution to the effect that the bill for reconsideration be "discussed and reviewed on a date to be determined later." As a result, eighty-five members of the Legislative Yuan, including Lai Ching-de, duly initiated a petition for constitutional interpretation because they were of the opinion that Article 8-II and -III of the Household Registration Act might be in violation of the Constitution. It should be noted that the bill for amendment to Article 8-II and -III of the Household Registration Act was submitted by the Procedure Committee of the Legislative Yuan to the plenary session of the said Yuan, which once resolved that

the said bill be passed to the Home and Nations Committee and the Finance Committee for purposes of review, and twice resolved that the bill for reconsideration be discussed and reviewed on a date to be determined later. This matter should therefore be heard pursuant to Article 5-I (iii) of the Constitutional Interpretation Procedure Act because the Legislators who, in exercising their authority to amend a law, believed that the existing and valid law as passed by the Legislative Yuan might be unconstitutional but failed to amend the law, have duly initiated a petition with this Court for constitutional interpretation in respect of the constitutionality of the law.

To preserve human dignity and to respect free development of personality is the core value of the constitutional structure of free democracy. Although the right of privacy is not among those rights specifically enumerated in the Constitution, it should nonetheless be considered as an indispensable fundamental right and thus protected under Article 22 of the Constitution for purposes of preserving human

維護人性尊嚴與尊重人格自由發展，乃自由民主憲政秩序之核心價值。隱私權雖非憲法明文列舉之權利，惟基於人性尊嚴與個人主體性之維護及人格發展之完整，並為保障個人生活私密領域免於他人侵擾及個人資料之自主控制，隱私權乃為不可或缺之基本權利，而受憲法第二十二條所保障（本院釋字第五八五號解釋參照），其中包含個人自主控制其個人資料之資訊隱私權，保

dignity, individuality and moral integrity, as well as preventing invasions of personal privacy and maintaining self-control of personal information. (See J. Y. Interpretation No. 585) As far as the right of information privacy is concerned, which regards the self-control of personal information, it is intended to guarantee that the people have the right to decide whether or not to disclose their personal information, and, if so, to what extent, at what time, in what manner and to what people such information will be disclosed. It is also designed to guarantee that the people have the right to know and control how their personal information will be used, as well as the right to correct any inaccurate entries contained in their information.

障人民決定是否揭露其個人資料、及在何種範圍內、於何時、以何種方式、向何人揭露之決定權，並保障人民對其個人資料之使用有知悉與控制權及資料記載錯誤之更正權。

Although the right of privacy is fashioned on the basis of preserving human dignity and respecting free development of personality, the mere restriction imposed on the said right does not necessarily lead to infringement upon human dignity. The Constitution does not make the right of information privacy absolute, which means that the State may forcibly

隱私權雖係基於維護人性尊嚴與尊重人格自由發展而形成，惟其限制並非當然侵犯人性尊嚴。憲法對個人資訊隱私權之保護亦非絕對，國家基於公益之必要，自得於不違反憲法第二十三條之範圍內，以法律明確規定強制取得所必要之個人資訊。至該法律是否符合憲法第二十三條之規定，則應就國家蒐集、利用、揭露個人資訊所能獲得之公

acquire necessary personal information in light of public interest by enacting unambiguous laws as far as such laws do not transgress the scope contemplated by Article 23 of the Constitution. In deciding whether the law at issue satisfies the requirements of Article 23 of the Constitution, one should comprehensively take into consideration the public interests to be served by the State's collection, use and disclosure of personal information, and the infringement upon the individual whose right of information privacy is invaded. In addition, different standards of scrutiny should be applied to different cases by looking to whether the personal information to be collected concerns confidential and sensitive matters or whether the information, though neither confidential nor sensitive, may nonetheless easily lead to a complete personal file when combined with other information. Furthermore, in order to ensure a person's individuality and moral integrity, ands to protect one's right of information privacy, the State shall also make sure that any and all personal information legitimately obtained by the State be reasonably used and

益與對資訊隱私之主體所構成之侵害，通盤衡酌考量。並就所蒐集個人資訊之性質是否涉及私密敏感事項、或雖非私密敏感但易與其他資料結合為詳細之個人檔案，於具體個案中，採取不同密度之審查。而為確保個人主體性及人格發展之完整，保障人民之資訊隱私權，國家就其正當取得之個人資料，亦應確保其合於目的之正當使用及維護資訊安全，故國家蒐集資訊之目的，尤須明確以法律制定之。蓋惟有如此，方能使人民事先知悉其個人資料所以被蒐集之目的，及國家將如何使用所得資訊，並進而確認主管機關係以合乎法定蒐集目的之方式，正當使用人民之個人資訊。

properly maintained and secured. Thus, the purposes of the State's collection of the information shall be specifically prescribed by law. After all, failing this, the people will be unable to learn in advance why their personal information will be collected and how the State will use such information so as to enable them to further determine that the competent authorities are collecting their personal information in a manner that is consistent with legally prescribed purposes and are using the same in a reasonable manner.

The 1st half of Article 7-I of the Household Registration Act provides, "For an area where household registration is completed, ROC identity cards and household registry shall be produced and issued." The 1st half of Article 20-III of the Enforcement Rules of the Household Registration Act further provides, "An ROC identity card shall be carried on one's person at all times." Therefore, the issuance of an ROC identity card does not create any right-establishing effect, and the identity card is merely a valid identity-verifying document. However, there are

戶籍法第七條第一項前段規定：已辦戶籍登記區域，應製發國民身分證及戶口名簿。戶籍法施行細則第二十條第三項前段並規定：國民身分證應隨身攜帶。故國民身分證之發給對於國民之身分雖不具形成效力，而僅為一種有效之身分證明文件。惟因現行規定須出示國民身分證或檢附影本始得行使權利或辦理各種行政手續之法令眾多，例如選舉人投票時，須憑國民身分證領取選舉票（如公職人員選舉罷免法第二十一條、總統副總統選舉罷免法第十四條等規定參照）、參與公民投票之提案，須檢附提案人之國民身分證影本（公民投

tons of existing laws and regulations requiring that an ROC identity card or a copy thereof shall be presented at the time of exercising one's rights or going through various administrative procedures. The following are some of such instances: On an election day, a voter must present his ROC identity card to receive the ballot (See Article 21 of the Public Officials Election and Recall Act and Article 14 of the Presidential and Vice Presidential Election and Recall Act). A proponent for a referendum must present a copy of his ROC identity card if he wishes to participate in such a proposal (See Article 10 of the Enforcement Rules of the Referendum Act). An applicant for an ROC passport must prepare his original ROC identity card and a copy thereof so as to receive the passport (See Article 8 of the Enforcement Rules of the Passport Act). A laborer must present a copy of his ROC identity card if he intends to apply for the payment of retirement pensions under the Labor Pension Act (See Article 37 of the Enforcement Rules of the Labor Pension Act). An examinee of various state-administered examinations must pre-

票法施行細則第十條規定參照）、請領護照須備具國民身分證正本及影本（護照條例施行細則第八條規定參照）、勞工依勞工退休金條例請領勞工退休金應檢附國民身分證影本（勞工退休金條例施行細則第三十七條規定參照）、參加各種國家考試須憑國民身分證及入場證入場應試（試場規則第三條）、辦理營業小客車駕駛人執業登記證須檢具國民身分證（如營業小客車駕駛人執業登記管理辦法第五條規定參照）等。且一般私人活動，如於銀行開立帳戶或公司行號聘任職員，亦常要求以國民身分證作為辨識身分之證件。故國民身分證已成為我國人民經營個人及團體生活辨識身分之重要文件，其發給與否，直接影響人民基本權利之行使。戶籍法第八條第二項規定：依前項請領國民身分證，應捺指紋並錄存。但未滿十四歲請領者，不予捺指紋，俟年滿十四歲時，應補捺指紋並錄存。第三項規定：請領國民身分證，不依前項規定捺指紋者，不予發給。對於未依規定捺指紋者，拒絕發給國民身分證，顯然形同強制按捺並錄存指紋，以作為核發國民身分證之要件。

sent his ROC identity card and admission pass so as to be admitted into the test site (See Article 3 of the Regulation Governing Examination Sites). When applying for the issuance of a professional license for business passenger vehicles, an applicant must have his ROC identity card ready for inspection (See Article 5 of the Regulation Governing the Supervision of Business Registration for Business Passenger Vehicle). In addition, more often than not, a person may be requested to produce his ROC identity card as proof of his identity in ordinary private activities. Such instances include the opening of a bank account and a company's hiring of an employee. Therefore, an ROC identity card has become an important document for the people of this nation to identify a person's identity in carrying on their personal and social life. The issuance or non-issuance of an ROC identity card will have a direct impact on the exercise of the people's fundamental rights. Article 8-II of the Household Registration Act provide, "While applying for an ROC identity card pursuant to the preceding paragraph, the applicant shall be fingerprinted

for record keeping; provided that no national who is under fourteen years of age will be fingerprinted until he or she reaches fourteen years of age, at which time he or she shall then be fingerprinted for record keeping." Paragraph III of the same article reads, "No ROC identity card will be issued unless the applicant is fingerprinted pursuant to the preceding paragraph." Refusal to issue an ROC identity card to one who fails to be fingerprinted according to the aforesaid provisions is no different from conditioning the issuance of an identity card upon compulsory fingerprinting for the purpose of record keeping.

Fingerprints are biological features of an individual's person, which are characterized by personal uniqueness and lifetime unchangeability. As such, they will become a form of personal information that is highly capable of performing the function of identity verification once they are connected with one's identity. Because fingerprints possess such trait as leaving traces at touching an object, they will be in a key position to opening the complete

指紋係個人身體之生物特徵，因其具有人各不同、終身不變之特質，故一旦與個人身分連結，即屬具備高度人別辨識功能之一種個人資訊。由於指紋觸碰留痕之特質，故經由建檔指紋之比對，將使指紋居於開啟完整個人檔案鎖鑰之地位。因指紋具上述諸種特性，故國家藉由身分確認而蒐集個人指紋並建檔管理者，足使指紋形成得以監控個人之敏感性資訊。國家如以強制之方法大規模蒐集國民之指紋資料，則其資訊蒐

file of a person by means of cross-checking the fingerprints stored in the database. As fingerprints are of the aforesaid characteristics, they may very well be used to monitor an individual's sensitive information if the State collects fingerprints and establishes databases by means of identity confirmation. If the State intends to engage in mass collection of the people's fingerprinting information, such information collection should use less intrusive means substantially related to the achievement of a compelling public interest, which should also be clearly prescribed by law, so as to be consistent with the intent of Articles 22 and 23 of the Constitution.

集應屬與重大公益之目的之達成，具備密切關聯之侵害較小手段，並以法律明確規定之，以符合憲法第二十二條、第二十三條之意旨。

It should be noted that the failure of the Household Registration Act to specify the purpose of compulsory fingerprinting and record keeping of such fingerprinting information is already inconsistent with the aforesaid constitutional intent to protect the people's right of information privacy. Although it is described in the motivations and history of the newly added and amended Article 8-II and -III of the

查戶籍法就強制按捺與錄存指紋資料之目的，未有明文規定，與上揭憲法維護人民資訊隱私權之本旨，已有未合。雖有以戶籍法第八條修正增列第二項與第三項規定之修法動機與修法過程為據，而謂強制蒐集全體國民之指紋資料並建庫儲存，亦有為達成防範犯罪之目的云云，惟動員戡亂時期終止後，回復戶警分立制度（本院釋字第五七五號解釋參照），防範犯罪明顯不在戶籍法

Household Registration Act that compulsory collection of all the people's fingerprints and storing the same in a database may also serve the purpose of crime prevention, the said purpose, i.e., crime prevention, should not be covered by the legislative purpose of the Household Registration Act because the system of separation of household administration and police administration has been reinstated since the end of the Period of National Mobilization for Suppression of the Communist Rebellion (See J. Y. Interpretation No. 575). In addition, during the oral argument, the agency concerned, i.e., the Executive Yuan, also denied that the objective of taking all the people's fingerprints is to prevent crimes. As such, crime prevention should not have been an objective of the law at issue. Even if, as claimed by the Executive Yuan during the oral argument, the compulsory taking of fingerprints and storing the same in a database as provided under the Article 8 of the Household Registration Act is aimed at improving the anti-counterfeit function of the new ROC identity card, preventing false claim or use of an identity card, and

立法目的所涵蓋範圍內。況關係機關行政院於本件言詞辯論程序亦否認取得全民指紋目的在防範犯罪，故防範犯罪不足以為系爭法律規定之立法目的。縱依行政院於本案言詞辯論中主張，戶籍法第八條規定強制人民按捺指紋並予以錄存之目的，係為加強新版國民身分證之防偽功能、防止冒領及冒用國民身分證及辨識迷途失智者、路倒病人、精神病患與無名屍體之身分等，固不失為合憲之重要公益目的，惟以強制全民按捺指紋並予錄存否則不發給國民身分證為手段，仍不符合憲法第二十三條比例原則之限制。蓋就「加強國民身分證之防偽」及「防止冒用國民身分證」之目的而言，錄存人民指紋資料如欲發揮即時辨識之防止偽造或防止冒用功能，除須以顯性或隱性方式將指紋錄存於國民身分證上外，尚須有普遍之辨識設備或其他配套措施，方能充分發揮。惟為發揮此種功能，不僅必須投入大量成本，且因缺乏適當之防護措施，並可能造成資訊保護之高度風險。依行政院之主張，目前並未於新式國民身分證上設錄存指紋資料之欄位，更無提供指紋資料庫供日常即時辨識之規畫。況主管機關已於新式國民身分證上設置多項防偽措施，如其均能發揮預期功能，配合目前既有

identifying stray imbeciles, roadside unconscious patients, psychotic invalids and unidentified corpses, which may pass the constitutional test as serving a significant public interest purpose, still it will fail to cross the threshold imposed by Article 23 of the Constitution, i.e., the principle of proportionality, when it compels the taking of fingerprints by providing that no ROC identity card will be issued unless an applicant is fingerprinted for record keeping. As far as the purposes of "improving the anti-counterfeit of ROC identity cards" and "prevention of false use of ROC identity cards" are concerned, the real-time verification for purposes of anti-counterfeit and prevention of false use as contemplated by the taking of all the people's fingerprints will not be brought into full play unless verification equipment are universally used or other auxiliary measures are taken in addition to the storage of fingerprints onto an identity card either in a visible or an invisible way. Nevertheless, the aforesaid functions cannot be fully performed unless substantial amounts of costs and expenses are invested. Moreover, there may be a higher

顯性資料，如照片等之比對，已足以達成上揭之目的，並無強制全民按捺指紋並予錄存之必要。次就「防止冒領國民身分證」之目的言，主管機關未曾提出冒領身分證之確切統計數據，是無從評估因此防範冒領所獲得之潛在公共利益與實際效果。且此次換發國民身分證，戶政機關勢必藉由人民指紋資料之外之其他戶籍資料交叉比對，並仰賴其他可靠之證明，以確認按捺指紋者之身分。則以現有指紋資料以外之資訊，既能正確辨識人民之身分，指紋資料之蒐集與「防止冒領國民身分證」之目的間，並無密切關聯性。末就有關「迷途失智者、路倒病人、精神病患與無名屍體之辨認」之目的而言，關係機關行政院指出目前收容在社會福利機構迷途失智老人二七九六位，每年發現無名屍約二百具。此類有特殊辨識身分需要的國民個案雖少，但辨識其身分之利益仍屬重要之公益目的。然而就目前已身分不明、辨識困難的國民而言，於換發國民身分證時一併強制按捺並錄存指紋資料對其身分辨識並無助益，而須著眼於解決未來身分辨識之需求。惟縱為未來可能需要，並認此一手段有助前開目的之達成，然因路倒病人、失智者、無名屍體之身分辨識需求，而強制年滿十四歲之

risk confronting information protection for lack of adequate precautionary measures. According to the Executive Yuan, there is no space designed to store the fingerprinting information on the new ROC identity card for now, nor is there any plan to provide fingerprinting database for daily real-time verification. Besides, as the competent authority has installed multiple anti-counterfeit measures onto the new identity card, it should be good enough to achieve the aforesaid objectives and thus unnecessary to compel an overall taking of fingerprints for purpose of record keeping if the expected functionalities of those measures, along with such existing visible data as checking of photographs, may be brought into full play. Furthermore, as for such purpose as the "prevention of false claim of ROC identity cards," there is no way to evaluate the potential public interests and actual results that may be achieved due to the prevention of false claim of identity cards since the competent authority has failed to present any valid statistics in respect of falsely claimed identity cards. Additionally, in respect of the upcoming overall

全部國民均事先錄存個人之指紋資料，並使全民承擔授權不明確及資訊外洩所可能導致之風險，實屬損益失衡、手段過當，難以符合比例原則之要求，侵害人民受憲法第二十二條保障之資訊隱私權。

replacement of ROC identity cards, the household administration will inevitably depend on household information other than fingerprints of the people, as well as other reliable proof, to verify the identity of those to be fingerprinted. Therefore, since information other than fingerprints may be used to accurately identity a person, the collection of fingerprinting information and the objective of "prevention of false claim of ROC identity cards" are not closely related to each other. Finally, with respect to the purpose of "identifying stray imbeciles, roadside unconscious patients, psychotic invalids and unidentified corpses," the agency concerned, i.e., the Executive Yuan, pointed out that there are currently a total of 2,796 stray and imbecile senior citizens taken in by social welfare institutions, and that roughly a total of 200 unidentified corpses are found each year. Despite the relatively few number of cases that demands special need for identity verification, it remains a significant public interest to identify those people. Nevertheless, for those nationals who are already unidentified or hard to identify, the compulsory taking and stor-

age of their fingerprints at the time of replacing identity cards will not help with their identity verification. Instead, the said measures must be aimed at meeting the needs for identity verification in the future. However, even if the means is considered useful in achieving the aforesaid objectives in the future, still it fails to achieve balance of losses and gains and uses excessively unnecessary means, which is not in line with the principle of proportionality and thus infringes upon the people's right of information privacy as protected under Article 22 of the Constitution, when it compels all those above fourteen to be fingerprinted in advance and subjects them to those potential risks that may arise from unclear and indefinite delegation of power and unwarranted disclosure of fingerprinting information simply because of the needs to verify the identity of a roadside unconscious patient, stray imbecile or unidentified corpse.

In light of the foregoing, the relevant provisions of Article 8-II and III of the Household Registration Act have made the refusal to issue an ROC identity card

揆諸上揭說明，戶籍法第八條第二項、第三項形同強制人民按捺指紋並予錄存，否則不予發給國民身分證之規定，已侵害人民受憲法保障之資訊隱私

to one who fails to be fingerprinted according to said provisions no different from conditioning the issuance of an identity card upon compulsory fingerprinting for the purpose of record keeping. As such, the said provisions have infringed upon the people's right of information privacy as protected under the Constitution. As for such purposes as improving the anti-counterfeit functionality, preventing false claim and use of ROC identity cards and identifying stray and imbecile people, roadside unconscious patients, psychotic invalids and unidentified corpses, they fail to meet the test under the principle of proportionality and thus are inconsistent with the intent of Articles 22 and 23 of the Constitution. Therefore, the said provisions shall no longer apply as of the date of this Interpretation. Needless to say, the replacement of ROC identity cards, which follows the remaining applicable provisions of the Household Registration Act, may still carry on.

權，而就達到加強新版國民身分證之防偽功能、防止冒領及冒用國民身分證及辨識迷途失智者、路倒病人、精神病患與無名屍體之身分等目的而言，難認符合比例原則之要求，與憲法第二十二條、第二十三條意旨均有未符，應自本解釋公布之日起不再適用。至依據戶籍法其他相關規定換發國民身分證之作業，仍得繼續進行，自不待言。

Where it is necessary for the State to engage in mass collection and storage of the people's fingerprints and set up data-

國家基於特定重大公益之目的，而有大規模蒐集、錄存人民指紋，並有建立資料庫儲存之必要者，應以法律明

bases to keep same for the purposes of any particular major public interest, it shall not only prescribe by law the scope and means of such collection, which shall be necessary and relevant to the achievement of the purposes of such major public interest, but also prohibit by law any use other than the statutory purposes. Having taken into account the contemporary development of relevant technologies, the competent authority shall engage in the aforesaid collection in a manner that is sufficient to ensure the accuracy and safety of the information, and take any and all necessary protective measures both organizationally and procedurally as to the files of fingerprints so collected so as to be in line with the constitutional intent to protect the people's right of information privacy.

定其蒐集之目的，其蒐集之範圍與方式且應與重大公益目的之達成，具有密切之必要性與關聯性，並應明文禁止法定目的外之使用。主管機關尤應配合當代科技發展，運用足以確保資訊正確及安全之方式為之，並對所蒐集之指紋檔案採取組織上與程序上必要之防護措施，以符憲法保障人民資訊隱私權之本旨。

Despite the admissibility of other nations' similar legislations and domestic popular polls as materials used in interpreting the Constitution, they cannot be used as the sole basis of determining the meanings and intents thereof. Moreover, it remains dubious whether an overall col-

至世界各國立法例與國人民意調查之結果，固不失為憲法解釋所得參考之事實資料，惟尚難作為論斷憲法意旨之依據。況全面蒐集人民指紋資訊並建立數位檔案，是否已為世界各國之立法趨勢，仍無定論。而外國相關之立法例，若未就我國戶政制度加以比較，並

lection of the people's fingerprinting information and preparation of digitalized files on such information has become a universally accepted practice in legislations. Furthermore, failing a careful comparison between our household administration system and its counterparts and an elaboration of other nations' reasons and means of collecting the people's fingerprinting information, foreign legislations may not be hastily transplanted to our soil. In addition, public opinion polls are simply indices of the popular thinking and preference as to a particular issue, the credibility of which is influenced by numerous factors such as the contents and methods of the inquiries, the agencies conducting the polls, and the purposes of the polls. It should be noted that the agency concerned for this matter has failed to offer any relevant questionnaires and materials although it claimed that the majority of our people are in favor of conditioning the issuance of an ROC identity card on the taking of one's fingerprints. As such, we can hardly rely on the said claim as a basis for rendering an interpretation in respect of the matter at issue.

詳細論述外國為何及如何蒐集人民指紋資訊，則難遽予移植；又民意調查僅為國民對特定問題認知或偏好之指標，調查之可信度受其調查內容、調查方法、執行機關、調查目的等因素影響。本件關係機關雖泛稱多數國人贊成按捺指紋作為發給國民身分證之條件，但未能提出相關之問卷資料，實難據為本案解釋之參考，均併予指明。

Justice Chung-Mo Cheng filed concurring opinion.

Justice Yih-Nan Liaw filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Tzu-Yi Lin filed concurring opinion.

Justice Tzong-Li Hsu filed concurring opinion, in which Justice Yu-Tien Tseng joined.

Justice Syue-Ming Yu filed concurring opinion in part and dissenting opinion in part.

Justice Jen-Shou Yang filed dissenting opinion.

Justice Tsay-Chuan Hsieh filed dissenting opinion.

本號解釋城大法官仲模、廖大法官義男、許大法官玉秀、林大法官子儀分別提出協同意見書；許大法官宗力、曾大法官有田共同提出協同意見書；余大法官雪明提出部分協同部分不同意見書；楊大法官仁壽、謝大法官在全分別提出不同意見書。

J. Y. Interpretation No.604（October, 21, 2005）*

ISSUE: Are the provisions of the Act Governing the Punishment for Violation of Road Traffic Regulations regarding multiple punishments for multiple illegal parking violations unconstitutional?

RELEVANT LAWS:

Article 23 of the Constitution（憲法第二十三條）; Article 1 of the Act Governing the Punishment for Violation of Road Traffic Regulations (as amended and promulgated on May 21, 1986)（道路交通管理處罰條例第一條（中華民國75年5 月21日修正公布））; Articles 56-I and –II, 85-1 and 92 of the Act Governing the Punishment for Violation of Road Traffic Regulations (as amended and promulgated on January 22, 1997)（道路交通管理處罰條例第五十六條第一項、第二項、第八十五條之一、第九十二條（中華民國86年1月22日修正公布））; Article 9-I of the Act Governing the Punishment for Violation of Road Traffic Regulations (as amended and promulgated on January 17, 2001)（道路交通管理處罰條例第九條第一項（中華民國90年1月17日修正公布））; Article 85-1, -II (ii) of the Act Governing the Punishment for Violation of Road Traffic Regulations (as amended and promulgated on July 3, 2002)（道路交通管理處罰條例第八十五

* Translated by Ching P. Shih.

** Contents within frame, not part of the original text, are added for reference purpose only.

條之一第二項第二款（中華民國91年7月3日修正公布）；Article 12-IV of the Uniform Punishment Standard Forms and Rules for Handling the Matters regarding Violation of Road Traffic Regulations (as amended and issued on May 30, 2001)（違反道路交通管理事件統一裁罰標準及處理細則第十二條第四項（90年5月30日修正發布））.

KEYWORDS:

illegal parking（違規停車）, consecutive charges（連續舉發）, rule-of-law nations（法治國家）, principle of double jeopardy（一罪不二罰原則）, principle of proportionality（比例原則）, principle of clarity of authorization（授權明確性原則）, administrative discretion（行政裁量）.**

HOLDING: The Act Governing the Punishment for Violation of Road Traffic Regulations was enacted for the purposes of strengthening road traffic regulations, maintaining traffic flow and ensuring traffic safety. Having considered that the continuous occurrence of traffic violation activities will certainly affect public interest or public order, the legislators, by amending and promulgating Article 85-1 of the said Act on January 22, 1997, providing that the competent authority may make consecutive findings

解釋文：道路交通管理處罰條例係為加強道路交通管理，維護交通秩序，確保交通安全而制定。依中華民國八十六年一月二十二日增訂公布第八十五條之一規定，係對於汽車駕駛人違反同條例第五十六條第一項各款而為違規停車之行為，得為連續認定及通知其違規事件之規定，乃立法者對於違規事實一直存在之行為，考量該違規事實之存在對公益或公共秩序確有影響，除使主管機關得以強制執行之方法及時除去該違規事實外，並得藉舉發其違規事實之次數，作為認定其違規行為之次數，從

and notices as to violations of any of the various provisions of Article 56-I thereof by a motorist who engages in illegal parking, have enabled the competent authority not only to eliminate traffic violation incidents in a timely manner by means of compulsory enforcement, but also to determine the number of violations by counting the number of charges against such violations and thereby impose multiple punishments for such multiple violations. Hence, multiple punishments may be imposed for multiple violations and this does not give rise to any issue of double jeopardy. Therefore, there is no violation of the principle of double jeopardy embraced by a rule-of-law nation.

而對此多次違規行為得予以多次處罰，並不生一行為二罰之問題，故與法治國家一行為不二罰之原則，並無牴觸。

Even though the legislators may enact legislation to enable the law enforcement personnel to achieve the purpose of administrative control through the preventive effects resulting from consecutive charges and the accompanying multiple punishments, the relevant provisions of law shall still be consistent with the principles of proportionality and clarity of authorization of law under Article 23 of

立法者固得以法律規定行政機關執法人員得以連續舉發及隨同多次處罰之遏阻作用以達成行政管制之目的，但仍須符合憲法第二十三條之比例原則及法律授權明確性原則。鑑於交通違規之動態與特性，則立法者欲藉連續舉發以警惕及遏阻違規行為人任由違規事實繼續存在者，得授權主管機關考量道路交通安全等相關因素，將連續舉發之條件及前後舉發之間隔及期間以命令為明確

the Constitution. In view of the specific developments and characteristics of traffic violations, the legislators, in proposing to warn and prevent violators from capriciously rendering the violation incident in situation of continual existence by means of consecutive charges, may authorize the competent authority to issue administrative orders in which the conditions of consecutive charges and the intervals and durations between a previous charge and a subsequent one are clearly prescribed after taking into consideration road traffic safety and other related factors.

之規範。

As far as consecutive charges are concerned, Article 85-1 of the Act Governing the Punishment for Violation of Road Traffic Regulations has not provided anything in principle as to the kind of standards that shall be followed in making consecutive charges. Although Article 12-IV of the Uniform Punishment Standard Forms and Rules for Handling the Matters regarding Violation of Road Traffic Regulations as amended and issued by the competent authority on May 30, 2001, under the authorization of Article 92 of

道路交通管理處罰條例第八十五條之一得為連續舉發之規定，就連續舉發時應依何種標準為之，並無原則性規定。雖主管機關依道路交通管理處罰條例第九十二條之授權，於九十年五月三十日修正發布「違反道路交通管理事件統一裁罰標準及處理細則」，其第十二條第四項規定，以「每逾二小時」為連續舉發之標準，衡諸人民可能因而受處罰之次數及可能因此負擔累計罰鍰之金額，相對於維護交通秩序、確保交通安全之重大公益而言，尚未逾越必要之程度。惟有關連續舉發之授權，其目的與

the Act Governing the Punishment for Violation of Road Traffic Regulations states that the standard for consecutive charges is ‘ very two hours,’ which does not go beyond the extent of necessity after weighing the possible number of punishments burdened and the amount of accumulated fines sustained by the people against the compelling public interests for maintaining traffic flow and ensuring traffic safety, it is proper that the purpose and scope of the authorization of consecutive charges be clearly established by law.

範圍仍以法律明定為宜。

In respect of Article 56-II of the Act Governing the Punishment for Violation of Road Traffic Regulations, which provides that law enforcement personnel may employ private tow trucks to tow away illegally parked vehicles and collect the resulting relocation expenses after charging a motorist with the violation if the motorist is not seated in that illegally parked vehicle, is within the administrative discretion reasonably entrusted by the legislators to the administrative agencies after considering various factors relevant to the maintenance of traffic order. It can-

道路交通管理處罰條例第五十六條第二項關於汽車駕駛人不在違規停放之車內時，執法人員得於舉發其違規後，使用民間拖吊車拖離違規停放之車輛，並收取移置費之規定，係立法者衡量各種維護交通秩序之相關因素後，合理賦予行政機關裁量之事項，不能因有此一規定而推論連續舉發並為處罰之規定，違反憲法上之比例原則。

not be concluded from the said provision per se that the provisions regarding consecutive charges and the resulting punishments violate the principle of proportionality under the Constitution.

REASONING: The Act Governing the Punishment for Violation of Road Traffic Regulations was enacted for purposes of strengthening road traffic regulations, maintaining traffic flow, and ensuring traffic safety (See Article 1 of the said Act). According to Article 85-1 of the said Act as amended and promulgated on January 22, 1997, any motorist who has been charged with violation of Article 56 thereof but has failed to observe the corrective order issued by an on-duty traffic police officer or any other personnel performing traffic inspection duties by law may be charged consecutively; the foregoing will apply *mutatis mutandis* to the circumstances where a corrective order cannot be issued on the spot. The said provision has made it clear that a motorist who engages in illegal parking under any of the various provisions of Article 56-I thereof may be consecutively charged and

解釋理由書：道路交通管理處罰條例係為加強道路交通管理，維護交通秩序，確保交通安全而制定（同條例第一條）。依八十六年一月二十二日增訂公布第八十五條之一規定，汽車駕駛人違反同條例第五十六條規定，經舉發後，不遵守交通勤務警察或依法令執行交通稽查任務人員責令改正者，得連續舉發之；其無法當場責令改正者，亦同。此乃對於汽車駕駛人違反同條例第五十六條第一項各款而為違規停車之行為，得為連續認定及通知其違規事件之規定。又九十年一月十七日修正公布之同法第九條第一項規定：「本條例所定罰鍰之處罰，行為人接獲違反道路交通管理事件通知單後，於十五日內得不經裁決，逕依規定之罰鍰標準，向指定之處所繳納結案；不服舉發事實者，應於十五日內，向處罰機關陳述意見或提出陳述書。其不依通知所定限期前往指定處所聽候裁決，且未依規定期限陳述意見或提出陳述書者，處罰機關得逕行裁

notified of his or her violations. In addition, Article 9-I of the said Act as amended and promulgated on January 17, 2001, provides, 'In respect of the fines prescribed in this Act as a punishment, an actor may, upon receipt of a notice of violation regarding road traffic regulations, directly follow the regulatory punishment standard without administrative ruling and pay the amount of fine in full to the designated place within fifteen days for the purpose of closing the case; if the actor disagrees with the facts regarding the charge, he or she shall express his or her opinion or file a statement to the punitive agency; and if the actor neither appears at the designated place to listen to the ruling within the prescribed period, nor expresses his or her opinion nor files a statement within the prescribed period, the punitive agency may directly give a ruling in respect thereof.' Therefore, if the facts show that an actor has received multiple notices of violations regarding road traffic regulations, he or she will have to make multiple payments of fines or may receive multiple rulings regarding the fines. In respect of illegal parking, as soon as a

決之。」故行為人如接獲多次舉發違規事件通知書者，即有發生多次繳納罰鍰或可能受多次裁決罰鍰之結果。按違規停車，在禁止停車之處所停車，行為一經完成，即實現違規停車之構成要件，在車輛未離開該禁止停車之處所以前，其違規事實一直存在。立法者對於違規事實一直存在之行為，如考量該違規事實之存在對公益或公共秩序確有影響，除使主管機關得以強制執行之方法及時除去該違規事實外，並得藉舉發其違規事實之次數，作為認定其違規行為之次數，即每舉發一次，即認定有一次違反行政法上義務之行為發生而有一次違規行為，因而對於違規事實繼續之行為，為連續舉發者，即認定有多次違反行政法上義務之行為發生而有多次違規行為，從而對此多次違規行為得予以多次處罰，並不生一行為二罰之問題，故與法治國家一行為不二罰之原則，並無牴觸。

motor vehicle is parked in a no-parking zone, the requisite elements of illegal parking are satisfied. The fact of the violation will exist until the motor vehicle is removed from the no-parking zone. In respect of an constantly existing violation, the legislators, having considered that the existence of the said act will indeed affect public interest or public order, may enable the competent authority to eliminate not only the above violation in a timely manner by means of compulsory enforcement, but also to calculate the number of violations by counting the number of charges against the violations. In other words, every single charge is capable of leading to the finding of a single breach of duties under the administrative law and thus one violation is committed. As a result, where there are consecutive charges against an existing violation, there are multiple findings of breach of duties under the administrative law and thus multiple violations. Hence, multiple punishments may be imposed for multiple violations and this does not give rise to any issue of double jeopardy. Therefore, there is no violation of the principle of double jeopardy embraced

by a rule-of-law nation.

Even though the legislators may enact legislation to enable the law enforcement personnel to achieve the purpose of administrative control through the preventive effects resulting from consecutive charges and the accompanying multiple punishments, the relevant provisions of law shall still be consistent with the principles of proportionality and clarity of authorization of law under Article 23 of the Constitution. More specifically, in respect of the prevention of the continuing occurrence of any violations through the preventive effect resulting from multiple punishments, the means of consecutive charges is employed against every violation with regard to continuing violations. And, based on the number of charges for such violations, the number of violations under the law will be evaluated and counted and thus multiple punishments will be imposed. The said means are beneficial to the achievement of the ends. As far as the purposes of maintaining traffic flow and ensuring traffic safety are concerned, the said means are even more nec-

立法者固得以法律規定行政機關執法人員得以連續舉發及隨同多次處罰之遏阻作用以達成行政管制之目的，但仍須符合憲法第二十三條之比例原則及法律授權明確性原則。申言之，以連續舉發之方式，對違規事實繼續之違規行為，藉舉發其違規事實之次數，評價及計算其法律上之違規次數，並予以多次處罰，藉多次處罰之遏阻作用，以防制違規事實繼續發生，此種手段有助於目的之達成，對維護交通秩序、確保交通安全之目的而言，在客觀條件之限制下，更有其必要性及實效性。惟每次舉發既然各別構成一次違規行為，則連續舉發之間隔期間是否過密，以致多次處罰是否過當，仍須審酌是否符合憲法上之比例原則，且鑑於交通違規之動態與特性，進行舉發並不以違規行為人在場者為限，則立法者欲藉連續舉發以警惕及遏阻違規行為人任由違規事實繼續存在者，自得授權主管機關考量道路交通安全等相關因素，將連續舉發之條件及前後舉發之間隔及期間以命令為明確之規範。

essary and effective given the limitations of objective circumstances. However, since every charge establishes a single violation, one should still examine the principle of proportionality under the Constitution to answer the question as to whether the interval between a previous charge and a subsequent one is too short to render multiple punishments adequate. Furthermore, in view of the developments and characteristics of traffic violations, a charge can be made even if the violating actor is not present. The legislators, in proposing to warn and prevent the violator from capriciously violating the law and thereby incurring consecutive charges, may authorize the competent authority to issue administrative orders in which the conditions of consecutive charges and the intervals and durations between a previous charge and a subsequent one are clearly prescribed after taking into consideration road traffic safety and other related factors.

Article 85-1 of the Act Governing the Punishment for Violation of Road Traffic Regulations as amended and

八十六年一月二十二日增訂公布之道路交通管理處罰條例第八十五條之一規定：「汽車駕駛人、汽車買賣業或

promulgated on January 22, 1997, states, 'Any motorist, dealership, or car repair business that has been charged with violation of Article 33, 40, 56 or 57 thereof but failed to observe the corrective order issued by an on-duty traffic police officer or any other personnel performing traffic inspection duties by law may be charged consecutively; the foregoing will apply mutatis mutandis to the circumstances where a corrective order cannot be issued on the spot; provided, however, that the violation point can only be counted once.' The said provision merely states that consecutive charges may be made if a corrective order is not observed or cannot be issued on the spot. However, it has not provided anything in principle as to the kind of standards that shall be followed in making consecutive charges, especially the regulatory purposes and traffic factors to be considered in determining the intervals between a previous charge and a subsequent one. Although Article 12-IV of the Uniform Punishment Standard Forms and Rules for Handling the Matters regarding Violation of Road Traffic Regulations as amended and issued by the com-

汽車修理業違反第三十三條、第四十條、第五十六條或第五十七條規定，經舉發後，不遵守交通勤務警察或依法令執行交通稽查任務人員責令改正者，得連續舉發之；其無法當場責令改正者，亦同。但其違規計點，均以一次核計。」僅規定於不遵守責令改正或無法當場責令改正時，得為連續舉發，至於連續舉發時應依何種原則標準為之，尤其前後舉發之間隔期間應考量何種管制目的及交通因素等加以決定，並無原則性規定。雖主管機關依道路交通管理處罰條例第九十二條之授權，於九十年五月三十日修正發布「違反道路交通管理事件統一裁罰標準及處理細則」，其第十二條第四項規定「每逾二小時，得連續舉發之」，即以上開細則為補充規定，並以「每逾二小時」為連續舉發之標準，就其因此而造成人民可能受處罰之次數及衡量人民須因此負擔繳納累計之罰鍰金額仍屬有限，衡諸維護交通秩序、確保交通安全之立法目的而言，尚未逾越必要之程度。惟有關連續舉發之授權，其目的與範圍仍應以法律明確規定為宜。

petent authority on May 30, 2001, under the authorization of Article 92 of the Act Governing the Punishment for Violation of Road Traffic Regulations states that 'Consecutive charges may be made every two hours,' which serves as a supplemental regulation and sets' every two hours' as the standard for making consecutive charges, it does not go beyond the extent of necessity after weighing the possible number of punishments incurred and the amount of fines accumulated by motorists, which are not substantial, against the legislative purposes of maintaining traffic flow and ensuring traffic safety. Nevertheless, it is proper that the purpose and scope of the authorization of consecutive charges be clearly established by law.

Article 56-II of the Act Governing the Punishment for Violation of Road Traffic Regulations provides, 'An on-duty traffic police officer or any other personnel performing traffic inspection duties by law shall order a motorist to move his or her vehicle to a proper place; if the motorist refuses to move the vehicle or is not seated in the vehicle, the on-duty traffic

至道路交通管理處罰條例第五十六條第二項規定：「交通勤務警察或依法令執行交通稽查任務人員，應責令汽車駕駛人將車移置適當處所；如汽車駕駛人不予移置或不在車內時，得由該交通勤務警察或依法令執行交通稽查任務人員為之，或得於舉發其違規後，使用民間拖吊車拖離之，並收取移置費。」本此規定，執法機關固得於舉發其違規

police officer or such other personnel performing traffic inspection duties by law may do it by themselves, or employ a private tow truck to tow away the vehicle and collect the resulting relocation expenses from said motorist after charging him or her with the violation.' Pursuant to the said provision, the law enforcement agency may certainly relocate the illegally parked vehicle after charging the motorist with the violation. However, in light of the limitations of objective circumstances, the latter part of the said provision also provides that the police agency may engage a private tow truck to tow it away. Nevertheless, as the foregoing provision provides ' may employ a private tow truck to tow it away,' it may be concluded that the said provision does not require that an on-duty police officer shall employ a private tow truck to tow away an illegally parked vehicle, and that, even if a tow-away is to be enforced, the said provision does not prescribe that the towing shall be done only after an initial charge has been made. The on-duty police officer has been authorized to decide upon the foregoing matters at his or her own discretion on a

後，移置該違規車輛，惟顧及客觀條件之限制，同條項後段亦規定警察機關得使用民間拖吊車拖離之。然由上開條文規定「『得』於舉發其違規後，使用民間拖吊車拖離之」，可知該條文並不限定值勤員警一定要使用民間拖吊車拖離違規停放車輛，且縱要執行拖吊車輛，亦未規定必須在一次舉發後為之，此等事項均授權值勤員警視個案裁量決定。除此之外，有鑑於拖離以前仍以違規行為人自行排除交通障礙為當，故容許執勤員警視情況依其合義務性之裁量，選擇執法之方法。是以，得視違規停車狀況，決定執行移置保管或連續舉發之優先順序，係立法者衡量各種因素後，合理賦與行政機關裁量之事項，不能因有此規定而推論連續舉發並為處罰之規定，違反憲法上之比例原則。

case-by-case basis. In addition, as it is proper that the traffic obstacle be removed by the violating actor him- or herself before enforcing a towaway, the on-duty police officer should be permitted to choose the means of law enforcement after investigating the circumstances and based on his or her discretion corresponding to his/her duties. Hence, in respect of the fact that the law enforcement personnel may decide upon the priority between enforcing relocation and custody and consecutive charges based on the circumstances regarding an illegally parked vehicle, it falls within the administrative discretion reasonably entrusted by the legislators to the administrative agencies by the legislators after considering various factors. Therefore, it cannot be concluded from the said provision per se that the provisions regarding consecutive charges and the resulting punishments violate the principle of proportionality under the Constitution.

In addition, it should be noted that Article 85-1-II (ii) of the Act Governing the Punishment for Violation of Road

又九十一年七月三日修正公布之道路交通管理處罰條例第八十五條之一第二項第二款規定：「逕行舉發汽車有

Traffic Regulations as amended and promulgated on July 3, 2002, provides,' By directly charging a motorist with any violation by involving a motor vehicle of any of the various situations as prescribed under Article 56-I of the said Act, if the motorist is not present or cannot move the vehicle, consecutive charges may be made every two hours.' In view of the fact that traffic flow may still be substantially affected in road sections with serious traffic congestion or during rush hours even if the vehicle remains the situation of illegally parking for less than two hours despite the unambiguousness of the aforesaid provision, it is proper that the legislators, while clearly prescribing by law the intervals for making consecutive charges, permit the competent authority, having considered the differences in traffic volume among various areas, to shorten the statutory intervals for making consecutive charges as far as it is consistent with the principle of clarity of authorization so that the maintenance of traffic order will not be affected by the rigidity of the said statutory intervals.

第五十六條第一項規定之情形，而駕駛人不在場或未能將車輛移置每逾二小時者」得連續舉發，此項規定固屬明確，惟鑑於交通壅塞路段或交通尖峰時刻，違規停車狀態縱不逾二小時亦有嚴重影響交通秩序者，立法者將連續舉發之間隔期間明定於法律之同時，宜在符合授權明確性之原則下，容許主管機關得因地制宜，縮短連續舉發之法定間隔期間，避免因該法定間隔期間之僵化，而影響交通秩序之維護，併此指明。

Justice Yu-Tien Tseng filed concurring opinion.

Justice Tzong-Li Hsu filed concurring opinion.

Justice Feng-Zhi Peng filed concurring opinion.

Justice Chung-Mo Cheng filed concurring opinion.

Justice Yih-Nan Liaw filed concurring opinion in part and dissenting opinion in part.

Justice Jen-Shou Yang filed dissenting opinion in part.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋曾大法官有田、許大法官宗力、彭大法官鳳至、城大法官仲模分別提出協同意見書；廖大法官義男提出部分協同、部分不同意見書；楊大法官仁壽提出部分不同意見書；許大法官玉秀提出不同意見書。

J. Y. Interpretation No.605（November 9, 2005）*

ISSUE: Does Article 15, Paragraph 3 of the Enforcement Rules of the Public Functionaries Remuneration Act violate Articles 7, 15, and 23 of the Constitution?

RELEVANT LAWS:

Articles 7, 18, 22 and 23 of the Constitution（憲法第七條、第十八條、第二十二條、第二十三條）; J.Y. Interpretations Nos. 483, 485, 501, 525 and 575（司法院釋字第四八三號、第四八五號、第五〇一號、第五二五號、第五七五號解釋）; Articles 3 and 6 of the Act Governing the Employment of Contract-based Employees（聘用人員聘用條例第三條、第六條）; Article 7 of the Public Functionaries Merit Evaluation Act（公務人員考績法第七條）; Articles 15, Paragraphs 2 and 3, 19, Paragraphs 1 and 2 of the Enforcement Rules of the Public Functionaries Remuneration Act（公務人員俸給法施行細則第十五條第二項、第三項、第十九條第一項、第二項）.

KEYWORDS:

right to assume public service（服公職權）, public functionaries（公務人員）, contract-based employee（聘用人員）, principle of the protection of reliance（信賴保護原則）, principle of equality（平等原則）, differential treatment（差別待遇）, affirmative action（優惠措施）, transitory provision（過渡條款）.**

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* Translated by Ching P. Shih.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: The purpose of the right of people to assume public service prescribed under Article 18 of the Constitution is to protect the right of people to engage in public business by law, and to ensure the rights of protection of their status, remuneration and retirement allowance and so forth derived wherefrom. Based on the right to assume public service under the Constitution, the office, rank and remuneration level assessed by law and acquired by a public functionary are safeguarded by institutional protection. (See J.Y. Interpretations Nos. 575 and 483) However, the acquisition of rights of remuneration and assessment of ranking shall be premised on the acquisition of the public functionary qualifications under the Public Functionaries Appointment Act.

解釋文：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務，暨由此衍生享有之身分保障、俸給與退休金等權利。公務人員依法銓敘取得之官等俸級，基於憲法上服公職之權利，受制度性保障（本院釋字第五七五號、第四八三號解釋參照），惟其俸給銓敘權利之取得，係以取得公務人員任用法上之公務人員資格為前提。

Article 15, Paragraph 3 of the amended Enforcement Rules of the Public Functionaries Remuneration Act promulgated on November 25, 1999 (hereinafter referred to as the Enforcement Rules of 1999, which categorizes the nature of each kind of seniority, renders that the

中華民國八十八年十一月二十五日修正發布之公務人員俸給法施行細則（以下簡稱八十八年施行細則）第十五條第三項修正規定，區別各類年資之性質，使公務人員曾任聘用人員之公務年資，僅得提敘至本俸最高級為止，與憲法第七條保障平等權之意旨並無牴觸。

public business seniority of a public functionary accumulated during the time he or she was a contract-based employee may only be assessed up to the highest level of basic salary of his or her level ranking. This result does not contradict the intent and purpose of protecting equal rights under Article 7 of the Constitution.

The provision of Article 15, Paragraph 3 of the Enforcement Rules of 1999 stating that the seniority of a public functionary accumulated during the time he or she was a contract-based employee which may be assessed annually up to the highest level of seniority salary of his or her level ranking may, based on the provisions of Article 15, Paragraphs 2 and 3, of the amended Enforcement Rules of the Public Functionaries Remuneration Act promulgated on December 26, 1995 (hereinafter referred to as the Enforcement Rules of 1995 and the amended Enforcement Rules of the Public Functionaries Remuneration Act promulgated on January 15, 1998 (hereinafter referred to as the Enforcement Rules of 1998, only be assessed up to the highest level of basic

八十八年施行細則第十五條第三項修正規定，使公務人員原任聘用人員年資，依八十四年十二月二十六日修正發布之公務人員俸給法施行細則（以下簡稱八十四年施行細則）及八十七年一月十五日修正發布之公務人員俸給法施行細則（以下簡稱八十七年施行細則）第十五條第二項、第三項規定，得按年提敘俸級至年功俸最高級者，僅得提敘至本俸最高級為止。並另以指定施行日期方式，訂定過渡條款。衡量此項修正，乃為維護公務人員文官任用制度之健全、年功俸晉敘公平之重大公益，並有減輕聘用人員依八十八年修正前舊法規得受保障之利益所受損害之措施，已顧及憲法上之信賴保護原則，與平等原則亦尚無違背。

salary of his or her level ranking. It also designates the enforcement date as another method by which to establish transitory provisions. Considering that this amendment is to maintain significant public interests such as the integrity of the civil servant appointment system of public functionaries and the equality of assessing and upgrading the seniority salary, and provided with measures to mitigate the damage suffered by interests protected by the original provisions prior to the amendment of 1999, the amendment has considered the principle of protection of reliance, and hence it does not violate the principle of equality.

The purpose of the above Enforcement Rules is to provide a public functionary with affirmative action to weigh and consider his or her public business seniority before he or she acquires the public functionary appointment qualification and to recognize and count that part of seniority into his or her public functionary seniority after he or she has been formally appointed by law. Since this action in essence does not restrict people's

上開施行細則旨在提供公務人員於依法任用之後，其未具公務人員任用資格前所曾任之公務年資，酌予核計為公務人員年資之優惠措施，本質上並非限制人民之財產權，故不生違反憲法第二十三條之問題。

property right, it will not incur the question of violation of contradict Article 23 of the Constitution.

REASONING: The purpose of the right of people to assume public service prescribed under Article 18 of the Constitution is to protect the right of people to engage in public business by law, and to ensure the protection of their status, remuneration and retirement allowance and so forth derived wherefrom. Based on the right to assume public service under the Constitution, the office rank and remuneration level assessed by law and acquired by a public functionary are safeguarded by institutional protection. (See J.Y. Interpretations Nos. 575 and 483) However, the acquisition of rights of remuneration and assessment of ranking shall be premised on the acquisition of public functionary qualifications under the Public Functionaries Appointment Act.

解釋理由書：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務，暨由此衍生享有之身分保障、俸給與退休金等權利。公務人員依法銓敘取得之官等俸級，基於憲法上服公職之權利，受制度性保障（本院釋字第五七五號、第四八三號解釋參照），惟其俸給銓敘權利之取得，係以取得公務人員任用法上之公務人員資格為前提。

The principle of equality prescribed under Article 7 of the Constitution does not mean a formal equality in an absolute and mechanical sense. Rather, it aims to

憲法第七條平等原則並非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，基於憲法之價值體系及立法目的，自得斟酌規範事

guarantee the substantial equality of the people in the sense of equal protection under law. Based on the value system of the Constitution and the purpose of enactment, the agency in charge of course may weigh and consider the variations in the nature of subject matters and exercise reasonable, differential treatments (See J.Y. Interpretation No. 485). The administrators of different systems shall essentially apply different sets of rules regarding appointment, assessment of remuneration, evaluation of merit (service), and appraisement of service. Therefore, a person cannot directly exchange his or her originally assessed level of remuneration (salary) when transferring from one system to another. Based on the fairness of the personnel system, there is, thus, a design to assess the level of remuneration (See J.Y. Interpretation No. 501). According to Article 3 of the Act Governing the Employment of Contract-based Employees (hereinafter referred to as the Employment Act), the term 'contract-based employee' means the professional and technical personnel periodically employed by every agency through contract. The

物性質之差異而為合理之區別對待（本院釋字第四八五號解釋參照）。不同制度人員間原係適用不同之任用、敘薪、考績（成）、考核等規定，於相互轉任時，無從依原敘俸（薪）級逕予換敘，基於人事制度之公平性，故有俸級提敘之設計（本院釋字第五〇一號解釋參照）。聘用人員依聘用人員聘用條例（以下簡稱「聘用條例」）第三條規定，係各機關以契約定期聘用之專業或技術人員。其職稱、員額、期限及報酬，應詳列預算，並列冊送銓敘部登記備查，乃屬編制外依契約給與報酬之臨時人員。聘用無須資格，無官等職等、無法定之官稱或職稱，亦不敘俸。因其無公務人員任用資格，依聘用條例第六條，特別明定其不適用公務人員俸給法、退休法、撫卹法，無由主張公務人員俸給銓敘之權利。惟公務人員於依法任用，取得實任資格之後，依八十四年施行細則第十五條第二項、第三項規定（八十七年施行細則第十五條第二項、第三項規定同其意旨），其曾任聘用人員之年資，如與擬任職務職等相當且性質相近者，得按年核計加級，至所銓敘審定職等之年功俸最高級為止。八十八年施行細則第十五條第三項規定：「依公務人員任用法任用之人員，其曾任前

title, number of positions, term and remuneration shall be included in a detailed budget. They shall be displayed on a list, and the list shall be delivered to the Ministry of Civil Service for registration and reference. These employees are temporary personnel outside of the organic structure and receive remuneration by contract. Public functionary qualifications are not required for contract-based employment in which the levels of ranks and grades do not exist. There is no legal official or office title, and thus no assessment of level of remuneration, either. Since the contract-based employee does not have public functionary appointment qualifications (according to the provision especially prescribed in Article 6 of the Employment Act), the Public Functionaries Remuneration Act, Retirement Act, and the Act Governing the Payment of Compensation to Surviving Dependents of Public Functionaries will not apply, and he or she shall then have no reason to claim any public functionary rights of either remuneration or assessment of ranking. However, according to Article 15, Paragraphs 2 and 3 of the Enforcement Rules of 1995,

二項以外之公務年資，如與現所銓敘審定之職等相當、性質相近且服務成績優良者，得按年核計加級至其所銓敘審定職等之本俸最高級為止。」查其意旨，係因年功俸制度之精神，重在獎掖優秀公務人員之年資與功績，以鼓勵久任。依九十年六月二十日修正公布前之公務人員考績法第七條規定，必須考績甲等或是連續兩年考績乙等者，始能晉敘年功俸一級。正式公務人員晉敘年功俸所需之考績等級，較諸晉敘本俸者為嚴。聘用人員之制度設計與正式公務人員相異，僅於約聘契約存續期間，以考核方式觀察工作績效，作為續聘或解聘之依據，並無與公務人員考績法完全相同之考核規定，然曾任聘用人員之公務年資，卻可依八十四年及八十七年施行細則第十五條規定，提敘俸級至年功俸最高級，形成銓敘合格年資不如未經銓敘合格之年資的不合理現象。為求公務人員文官任用制度之健全與年功俸晉敘之公平，乃為上開修正，對公務年資之採計，予以差別待遇，使得提敘至「年功俸最高級」之年資，不及於未具公務人員任用資格前所曾任之所有公務年資。而其不包含曾任聘用人員之公務年資，係依各類年資考核寬嚴之不同，對之採取不同之認定標準，並非恣意選擇，符

(the purpose and intent of Paragraphs 2 and 3 of Article 15 of the Enforcement Rules are identical) the seniority accumulated during the time he or she was a contract-based employee may be assessed annually and counted into his or her public functionary seniority after he or she has been appointed by law and obtained actual appointment qualifications up to the highest level of seniority salary of his or her level ranking assessed and authorized if that seniority is equivalent to the proposedly assumed office and grade and both are similar in nature. Article 15, Paragraph 3 of the Enforcement Rules of 1999 states: In respect of a person appointed under the Public Functionaries Appointment Act, his or her public business seniority accumulated during the time he or she served in a position other than that mentioned in the preceding two paragraphs may be assessed and counted into his or her public functionary seniority up to the highest level of basic salary of his or her level ranking assessed and authorized if that seniority is equivalent to the currently assessed and authorized office and grade, both are similar in nature,

合國家對整體文官制度之合理安排，以及維護年功俸晉敘公平性之目的。主管機關基於公共政策之考量，尚難認係恣意或不合理，且與目的之達成亦有合理之關聯性，故與憲法第七條保障平等權之意旨並無牴觸。

and the record of service is outstanding. In view of its intent and purpose, this provision is based on the spirit of the seniority salary system, highlighting the promotion of the seniority and merit of outstanding public functionaries, in order to encourage longer appointment. According to the former Article 7 of the Public Functionaries Merit Evaluation Act prior to its revision and amendment promulgated on June 20, 2001, only those whose level of evaluation is at rank A or at rank B for two consecutive years may have their seniority salary assessed and upgraded by one level. In respect of a formally appointed public functionary, the level of evaluation required for assessing and upgrading his or her seniority salary is stricter than that required for assessing and upgrading his or her basic salary. The evaluation systems for contract-based employees and formally appointed public functionaries are different. In respect of a contract-based employee, the effectiveness of his or her job performance is monitored only through evaluation within the duration of the employment contract as the basis for continuing or terminating the employ-

ment, and there is no evaluation regulation similar to that provided in the Public Functionaries Merit Evaluation Act. However, according to the provisions of the Enforcement Rules of 1995 and 1998, the level of remuneration of the public business seniority accumulated during the time a person was a contract-based employee may be assessed up to the highest level of seniority salary of the level ranking. This results in an unreasonable situation in which the seniority that has been assessed and authorized amounts to less than the seniority that has not been assessed and authorized. Therefore, in order to pursue the integrity of the civil servant appointment system of public functionaries and the equality of assessing and upgrading the seniority salary, the above amendment has been so revised. It exercises differential treatments with regard to the recognition and counting of the public business seniority and renders that the seniority assessed into ‘ the highest level of the seniority salary’ will not include all of the public business seniority for those serving without public functionary appointment qualifications. The seniority

not including the public business seniority accumulated during the time a person served as a contract-based employee is a result of the adoption of different decision-making standards for each kind of evaluation with various degrees of strictness. This is not a capricious choice and is in conformity with the reasonable arrangement of the national civil servant system as a whole and the objective of maintaining the fairness of assessing and upgrading the seniority salary. Based on the consideration of public policy, it is hard to find that the agency in charge is capricious or unreasonable, and there is a reasonable connection with the achievement of the objective. Hence, the amendment does not contradict the intent and purpose of protecting equal rights under Article 7 of the Constitution.

It should not be expected that any administrative regulation could be permanently enforced. However, after the administrative regulation has been promulgated and enforced, the agency that enacts and promulgates the regulation shall also attend to the protection of the interests of

任何行政法規皆不能預期其永久實施，然行政法規發布施行後，訂定或發布法規之機關依法定程序予以修改，應兼顧規範對象信賴利益之保護。其因公益之必要修正法規之內容，如人民因信賴舊法規而有客觀上具體表現信賴之行為，並因法規修正，使其依舊法規已

the regulated persons while revising the same regulation under the legal proceedings. The agency revises the content of a regulation for the necessity of the public interest. If a person objectively engages in an activity in which the reliance apparently appears because he or she relies on the former regulation, and because of the revision of the regulation, he or she will suffer damage incurred from the rights obtained under the former regulation and the interests expected to be obtained under the former regulation, the agency in charge shall, aiming directly at the suffered damage from the above interests, adopt a reasonable remedial measure or enacting a reasonable transitory provision to mitigate the damage, so as to satisfy the intent and purpose of protecting the rights of the people under the Constitution. However, since not all of the interests of people expected to be obtained under the former regulation can be equally claimed the protection of reliance, decisions shall be made on the basis of factors such as the interests expected to be met, whether the material elements required by the old regulation have been satisfied, whether

取得之權益，與依舊法規預期可以取得之利益受損害者，應針對人民該利益所受之損害，採取合理之補救措施，或訂定合理之過渡條款，俾減輕損害，以符憲法保障人民權利意旨。惟人民依舊法規預期可以取得之利益並非一律可以主張信賴保護，仍須視該預期可以取得之利益，依舊法規所必須具備之重要要件是否已經具備，尚未具備之要件是否客觀上可以合理期待其實現，或經過當事人繼續施以主觀之努力，該要件有實現之可能等因素決定之。至經廢止或變更之法規有重大明顯違反上位規範情形，或法規（如解釋性、裁量性之行政規則）係因主張權益受害者以不正當方法或提供不正確資料而發布者，其信賴即不值得保護（本院釋字第五二五號解釋意旨參照）。

the elements which have not been satisfied can objectively and reasonably be expected to be realized, or there is a possibility for the elements to be realized after the party has made continuous subjective efforts. If the regulations, having been repealed or modified, have substantially violated the upper-level norms or the regulations (e.g., interpretative, discretionary administrative rules) are promulgated because a person who claims his or her interests have been injured utilizes unjust means or provides incorrect information, then his or her interests shall not deserve protection. (See J.Y. Interpretation No. 525 for intent and purpose)

The provision of Article 15, Paragraph 3, of the Enforcement Rules of 1999 stating that the seniority of a public functionary accumulated during the time he or she served as a contract-based employee which may be assessed annually up to the highest level of seniority salary of his or her level ranking may, based on the provisions of Article 15, Paragraphs 2 and 3 of the Enforcement Rules of 1995 and the Enforcement Rules of 1998, only

八十八年施行細則第十五條第三項修正規定，使公務人員原任聘用人員年資，依八十四年及八十七年施行細則第十五條第二項、第三項規定，得按年提敘俸級至年功俸最高級者，僅得提敘至本俸最高級為止。人民如信賴八十四年及八十七年施行細則第十五條第二年施行細則修正前應公務人員高等考試，並筆試及格，開始接受實務訓練，預期於取得公務人員任用資格而實任公務人員職務時，依八十八年修正前之施行細

be assessed up to the highest level of basic salary of his or her level ranking. If any person relying on the provisions of Article 15, Paragraphs 2 and 3 of the Enforcement Rules of 1995 and the Enforcement Rules of 1998 took the Higher Rank Public Functionaries Examination, passed the written exam, started to receive practical training prior to the revision of the Enforcement Rules of 1999, and expected that he or she could apply for and obtain the rights and interests of assessment of seniority after having acquired the public functionaries appointment qualifications and actually assumed the public functionary office based on the Enforcement Rules prior to their revision, then the protection of reliance based on his or her rights and interests could not be disregarded because the realization of the rights and interests could not be reasonably expected. However, if a person having acquired the public functionary appointment qualification took the examination after the Enforcement Rules of 1999 were revised, then it was no doubt that there was no possibility for him or her to claim protection of reliance based on his or her rights and interests.

則申請並取得提敘年資之權益，因屬客觀上可以合理期待其實現，故非不得主張信賴保護。至人民如於八十八年施行細則修正後，始為取得公務人員任用資格而報名參加考試，並無主張信賴保護之餘地，無庸贅言。

ests.

To particularly protect the vested interests of the person who could reasonably expected to have his or her rights and interests of seniority assessment based on the regulations prior to their revision, Article 19, Paragraphs 1 and 2 of the Enforcement Rules of 1999 stated: These Enforcement Rules will be enforced from the date of promulgation. The amended provisions of Articles 15 and 15-1 will be enforced from the date of January 15, 2000.? The enactment of these transitory provisions by means of designating an enforcement date rendered that the persons who have acquired the public functionary appointment qualification but are not yet eligible for the assessment might receive the assessment of the level of remuneration in time and some of the persons having taken and passed the public functionaries written examination, finished training during the transitory period and thus acquired the public functionary appointment qualification might also receive the assessment of the level of remuneration under the old provisions of the

八十八年施行細則為特別保護依修正前法規已可合理期待其提敘權益者之既得利益，於第十九條第一、二項規定：「本細則自發布日施行」、「本細則修正條文第十五條、第十五條之一，自中華民國八十九年一月十五日施行」。乃以指定施行日期方式，訂定過渡條款，俾使新施行細則生效前，已依法取得公務人員任用資格，但尚未辦理提敘者，得及時辦理俸級提敘，同時使部分已應公務人員考試筆試及格，於過渡期間受訓期滿，而取得公務人員任用資格之人員，亦得依舊施行細則之規定辦理俸級提敘，以保障其權益，雖仍有部分已考試及格、尚未受訓期滿人員，因未能及時於過渡期間取得公務人員任用資格，而未能同享俸級提敘之利益，對其權益之保護未臻周詳，惟為避免修法所追求公益目的遲未能實現，過渡期間本不宜過長，而新法規之修正本質上為正常文官制度外優惠措施之縮減，衡諸人民依舊法規本可預期得提敘俸級至年功俸最高級，而依新施行細則只得提敘至本俸最高級所損失之利益，與主管機關為建立公平合理之公務員年功俸制度所欲維護之公益，新施行細則以八十

Enforcement Rules, so as to protect their rights and interests. Even though there was situation in which some persons who had passed the examination but had not yet completed their training could not jointly enjoy the interests of assessment of the level of remuneration because they had not timely acquired the public functionary appointment qualifications during the transitory period and the protection was not complete in terms of their rights and interests, to avoid the result that the objective pursued for ensuring the public interest was delay and unable to realize during the period the regulation was revised, and it was not proper that the transitory period was extended excessively, furthermore, the revision of the regulations was in essence a diminution of the effect of the affirmative action provisions of the ordinary civil servant system, considering the loss of interests of the person who has originally expected that he or she might have the level of remuneration assessed up to the highest level of seniority salary of his or her level ranking under the old regulation from the assessment of the level of remuneration that could only be

九年一月十五日之特定日期為施行日期之過渡條款規定，尚屬合理，與憲法上之信賴保護原則及平等原則均尚無違背。

fulfilled up to the highest level of the basic salary under the newly effective Enforcement Rules, and the public interest maintained by the agency in charge of establishing a fair and reasonable public functionary seniority salary system, it was reasonable that the transitory provisions of the newly effective Enforcement Rules particularly designated the date of January 15, 2000, as the enforcement date. This did not contradict either the principle of the protection of the reliance or the principle of equality.

The purpose of the above Enforcement Rules is to provide a public functionary with affirmative action to determine his or her public business seniority accumulated during the time before he or she received the public functionary appointment qualifications and to recognize and calculate that part of seniority into his or her public functionary seniority after he or she has been formally appointed by law. Since this action in essence does not restrict people's property right, it does not contradict Article 23 of the Constitution.

上開施行細則旨在提供公務人員於依法任用之後，其未具公務人員任用資格前所曾任之公務年資，酌予核計為公務人員年資之優惠措施，本質上並非限制人民之財產權，故不生違反憲法第二十三條之問題。

Justice Yu-Tien Tseng filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Jen-Shou Yang filed dissenting opinion in part, in which Justice Ho-Hsiung Wang joined.

本號解釋曾大法官有田、許大法官玉秀分別提出協同意見書；楊大法官仁壽與王大法官和雄共同提出部分不同意見書。

J. Y. Interpretation No.606（December 2, 2005）*

ISSUE: Is the deadline for application for tax deferrals prescribed by Article 42 of the Enforcement Rules of the Act for Upgrading Industries in contravention either to the enabling statute or to the Constitution?

RELEVANT LAWS:

Articles 15, 19 and 23 of the Constitution（憲法第十五條、憲法第十九條、憲法第二十三條）; J. Y. Interpretation No. 514（司法院釋字第五一四號解釋）; Articles 16, Subparagraph 3, and 43 of the Act for Upgrading Industries（促進產業升級條例第十六條第三款、第四十三條）; Articles 13, 240 and 241 of the Company Act（公司法第十三條、第二百四十條及第二百四十一條）; Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款）; Article 42 of the Enforcement Rules of the Act for Upgrading Industries (as promulgated on September 24, 1997)（促進產業升級條例施行細則第四十二條（八十六年九月二十四日修正發布））; Article 47, Paragraph 3, of the Enforcement Rules of the Act for Upgrading Industries (as promulgated on November 15, 1995)（促進產業升級條例施行細則第四十七條第三項（八十四年十一月十五日修正發布））.

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* Translated by Professor Chun-Jen Chen.

** Contents within frame, not part of the original text, are added for reference purpose only.

KEYWORDS:

undistributed earnings（未分配盈餘）, capital increase（增資）, reinvestment（轉投資）, issue（發行）, stock（股票）, registered share（記名股票）, bearer share（不記名股票）, freedom to operate a business（營業自由）, right of work（工作權）, onsolidated income（綜合所得）, corporation, company（公司）, in contravention to（牴觸）, tax deferral（租稅緩課）, competent taxing authority（管轄稽徵機關）, property right（財產權）, exceed（逾越）, central governing authority（中央主管機關）, central governing authority in charge of relevant business（中央目的事業主管機關）, business（營利事業）, levy tax（課稅）, dividend（股利）, enabling statute（母法）, taxpayer（納稅義務人）, tax plan（稅務規畫）, final and binding judgment（確定終局判決）, shareholder（股東）, general authorization（概括授權）, supplementary regulation（補充規定）, capital（資本）.**

HOLDING: Article 16, Subparagraph 3, of the Act for Upgrading Industries, enacted and implemented on December 29, 1990, prescribes that the newly issued registered shares received by shareholders due to a corporation's reinvesting its undistributed earnings in significant businesses such as those deline-

解釋文：中華民國七十九年十二月二十九日制定公布之促進產業升級條例第十六條第三款規定，公司以未分配盈餘增資轉投資於同條例第八條所規定之重要事業者，其股東因而取得之新發行記名股票，免予計入該股東當年度綜合所得額；其股東為營利事業者，免予計入當年度營利事業所得額課稅。主

ated in Article 8 of the same Act are exempted from being accounted as part of individual shareholders consolidated incomes; those newly issued registered shares are also exempted from being accounted as part of business incomes of the same fiscal year for tax purpose when the recipient shareholders are themselves corporations. Article 42 of the Enforcement Rules of the Act for Upgrading Industries, as amended and implemented on September 24, 1997 by the agency-in-charge, prescribes that those corporations which reinvest their undistributed earnings in significant businesses such as those delineated in Article 8 of the same Act shall submit relevant documents to the competent taxing authority to apply for the exemption excluding the shareholders stock dividends, which come from the capital increase owing to the reinvestment, from income taxes of the same fiscal year, within six months after the governing authority in charge of corporate registry approves the capital increase. The foregoing Article 42 is necessary to enforce the Act for Upgrading Industries and is consistent with Article 16, Subparagraph 3, of the

管機關於八十六年九月二十四日修正發布之同條例施行細則第四十二條規定，公司以未分配盈餘增資轉投資於該條例第八條所規定之重要事業者，應於公司登記主管機關核准增資後六個月內，檢附相關文件向管轄稽徵機關申請該次增資發放予股東之股票股利免計入股東當年度所得課稅，乃屬執行該條例第十六條第三款規定所必要，符合首開法律規定之意旨，並未逾越母法之限度，與憲法第十五條及第二十三條並無牴觸。

said Act. It does not exceed the authorization of the enabling statute and is not in contravention to Articles 15 and 23 of the Constitution.

REASONING: In J. Y. Interpretation 514, we have held that people's freedom to operate a business falls under the constitutional guarantees of people's right of work and property rights. According to Article 23 of the Constitution, any restriction or limitation imposed by the state on people's freedom and rights shall only be enacting laws and shall not exceed the degree of necessity. To facilitate the implementation of law, the law may confer on the agency-in-charge general authorization to promulgate a supplementary regulation; however, the supplementary regulation shall be consistent with and shall not exceed the enabling statute. We have repeatedly held that the standard for determining whether a given regulation promulgated by an administrative agency under the general authorization of an enabling statute exceeds its statutory authorization and hence such administrative agency shall take into account the

解釋理由書：人民營業之自由為憲法上工作權及財產權所保障，本院釋字第五一四號解釋足資參照。國家對人民自由權利之限制，應以法律定之，且不得逾越必要程度，憲法第二十三條定有明文。如為便利法律之實施，以法律授權主管機關發布命令為補充規定，其內容須符合立法意旨，且不得逾越母法規定之範圍。其在母法概括授權情形下所發布者，是否超越法律授權，不應拘泥於法條所用之文字，而應就該法律本身之立法目的，及其整體規定之關聯意義為綜合判斷，迭經本院解釋闡明在案。

legislative intent and the correlative meanings of the entire body of regulations and shall not be restrained by the statutory language.

Article 16, Subparagraph 3, of the Act for Upgrading Industries, enacted and implemented on December 29, 1990, prescribes that the newly issued registered shares received by shareholders due to a corporation's reinvesting its undistributed earnings in significant businesses such as those delineated in Article 8 of the same Act are exempted from being accounted as part of individual shareholders consolidated incomes; those newly issued registered shares are also exempted from being accounted as part of business incomes of the same fiscal year for the tax purpose when the recipient shareholders are themselves corporations. Its legislative intent is to facilitate corporate capital-raising by allowing the corporation to use its undistributed earnings as corporate capital increase to strengthen its financial structure. To accomplish such a goal, the law serves as an incentive to gain shareholders approval by allowing them tax deferrals on

七十九年十二月二十九日制定公布之促進產業升級條例第十六條第三款規定，公司以未分配盈餘增資轉投資於同條例第八條所規定之重要事業者，其股東因而取得之新發行記名股票，免予計入該股東當年度綜合所得額；其股東為營利事業者，免予計入當年度營利事業所得額課稅。揆其立法意旨，乃為加速公司資本形成，使公司以未分配盈餘增資，作為改善財務結構之特定用途者，准其因增資而配與股東之股票股利予以緩課，促使股東同意公司以未分配盈餘增資轉投資（公司法第十三條、第二百四十條及第二百四十一條參照），而影響公司累積資本之方式，對於公司之財務結構、營運及發展自有重大影響，是構成公司財產權及營業自由之重要內容。惟因增資而配與股東之股票股利是否應予依法緩課，應由主管機關核實認定之。為執行上開法律規定，主管機關於八十六年九月二十四日修正發布之同條例施行細則第四十二條規定：「公司以未分配盈餘增資轉投資於本條

the newly issued registered shares received by them due to the corporation's reinvesting its undistributed earnings. (See Articles 13, 240 and 241 of the Company Act) The corporation's use of its undistributed earnings as its capital increase, the shareholders approval, and the incentives provided by the law all constitute important elements of corporate property rights and the freedom to operate a business as they may affect the way a corporation raises capital, its financial structure, operation, and development. However, whether shareholders stock dividends resulting from a given corporation's capital increase are qualified for tax deferrals shall be left to the agency-in-charge to determine in accordance with factual circumstances. In order to enforce the abovementioned statute, on September 24, 1997, the agency-in-charge amended and implemented Article 42 of the Enforcement Rules of the Act for Upgrading Industries (hereinafter the Enforcement Rules, prescribing that, Any corporation which uses its undistributed earnings as its capital increase and reinvests them in a significant business such as those delineated in Article 8 of the Act for Upgrading Industries shall, within six months after the approval of the capital increase by the competent authority in charge of the company registration, submit the following documents to the competent authority in charge of the relevant business for verification: (1) a copy of the approval letter of the competent authority in charge of the relevant business for the significant business; (2) a copy of the approval letter of the competent authority in charge of the company registration for the capital increase of the company before and after the capital increase and a copy of the shareholder register; however, a copy of the shareholder register is not required for a listed company; (3) the minutes of the shareholders meeting (including the capital increase) and a statement of the sources and uses of the capital increase; (4) the certificate issuing institution, the number of sheets and a copy of the certificate of the registered shares issued after the capital increase and the certification documents; (5) the documents relating to the investment under the preceding paragraph. If the company fails to submit the documents within the time limit mentioned in the preceding paragraph, it may apply for an extension before the expiration of the time limit, stating the reasons, and shall submit the documents within the extended time limit. (Article 42, paragraph 2) The purpose of the amendment is to delegate the authority provided in Article 43 of the Act for Upgrading Industries and to implement Article 16, paragraph 3 of the Act for Upgrading Industries regarding tax deferrals. Considering that the majority of the factual information regarding the application for tax deferrals is in the hands of the corporation, the corporation has the duty to cooperate and to submit the relevant documents within a certain period of time in order to fulfill the purpose of the statute. Although the time limit of six months is relatively short for the corporation that is required to file the application, it does not restrict the scope of the tax deferrals or limit the application of the tax deferrals. Considering that the tax deferrals affect the national tax revenue and the tax planning of the taxpayers, the time limit should not be too long. Therefore, the time limit of six months is not unreasonable. Article 42, paragraph 2 of the Enforcement Rules is not inconsistent with the Act for Upgrading Industries or the Constitution.

例第八條所規定之重要事業者，應於公司登記主管機關核准增資後六個月內，檢附下列文件向管轄稽徵機關申請該次增資發放予股東之股票股利免計入股東當年度所得課稅。一被轉投資事業經中央目的事業主管機關核發符合重要事業之核准函。二增資前後股份有限公司執照影本及股東名冊。但上市公司得免附股東名冊。三股東會會議紀錄（含增資資金來源運用明細表）。四經簽證機構簽證完畢之股票樣張及股票簽證證明文件。五轉投資相關文件（第一項）。公司未能於前項規定期限內檢齊文件者，得於期限屆滿前敘明理由提出申請，並聲明補送。但應於期限屆滿之次日起六個月內補送齊全（第二項）」，乃係基於上開促進產業升級條例第四十三條之授權，為執行同條例第十六條第三款有關租稅緩課事項所為規定。衡諸申請緩課之相關事實資料多半掌握於公司自身，故課公司協力義務，使公司主動於一定期間內檢具相關資料申請，符合首開法律規定之意旨。其中有關六個月申請期間之規定，對依法令規定進行申報之公司而言，雖屬較短之期限，惟其並非對租稅緩課之內容或適用範圍予以限縮，況租稅緩課影響國家稅收及納稅義務人之稅務規畫，因此申請期限不宜過

ated in Article 8 of the same Act shall, within six months after the governing authority in charge of corporate registry approves the capital increase, submit the following documents to the competent taxing authority to apply for the exemption excluding the shareholders stock dividends, which come from the capital increase owing to the reinvestment, from income taxes of the same fiscal year: (a) A letter of approval issued by the central governing agency in charge of relevant business stating that the reinvested business qualifies as a significant business; (b) Copies of licenses of stock corporation registrations and of shareholders lists issued before and after the corporate capital increase; (no shareholders list is needed if the corporate applicant is a listed corporation); (c) The minutes of shareholders meetings [including details of the source(s) and the use(s) of the fund of capital increase]; (d) A sample of its stock certified or authenticated by a competent certifying institution and documents of such certification or authentication; and (e) Relevant reinvestment documents (Paragraph 1). Any corporation which

長，又系爭規定除六個月期間限制外，復容許提出申請之公司得於期限屆滿前敘明理由提出延期補送之申請，補送期間亦達六個月，因係考量符合重要事業核准函之取得尚非容易，且公司轉投資之行為須配合重要事業增資時間，已可緩和申請期間之限制。是衡量前揭諸項因素，應認系爭細則有關六個月期間為執行母法及相關法律所必要，符合立法意旨，且未逾越母法之限度，與憲法第十五條及第二十三條並無牴觸。

fails to meet the deadline provided in the previous paragraph may still submit an application stating the reason for the delay before the deadline expires; however, it shall submit all required documents within six months starting from the day after the expiration of the deadline (Paragraph 2). The paragraphs of Article 42 cited above were promulgated under the statutory authorization of Article 43 of the Act for Upgrading Industries to enforce related tax deferral matters as prescribed by Article 16, Paragraph 3, of the same Act. Taking into account the fact that relevant tax deferral application materials are mostly in the possession of the corporation itself, requiring the corporation of its own accord to submit such relevant application materials under Article 42 of the Enforcement Rules is consistent with the above stated legislative intent and with the meaning of the enabling statute. With respect to the six-month requirement to submit the application, it a short period from the corporate applicant's point of view, but it does not constitute a limitation on the content or the range of the application for the tax deferral. Moreover,

because the tax deferral will affect the state revenue and taxpayers tax plans, it is not appropriate to set a longer period. Furthermore, according to Article 42, corporate applicants who fail to meet the deadline may still submit their applications stating the reason(s) for the delay before the expiration of the six-month deadline and may receive a six-month extension. Such an extension reflects the framers taking into account the facts that it is not easy to obtain the letter of approval stating that the reinvested business is qualified as a significant business and it is necessary to coordinate corporate reinvestment with the capital increase of the reinvested significant business. Namely, the extension is sufficient to ease the of the six-month deadline. Therefore, after considering and evaluating the foregoing factors, we hold that the six-month requirement of Article 42 of the Enforcement Rules is necessary to enforce the enabling statute and relevant laws, is consistent with the legislative intent, and does not exceed the statutory authorization. It is also not in contravention to the Constitution.

When a corporation reinvests its undistributed earnings in a significant business, whether shareholders stock dividends issued due to the corporation's capital increase are qualified for tax deferrals may affect its financial structure, operation, and development, may constitute important elements of corporate property rights and its freedom to operate business, and shall be protected by the Constitution. The foregoing Article 42 of the Enforcement Rules, prescribing that a corporation's application for tax deferrals can only be submitted within a required period of time, in fact materially and significantly affects a corporation's freedom to utilize its property and operate its business. In the present petition, the petitioner, according to law, applied for the tax deferral to the agency-in-charge in her own name, sought administrative and judicial relief in her own name, filed a petition to the Judicial Yuan and appealed to us to interpret the Constitution because the petitioner thought that the relevant procedural requirement of applying for the benefit of tax deferrals as so applied by the court in its final and binding judgment limited her

公司以未分配盈餘增資轉投資於重要事業者，因增資而配與股東之股票股利是否得予緩課，對公司之財務結構、營運及發展有重大之影響，乃構成公司財產權及營業自由之重要內容，應受憲法之保障。而上開促進產業升級條例施行細則第四十二條規定，公司申請租稅緩課只能於一定期限內為之，對公司之財產及營業發展之自由發生實質之重要影響。本件聲請人依法以自己名義向主管機關申請緩課，並已以自己名義提起行政及司法救濟，則其認確定終局判決所適用關於緩課優惠程序要件之規定，限制其憲法所保障之財產權利，發生有牴觸憲法之疑義，而向本院聲請解釋憲法，自無違於司法院大法官審理案件法第五條第一項第二款之規定。至八十四年十一月十五日修正發布之同細則第四十七條第三項規定，並非本件確定終局判決所適用之法令，故不在本件解釋範圍內，併予指明。

constitutionally protected property right and thus gave rise to the question of constitutionality. The present petition was duly filed and is not in violation of Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act. It shall also be noted that we do not hold on Article 47, Paragraph 3, of the Enforcement Rules of the Act for Upgrading Industries, as amended and implemented on November 15, 1995, as it was not applied by the court in the final and binding judgment on which the present petition is based.

Justice Tzong-Li Hsu filed concurring opinion, in which Justice Syue-Ming Yu, Justice Yu-Tien Tseng and Justice Tzu-Yi Lin joined.

Justice Feng-Zhi Peng filed concurring opinion, in which Justice Pi-Hu Hsu joined.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋許大法官宗力、余大法官雪明、曾大法官有田、林大法官子儀共同提出協同意見書；彭大法官鳳至、徐大法官璧湖共同提出協同意見書；許大法官玉秀提出不同意見書。

J. Y. Interpretation No.607（December 30, 2005）*

ISSUE: Is the directive issued by the Ministry of Finance, stating to the effect that any compensation received by a company for relocation should be listed as other income and thus subject to taxation, unconstitutional?

RELEVANT LAWS:

Articles 7, 15 and 19 of the Constitution（憲法第七條、第十五條、第十九條）; Articles 3, 4, 8 (xi) and 24-I of the Income Tax Act（所得稅法第三條、第四條、第八條第十一款、第二十四條第一項）; Article 31 of the Enforcement Rules of the Income Tax Act（所得稅法施行細則第三十一條）; Article 5-I (ii) and –III of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）; Directive Ref. No. TTS-780432772 issued by the Ministry of Finance on April 7, 1990; Directive Ref. No. TTS-821491681 issued by same on July 19, 1993; Directive Ref. No. TTS-841641639 issued by same on August 16, 1995; Directive Ref. No. TTS-871966516 issued by same on September 23, 1998; Directive Ref. No. TTS-0910450396 issued by same on January 31, 2002（財政部民國七十九年四月七日台財稅第七八〇四三二七七二號函、八十二年七月十九日台財稅第八二一四九一六八一號函、

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

八十四年八月十六日台財稅第八四一六四一六三九號函、八十七年九月二十三日台財稅第八七一九六六五一六號函、九十一年一月三十一日台財稅字第〇九一〇四五〇三九六號函）.

KEYWORDS:

principle of taxation by law（租稅法律主義）, principle of fair taxation（租稅公平原則）, principle of equality（平等原則）, property right（財產權）, business income tax（營利事業所得稅）, compensation for relocation（拆遷補助費）, tax exemption（免稅）, taxation（課稅）, taxpaying ability（稅負能力）, validated taxation（核實課稅）, total income（收入總額）, non-business revenues（非營業收益）.**

HOLDING: Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the State shall, in imposing duty on the people to pay tax or granting tax abatements or exemption to the people, prescribe by law such requisite elements of taxation as taxpaying bodies, taxable objects, tax bases, tax rates and so forth. In addition, the respective contents of applicable laws shall not conflict with

解釋文：憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率等租稅構成要件，以法律明定之。各該法律規定之內容且應符合租稅公平原則。財政部中華民國八十二年七月十九日台財稅第八二一四九一六八一號函、八十四年八月十六日台財稅第八四一六四一六三九號函、八十七年九月二十三日台財稅第八七一九六六五一六號函，符合所得稅法第三條及第

the principle of fair taxation. The Directive Ref. No. TTS-821491681 dated July 19, 1993, Directive Ref. No. TTS-841641639 dated August 16, 1995, and Directive Ref. No. TTS-871966516 dated September 23, 1998, which were issued by the Ministry of Finance, are in line with the intents of Articles 3 and 24-I of the Income Tax Act and thus consistent with the principle of taxation by law and the principle of equality as embodied in Article 7 of the Constitution. Therefore, there is no violation of the property right guaranteed to the people under Article 15 of the Constitution.

二十四條第一項規定之意旨，並未違背租稅法律主義及憲法第七條規定之平等原則，與憲法第十五條保障人民財產權之意旨亦無牴觸。

REASONING: Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the State shall, in imposing duty on the people to pay tax or granting tax abatements or exemption to the people, prescribe by law such requisite elements of taxation as taxpaying bodies, taxable objects, tax bases, tax rates and so forth. However, since it is impossible to specify all the details in the law, the com-

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率等租稅構成要件，以法律明文規定。但法律規定之內容不能鉅細靡遺，故主管機關於職權範圍內適用各該租稅法律規定時，自得為必要之釋示。其釋示如無違於一般法律解釋方法，且符合各該法律之立法目的，即與租稅法律主義尚無違背；倘亦符合租稅公平原則，則與憲法第七條平等原則

petent authority may, within its authorities and powers, issue necessary interpretations in applying various provisions of the tax laws. If the interpretations do not contradict the general methodologies in legal construction and interpretation and are in line with the legislative purposes of the respective laws, there is no violation of the principle of taxation by law. In addition, there is no violation of the principle of equality under Article 7 of the Constitution and the constitutional guarantee of the people's property right under Article 15 thereof if the principle of fair taxation is also observed.

及第十五條保障人民財產權之規定不相牴觸。

The taxable objects for business income tax under the Income Tax Act are revenues of a profit-seeking enterprise, including the business gains and nonbusiness gains of the enterprise. Such revenues are taxable except where there is any statutory cause of tax reduction or exemption. Article 24-I of the Income Tax Act provides, "The amount of income of a profit-seeking enterprise shall be the net income, i.e., the gross yearly income after deduction of all costs, expenses, losses

所得稅法關於營利事業所得稅之課徵客體，為營利事業之收益，包括營業增益及非營業增益，除具有法定減免事由外，均應予以課稅。按所得稅法第二十四條第一項規定：「營利事業所得之計算，以其本年度收入總額減除各項成本費用、損失及稅捐後之純益額為所得額」。所謂「年度收入總額」及供計算所得額之項目則委由同法施行細則第三十一條規定為營業淨利＋非營業收益－非營業損失＝純益額（即所得額），至於免稅項目則列舉規定於所得稅法第

and taxes." The definition of the term "gross yearly income," as well as the items included in the calculation of the amount of income, is furnished by Article 31 of the Enforcement Rules of the said Act, which means: business net profits plus non-business revenues minus non-business loss equals net income (i.e., amount of income). As for income to be exempted from taxation, Article 4 of the Income Tax Act has enumerated the categories thereof. In light of the legislative purposes of Articles 3, 4 and 24-I of the Income Tax Act and the nexus of the provisions in its entirety, there is no violation of the principle of taxation by law under Article 19 of the Constitution.

四條，觀諸所得稅法第三條、第四條及第二十四條第一項規定之立法目的及其整體規定之關聯意義，尚未違背憲法第十九條規定之租稅法律主義。

A profit-seeking enterprise is an economic entity investing labor and capital to engage in economic activities for the purposes of making profits. Whether for business or not, any and all gains made by a profit-seeking enterprise are profits meant to be realized by such enterprise while pursuing the goal of making profits, and thus are sources of the enterprise's income that may become taxable objects.

按營利事業係以營利為目的，投入勞務及資本從事經濟活動之經濟主體，不問係營業或非營業之增益，皆屬於營利事業追求營利目的所欲實現之利益，為營利事業之所得來源，而得成為租稅客體。營利事業因土地重劃而領取之地上物拆遷補償費，係因公權力強制介入而發生之非自願性增益，雖非因營業而發生，而屬於非營業性之營利事業所得來源，如於扣減相關之成本費用、

The compensation for crops relocation received by a profitseeking enterprise due to land rezoning is a kind of involuntary gain accruing from intervention of public authority. Although it is considered to be part of a profit-seeking enterprise's non-business gains that do not derive from business operation, it should be taxable if there remains any balance after deduction of applicable costs, expenses and/or losses. Therefore, any validated taxation of such income does not contradict the principle of fair taxation.

損失後仍有餘額，即有稅負能力，就該筆所得核實課徵稅捐，與租稅公平原則並無不符。

Directive Ref. No. TTS-841641639 issued by the Ministry of Finance on August 16, 1995 stated, "The compensation received by a profitseeking enterprise in accordance with the regulations governing the compensation for relocation due to public construction or urban rezoning conducted by the government should be listed as other income, the necessary costs and relevant expenses of which may be simultaneously verified and validated." Directive Ref. No. TTS-821491681 issued by same on July 19, 1993, which ceased to apply as of January 1, 2002, read, "In

財政部八十四年八月十六日台財稅第八四一六四一六三九號函「營利事業因政府舉辦公共工程或市地重劃，依拆遷補償辦法規定領取之各項補償費應列為其他收入，其必要成本及相關費用准予一併核實認定」，以及自九十一年一月一日起不再援引適用之八十二年七月十九日台財稅第八二一四九一六八一號函「××紙器股份有限公司七十九及八十年度營利事業所得稅結算申報，將政府徵收廠地之地上物及機器設備拆遷補償費，列入非營業收入項下，復自行調整為免稅所得一案，應予調整補稅並依所得稅法第一百條之二規定加計利息

respect of the matter concerning XX Paper Co., Ltd., which, in filing its business income tax returns for the years 1990 and 1991, listed as non-business income the compensation it received from the government for exercising eminent domain in respect of the facilities on the ground of its factories and the disassembly and relocation of machinery and equipment, and further adjusted such compensation as tax-free income of its own accord, this agency finds that the said company shall pay the overdue tax, along with interests accrued therefrom, in accordance with Article 100-2 of the Income Tax Act." Explanation No. 3 of Directive Ref. No. TTS-871966516 issued by same on September 23, 1998, read, "The compensation received by a profitseeking enterprise in accordance with the regulations governing the compensation for relocation due to public construction or urban rezoning conducted by the government should still be listed as other income, the necessary costs and relevant expenses of which may be simultaneously verified and validated, as per Directive Ref. No. TTS-821491681 issued by this Ministry on

一併徵收」、八十七年九月二十三日台財稅第八七一九六六五一六號函說明三「至營利事業於八十二年度以後（含八十二年）因政府舉辦公共工程或市地重劃，依拆遷補償辦法規定領取之各項補償費，仍應依本部八十二年七月十九日台財稅第八二一四九一六八一號函及八十四年八月十六日台財稅第八四一六四一六三九號函釋規定，列為其他收入，其必要成本及相關費用准予一併核實認定」，乃就所得稅法第二十四條第一項及同法施行細則第三十一條關於非營業增益之規定所為之釋示。按營利事業因土地重劃所領取之地上物拆遷補償費既非所得稅法第四條所列舉之免稅項目，上開函釋將該等拆遷補償費認定為非營業增益，列為其他收入，並就其扣除屬於非營業損失及費用、必要成本及相關費用所剩盈餘，核實課徵所得稅，尚未逾越所得稅法第二十四條第一項及同法施行細則第三十一條規定之立法意旨，核與憲法第十九條規定之租稅法律主義並無不符。該等地上物拆遷補償費既為非營業性之增益，如於扣減非營業性之損失及費用仍有餘額，即有稅負能力，對該營利事業之純益額課徵營利事業所得稅，符合租稅公平原則，亦未違背憲法第十五條保障人民財產權之規定。

July 19, 1993 and Directive Ref. No. TTS-841641639 issued by same on August 16, 1995." The foregoing directives have been issued to elaborate on the provisions of Article 24-I of the Income Tax Act and Article 31 of the Enforcement Rules of the said Act in respect of non-business gains. Since the compensation received by a profit-seeking enterprise for crops relocation due to land rezoning does not fall within any taxfree category, the foregoing directives, in regarding such compensation as nonbusiness gains and listing same as other income that is subject to income taxation after deducting non-business losses and expenses, as well as necessary costs and relevant expenses, are not in disaccord with the legislative intent of Article 24-I of the Income Tax Act and Article 31 of the Enforcement Rules of the said Act, and thus do not contradict the principle of taxation by law. Since the compensation for crops relocation received by a profitseeking enterprise is non-business gain, it should be taxable if there remains any balance after deduction of non-business losses and expenses. Therefore, the imposition of business in-

come tax on a profit-seeking enterprise for its net income is in line with the principle of fair taxation and does not violate the property right guaranteed to the people under Article 15 of the Constitution.

Explanation No. 2 of Directive Ref. No. TTS-841641639 issued on August 16, 1995, in citing Directive Ref. No. TTS-780432772 issued on April 7, 1990 as stating, "The compensation for building improvement or crop improvement, the reward for selfdisassembly, and the subsidy for human relocation that are given out in accordance with the regulations governing the compensation for relocation due to the expropriation of land for purposes of public construction or urban rezoning conducted by the government, should be a form of compensation for damages and thus free of income taxation," has given different treatment for the taxability of the compensation received by individuals and profit - seeking enterprises for crops relocation (Directive Ref. No. TTS-0910450396 issued on January 31, 2002, in stating, "The statutory compensation received by an individual in

至八十四年八月十六日台財稅第八四一六四一六三九號函說明二所引用之七十九年四月七日台財稅第七八○四三二七七二號函「因政府舉辦公共工程或市地重劃而徵收土地，依拆遷補償辦法規定發給之建築改良物或農作改良物補償費、自行拆遷獎勵金及人口搬遷補助費，核屬損害補償，應准免納所得稅」，對個人與營利事業所領取之地上物拆遷補償費，如何繳納所得稅，為不同之處理（九十一年一月三十一日台財稅字第○九一○四五○三九六號函「個人依土地徵收條例第三十一條、第三十二條及第三十四條規定領取之建築改良物補償、農作改良物補償、土地改良物補償或遷移費等法定補償，係屬損害補償性質，尚無所得發生，不課徵綜合所得稅」亦同此意旨），乃因個人與營利事業二者之稅率、所得結構、課稅基礎、應否設帳及得否攤提折舊等均有不同，稽徵機關對於個人領取之地上物拆遷補償費，依職權就其拆遷成本採取不

accordance with Articles 31, 32 and 34 of the Act of Eminent Domain for building improvement, crop improvement, land improvement, or the relocation should be characteristic of compensation for damages, and thus no consolidated income tax would be levied since no income has accrued therefrom," has held the same opinion.) Since differences exist as to the tax rates, income structures, tax bases, establishment of accounts, and amortization and depreciation between individuals and businesses, the tax collection authority has ex officio adopted different methods in determining the costs of relocation in respect of the compensation received by an individual for crops relocation, rather than regarded the compensation for relocation as non-income, nor granted any tax-free benefits for compensation received by an individual for relocation that are not provided by law. Therefore, no discriminatory treatment is given to different subjects to be regulated under the same rationale, and thus there is no violation of the principle of equality as embodied in Article 7 of the Constitution.

同之認定方式，而非將個人拆遷補償費認定為非所得，亦非對個人拆遷補償費給予法律所未規定之免稅優惠，並未針對相同規範對象給予不合理之差別待遇，核與憲法第七條規定之平等原則尚無不符。

Finally, it should be noted that, as Article 8 (xi) of the Income Tax Act is not the statutory provision applied by the court to the final and conclusive judgment, the applicable part of the petition should be denied in accordance with Article 5-I (ii) and –III of the Constitutional Interpretation Procedure Act.

末按所得稅法第八條第十一款之規定，並非確定終局判決所適用之法令，依司法院大法官審理案件法第五條第一項第二款及第三項之規定，此部分之聲請，應不受理，附此指明。

Justice Yu-hsiu Hsu filed concurring opinion in part.

本號解釋許大法官玉秀提出部分協同意見書。

J. Y. Interpretation No.608（January 13, 2006）*

ISSUE: Is the directive, in stating to the effect that any stock dividend received subsequent to inheritance should be subject to income taxation, unconstitutional?

RELEVANT LAWS:

Articles 15 and 19 of the Constitution（憲法第十五條、第十九條）; Article 4 (xvii) of the Income Tax Act (as amended and promulgated on January 27, 1995)（所得稅法第四條第十七款（中華民國八十四年一月二十七日修正公布））;Article 14-I, Category I of the Income Tax Act (as amended and promulgated on December 30, 1997)（所得稅法第十四條第一項第一類（八十六年十二月三十日修正公布））; Article 10 of the Estate and Gift Taxes Act（遺產及贈與稅法第十條）; Article 29-I of the Enforcement Rules of the Estate and Gift Taxes Act（遺產及贈與稅法施行細則第二十九條第一項）; Directive Ref. No. TTS-36761 issued by the Ministry of Finance on October 5, 1978（財政部六十七年十月五日台財稅字第三六七六一號函）.

KEYWORDS:

principle of taxation by law（租稅法律主義）, property right（財產權）, estate tax（遺產稅）, estate value（遺產價值）, shares（股票）, net asset value（資產淨值）, undis-

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

tributed earnings（未分配盈餘）, stock value（股票價值）, taxation policies（租稅政策）, income tax（所得稅）, taxable objects（租稅客體）, double taxation（重複課稅）, stock dividend（股利）.**

HOLDING: It is unambiguously provided in the first part of Article 10-I of the Estate and Gift Taxes Act that the estate of the decedent shall be valued according to the prevailing value at the time of his or her death. According to the first part of Article 4 (xvii) of the Income Tax Act as amended and promulgated on January 27, 1995, income tax on properties received by way of inheritance shall be exempted. Pursuant to Category I under Article 14-I of the Income Tax Act as amended and promulgated on December 30, 1997, the gross dividend received by each shareholder of a company shall be considered as the shareholder's individual income from profit seeking, which shall be included in the gross amount of the shareholder's individual consolidated income and thus subject to consolidated income taxation. The Directive Ref. No.

解釋文：遺產稅之課徵，其遺產價值之計算，以被繼承人死亡時之時價為準，遺產及贈與稅法第十條第一項前段定有明文；依中華民國八十四年一月二十七日修正公布之所得稅法第四條第十七款前段規定，因繼承而取得之財產，免納所得稅；八十六年十二月三十日修正公布之所得稅法第十四條第一項第一類規定，公司股東所獲分配之股利總額屬於個人之營利所得，應合併計入個人之綜合所得總額，課徵綜合所得稅。財政部六十七年十月五日台財稅字第三六七六一號函：「繼承人於繼承事實發生後所領取之股利，係屬繼承人之所得，應課徵繼承人之綜合所得稅，而不視為被繼承人之遺產」，係主管機關基於法定職權，為釐清繼承人於繼承事實發生後所領取之股利，究屬遺產稅或綜合所得稅之課徵範圍而為之釋示，符合前述遺產及贈與稅法、所得稅法規定之意旨，不生重複課稅問題，與憲法第

TTS-36761 issued by the Ministry of Finance on October 5, 1978, read , "Any stock dividend received by an heir subsequent to the occurrence of inheritance shall be the heir's income rather than part of the decedent's estate, in respect of which consolidated income tax should be imposed on the heir." The said directive was ex officio issued by the competent authority to clarify whether the stock dividend received by an heir subsequent to the occurrence of inheritance should be subject to estate or consolidated income taxation, which is in line with the intents of the aforesaid provisions of the Estate and Gift Taxes Act and the Income Tax Act and thus does not give rise to any issue of double taxation. Therefore, there is no violation of the principle of taxation by law as embodied in Article 19 of the Constitution, nor is there any violation of the property right guaranteed to the people under Article 15 thereof.

十九條之租稅法律主義及第十五條保障人民財產權之規定，均無牴觸。

REASONING: Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law. If the competent authority, by its

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務。主管機關本於法定職權於適用相關租稅法律規定所為釋示，如無違於一般法律解釋方

statutory authorities and powers, issues necessary directives in applying various provisions of the tax laws without contradicting the general methodologies in legal construction and such directives are in line with the applicable constitutional principles and the legislative purposes of the respective laws, there is no violation of the principle of taxation by law as embodied in Article 19 of the Constitution, nor is there any violation of the constitutional guarantee of the people's property right under Article 15 thereof .

法，於符合相關憲法原則及法律意旨之限度內，即無違於憲法第十九條規定之租稅法律主義，並不生侵害人民受憲法第十五條保障之財產權問題。

Succession commences with the death of the deceased. An heir succeeds at the commencement of the succession to all the rights and obligations pertaining to the estate of the deceased (See Articles 1147 and 1148 of the Civil Code). As such, an heir's obligation to pay estate tax pursuant to the applicable laws shall also commence hence. By the same token, it is provided in the first part of Article 10-I of the Estate and Gift Taxes Act that the estate of the decedent shall be valued according to the prevailing value at the time of his or her death. In respect of the valua-

繼承因被繼承人死亡而開始，繼承人自繼承開始時，即承受被繼承人財產上之一切權利義務（民法第一千一百四十七條、第一千一百四十八條參照），繼承人依法繳納遺產稅之義務亦應自此時發生。遺產及贈與稅法第十條第一項前段規定：遺產價值之計算，以被繼承人死亡時之時價為準，即係本此意旨。如被繼承人遺有未上市或未上櫃股份有限公司之股票，其價值之估定，依同法施行細則第二十九條第一項規定，係以繼承開始日該公司之資產淨值，即營利事業資產總額與負債總額之差額估定之。稽徵機關於核算前開未上

tion of the shares of a company limited by shares that are neither listed nor traded over the counter, it is provided in Article 29-I of the Enforcement Rules of the Estate and Gift Taxes Act that they shall be valued based on the net asset value of the company on the date when the succession commences, namely, the margin between the profitseeking enterprise's gross assets and gross liabilities. Even if the tax authority, in calculating the stock value of the aforesaid company limited by shares that are neither listed nor traded over the counter, includes undistributed earnings among the profit-seeking enterprise's gross assets so as to assess the stock value among the decedent's estate and levies estate tax on an heir accordingly, it is not to be considered a levy on the company's gross assets or undistributed earnings for purposes of collecting estate tax, whether in form or in essence.

市或未上櫃股份有限公司之股票價值時，其營利事業資產總額縱然包含未分配盈餘，以估定被繼承人遺產股票之價值，並據以向繼承人課徵遺產稅，無論形式上或實質上均非對公司之資產總額或未分配盈餘課徵遺產稅。

For an heir who receives any estate due to the occurrence of inheritance, such estate is certainly a type of income. Nevertheless, for reasons of taxation policies, it is not to be taxed as ordinary income,

因繼承事實發生而形成之遺產，就因繼承而取得者而言，固為所得之一種類型，惟基於租稅政策之考量，不依一般所得之課稅方式，而另依法課徵遺產稅。八十四年一月二十七日修正公布

but instead subject to estate taxation as otherwise provided by law. The first part of Article 4 (xvii) of the Income Tax Act as amended and promulgated on January 27, 1995, provides that income tax on properties received by way of inheritance shall be exempted because estate tax shall be levied on any properties received by way of inheritance and thus income tax will no longer be levied. An heir becomes a shareholder of a company limited by shares that are neither listed nor traded over the counter after he or she succeeds to the shares of the company. Upon the company's distribution of revenues, the dividend received by the heir due to his or her shareholding shall, pursuant to Category I under Article 14-I of the Income Tax Act as amended and promulgated on December 30, 1997, be considered as the individual's income from profit seeking, which shall be included in the gross amount of his or her individual consolidated income and thus subject to consolidated income taxation, rather than any properties received by way of inheritance, which should be subject to estate taxation. Therefore, the provisions of Article 4

之所得稅法第四條第十七款前段規定，因繼承而取得之財產，免納所得稅，係因繼承之財產依法應繳納遺產稅，故不再課徵所得稅。繼承人繼承未上市或未上櫃股份有限公司之股票後即成為公司股東，嗣該公司分配盈餘，繼承人因其股東權所獲分配之股利，為其個人依八十六年十二月三十日修正公布之所得稅法第十四條第一項第一類規定之營利所得，應合併計入個人之綜合所得總額，課徵綜合所得稅，並非因繼承取得而經課徵遺產稅之財產，自無適用所得稅法第四條第十七款規定免納所得稅之餘地。是繼承人因繼承取得未上市或未上櫃股份有限公司之股票，與繼承人於繼承該股票後獲分配之股利，分屬不同之租稅客體，分別課徵遺產稅及綜合所得稅，不生重複課稅之問題。關於重複課稅是否違憲之原則性問題，自無解釋之必要。

(xvii) of the Income Tax Act regarding income tax exemption simply do not apply. In addition, the shares of a company limited by shares that are neither listed nor traded over the counter as received by an heir due to inheritance and the stock dividend distributed to the heir subsequent to the occurrence of the inheritance are distinct taxable objects, in respect of which estate tax and consolidated income tax will be levied, respectively. Thus, no issue of double taxation shall arise and hence the fundamental question as to whether double taxation is unconstitutional becomes moot.

The Directive Reference No. TTS-36761 issued by the Ministry of Finance on October 5, 1978, read, "Any stock dividend received by an heir subsequent to the occurrence of inheritance shall be the heir's income rather than the decedent's estate, in respect of which consolidated income tax should be imposed on the heir." The said directive was ex officio issued by the competent authority to clarify whether the stock dividend received by an heir subsequent to the occurrence of

財政部六十七年十月五日台財稅字第三六七六一號函：「繼承人於繼承事實發生後所領取之股利，係屬繼承人之所得，應課徵繼承人之綜合所得稅，而不視為被繼承人之遺產」，係主管機關基於法定職權，為釐清繼承人於繼承事實發生後所領取之股利，究屬遺產稅或綜合所得稅之課徵範圍而為之釋示，符合前述遺產及贈與稅法、所得稅法規定之意旨，與憲法第十九條之租稅法律主義及第十五條保障人民財產權之規定，均無牴觸。

inheritance should be subject to estate or consolidated income taxation, which is in line with the intents of the aforesaid provisions of the Estate and Gift Taxes Act and the Income Tax Act and thus does not give rise to any issue of double taxation. Therefore, there is no violation of the principle of taxation by law as embodied in Article 19 of the Constitution, nor is there any violation of the property right guaranteed to the people under Article 15 thereof.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Yih-Nan Liaw filed dissenting opinion.

本號解釋許大法官玉秀提出部分協同意見書；廖大法官義男提出不同意見書。

J. Y. Interpretation No.609（January 27, 2006）*

ISSUE: Are the relevant directives issued by the Council of Labor Affairs, which imposed additional conditions on the claims for death benefits arising from injury or sickness, unconstitutional?

RELEVANT LAWS:

Articles 23, 153-I and 155 of the Constitution（憲法第二十三條、第一百五十三條第一項、第一百五十五條）; Article 10-VIII of the Amendments to the Constitution（憲法增修條文第十條第八項）; J. Y. Interpretation No. 560（司法院釋字第五六〇號解釋）; Articles 2, 6, 8, 13, 14, 19-I, 23, 24, 26, 62, 63, 64, 70, 71 and 72 of the Labor Insurance Act (as amended on February 28, 1995)（勞工保險條例第二條、第六條、第八條、第十三條、第十四條、第十九條第一項、第二十三條、第二十四條、第二十六條、第六十二條、第六十三條、第六十四條、第七十條、第七十一條、第七十二條（中華民國八十四年二月二十八日修正））; Directive Ref. No. T77LB2-6530 issued by the Council of Labor Affairs on April 14, 1988; Directive Ref. No. T79LB3-4451 issued by same on March 10, 1990; Directive Ref. No. T82LB315865 issued by same on March 16, 1993（行政院勞工委員會七十七年四月十四日台七七勞保二字第六五三〇號函、七十九年

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

三月十日台七九勞保三字第四四五一號函、八十二年三月十六日台八二勞保三字第一五八六五號函）.

KEYWORDS:

labor insurance（勞工保險）, social insurance（社會保險）, social security（社會安全）, fundamental national policies（基本國策）, scope of legislative discretion（立法形成之範圍）, insurance contingency（保險事故）, death benefits（死亡給付）, principle of legal reservation（法律保留原則）.**

HOLDING: A worker's right to enroll in the labor insurance program pursuant to law, as well as his or her rights arising therefrom under public law, shall be protected by the Constitution. Since the suspension and termination of the effectiveness of the insurance, types of insurance contingencies, and distribution of insurance benefits, closely concern the rights and obligations of a worker or of his or her beneficiaries which arise in connection with the insurance, such matters should be regulated either by law or by orders clearly and definitely authorized by law. Additionally, the legislative purposes and means thereof will not be con-

解釋文：勞工依法參加勞工保險及因此所生之公法上權利，應受憲法保障。關於保險效力之開始、停止、終止、保險事故之種類及保險給付之履行等，攸關勞工或其受益人因保險關係所生之權利義務事項，或對其權利之限制，應以法律或法律明確授權之命令予以規範，且其立法之目的與手段，亦須符合憲法第二十三條之規定，始為憲法所許。中華民國八十四年二月二十八日修正之勞工保險條例第十九條第一項規定：「被保險人或其受益人，於保險效力開始後，停止前發生保險事故者，得依本條例規定，請領保險給付。」依同條例第六十二條至第六十四條之規定，死亡給付之保險事故，除法律有特別排

stitutional unless they are consistent with the provisions of Article 23 of the Constitution. Article 19-I of the Labor Insurance Act as amended on February 28, 1995 provides, "Upon the occurrence of an insurance contingency covered by the insurance after the beginning and before the end of the effective period of the insurance, an insured person or his beneficiary may claim insurance benefit payments pursuant to the provisions of this Act." According to Articles 62 to 64 of said Act, the insurance contingencies for death benefits, unless specifically excluded by law (See Articles 23 and 26 of said Act), shall refer to the death of an insured person or his or her parent, spouse or child, irrespective of the time when the cause of the death occurs. However, in case an insured person has already lost his or her ability to work at the time of participating in an insurance program, or receives insurance benefits through fraudulent or other improper acts, the insured person should either be disqualified, or subject to administrative fine and civil and/or criminal liabilities (See Articles 24 and 70 of said Act). The Directive Ref. No. T77LB2-

除規定外（同條例第二十三條、第二十六條參照），係指被保險人或其父母、配偶、子女死亡而言，至其死亡之原因何時發生，應非所問。惟若被保險人於加保時已無工作能力，或以詐欺、其他不正當行為領取保險給付等情事，則屬應取消其被保險人之資格，或應受罰鍰處分，並負民、刑事責任之問題（同條例第二十四條、第七十條參照）。行政院勞工委員會七十七年四月十四日台七七勞保二字第六五三〇號函及七十九年三月十日台七九勞保三字第四四五一號函，就依法加保之勞工因罹患癌症等特定病症或其他傷病，於保險有效期間死亡者，以各該傷病須在保險有效期間發生為條件，其受益人始得請領死亡給付，乃對於受益人請領死亡保險給付之權利，增加勞工保險條例所無之限制，與憲法第二十三條所定法律保留原則有違，於此範圍內，應不再適用。

6530 issued by the Council of Labor Affairs on April 14, 1988, as well as the Directive Ref. No. T79LB3-4451 issued by same on March 10, 1990, stated that a beneficiary of an insured person who participated in the labor insurance program pursuant to law and died of cancer or any other specified disease or injury or sickness during the effective period of the insurance may not claim death benefits unless the respective injury or sickness occurred during the effective period of the insurance. The foregoing directives have imposed additional restrictions on the right of a beneficiary to claim insurance benefit payments, which are not provided for by the Labor Insurance Act. As such, they are inconsistent with the principle of legal reservation as embodied by Article 23 of the Constitution and shall no longer apply to the extent of such inconsistency.

REASONING: Labor insurance is a social welfare program established by the State to implement and enforce the fundamental national policies to protect workers as provided in Article 153-I of

解釋理由書：勞工保險係國家為實現憲法第一百五十三條第一項保護勞工及第一百五十五條、憲法增修條文第十條第八項實施社會保險制度之基本國策而建立之社會福利措施，為社會保

the Constitution and to provide a social insurance system as described in Article 155 thereof and Article 10-VIII of the Amendments to the Constitution. Labor insurance, which is a type of social insurance, is intended to ensure the stability of workers' lives and to promote social security. As such, labor insurance has a clear social policy purpose. A worker's right to participate in the labor insurance program pursuant to law shall be protected by the Constitution. According to the Labor Insurance Act, the insurance premium contributed by a worker is calculated based on a certain percentage of the insured worker's monthly insurance salary (See Articles 13 and 14 of the Labor Insurance Act). As such, the payment of insurance premium is not exactly in proportion to the risks of the insurance contingencies. Instead, the function of social and mutual aid is maintained under the principle of the ability to pay. Furthermore, unlike commercial insurance where an individual may decide of his or her own volition whether to participate in the insurance program or not, the labor insurance is a type of mandatory insurance except for

險之一種，旨在保障勞工生活安定、促進社會安全，是以勞工保險具有明顯之社會政策目的。勞工依法參加勞工保險之權利，應受憲法之保障。依勞工保險條例之規定，勞工分擔之保險費係按投保勞工當月之月投保薪資一定比例計算（勞工保險條例第十三條、第十四條參照），與保險事故之危險間並非謹守對價原則，而是以量能負擔原則維持社會互助之功能；勞工保險除自願參加保險者外，更具有強制性，凡符合一定條件之勞工均應全部參加該保險（同條例第六條、第八條、第七十一條、第七十二條參照），非如商業保險得依個人意願參加。是以各投保單位依勞工保險條例規定為其所屬勞工辦理投保時，勞工保險局對其危險之高低無須為評估之核保手續，更不能因危險過高而拒絕其投保，各投保單位所屬之勞工對於是否加入勞工保險亦無選擇之權，此類勞工應依法一律強制加入勞工保險，繳納保險費，分擔自己與其他加保勞工所生保險事故之危險，此均與商業保險有間。又勞工保險因具社會保險之性質，對於何種保險事故始應為保險給付，立法機關自得衡酌勞工保險政策之目的、社會安全制度之妥適建立、勞工權益之保護、社會整體資源之分配及國家財政之負擔

those who participate in the insurance voluntarily, which means that whoever meets certain conditions shall participate in the insurance program (See Articles 6, 8, 71 and 72 of said Act). Therefore, the Labor Insurance Bureau is not required to assess the likelihood of the risks involved for any particular worker when an insured unit applies for the insurance coverage for its workers in accordance with the provisions of the Labor Insurance Act, let alone to reject the application for said insurance on the ground that there exist significant risks. Besides, the employees of an insured unit have no choice but to participate in the labor insurance program since they should, by law, participate in the insurance program without exception, paying insurance premiums and sharing the risks of the insurance contingencies that may occur to themselves and other insured workers. Moreover, since labor insurance is, in essence, a form of social insurance, the legislature may, of course, decide upon the scope of its coverage after considering such factors as the purposes of the labor insurance policies, proper implementation of the social security, 能力等因素，本於前述意旨形成一定之必要照顧範圍。勞工依法參加勞工保險所生之公法上權利，亦應受憲法之保障。關於保險效力之開始、停止、終止、保險事故之種類及保險給付之履行等，攸關勞工或其受益人因保險關係所生之權利義務事項，或對其權利之限制，應以法律或法律明確授權之命令予以規範，且其立法之目的與手段，亦須符合憲法第二十三條之規定，始為憲法所許。

rity system, protection of workers' rights and interests, distribution of overall social resources, financial burden of the State, and so forth. A worker's rights arising from participation in the labor insurance program under public law shall also be protected by the Constitution. Since the suspension and termination of the effectiveness of the insurance, types of insurance contingencies, and distribution of insurance benefits closely concern the rights and obligations of a worker or of his or her beneficiaries which arise in connection with the insurance, such matters should be regulated either by law or by orders clearly and definitely authorized by law. Additionally, the legislative purposes and means thereof will not be constitutional unless they are consistent with the provisions of Article 23 of the Constitution.

Article 19-I of the Labor Insurance Act as amended on February 28, 1995 provides, "Upon the occurrence of an insurance contingency covered by the insurance after the beginning and before the end of the effective period of the insur-

勞工保險條例第十九條第一項規定：「被保險人或其受益人，於保險效力開始後，停止前發生保險事故者，得依本條例規定，請領保險給付。」就保險事故發生之原因係於何時存在未設任何限制。於普通事故保險，依勞工保險

ance, an insured person or his beneficiary may claim insurance benefit payments pursuant to the provisions of this Act." The foregoing provision does not impose any restriction on the time when the cause of the insurance contingency occurs. In respect of ordinary injury insurance, Article 2 and Chapter IV of the Labor Insurance Act provide for seven kinds of benefits, namely those for maternity, injury and sickness, medical care, disability, unemployment, old age and death, covering a variety of specific insurance contingencies. According to Articles 62 to 64 of said Act, the insurance contingencies for death benefits, unless specifically excluded by law (See Articles 23 and 26 of said Act), shall refer to the death of an insured person or his or her parent, spouse or child, irrespective of the time when the cause of the death occurs. After all, death benefits are meant to prevent the economic hardships that may burden the family or dependents of a worker who died during his or her service by sustaining their livelihood through insurance benefits, thereby conforming to the constitutional intent to protect workers. However,

條例第二條及第四章之規定，保險給付計有生育給付、傷病給付、醫療給付、殘廢給付、失業給付、老年給付及死亡給付七種，各承保不同之特定保險事故。依同條例第六十二條至第六十四條之規定，死亡給付所承保之保險事故，除法律有特別排除規定外（同條例第二十三條、第二十六條參照），係指被保險人或其父母、配偶、子女死亡而言，至其死亡之原因何時發生，則非所問。蓋死亡給付乃在避免勞工於勞動期間內死亡時對家庭或受扶養親屬所造成之經濟上困頓，而以保險給付維持其生活，以符憲法保障勞工之意旨。至若被保險人於加保前，已因嚴重之傷病而不具工作能力，卻參加保險，係應取消其被保險人資格（同條例第二十四條參照）；甚或有以詐欺或其他不正當行為領取保險給付等情事，則屬應受罰鍰之處分，並負民、刑事責任之問題（同條例第七十條參照）。

in case an insured person already lost his or her ability to work due to serious injury or sickness prior to participating in an insurance program but participated in such insurance anyway, the insured person should be disqualified (See Article 24 of said Act). In an even worse scenario, in case an insured person receives insurance benefits through fraudulent or other improper acts, he or she should be subject to administrative fine, as well as civil and/or criminal liabilities (See Article 70 of said Act).

The Directive Ref. No. T77LB2-6530 issued by the Council of Labor Affairs on April 14, 1988 read, "Where an insured person or his or her beneficiary claims insurance benefit payments pursuant to Article 19 of said Act (Labor Insurance Act), the insurance contingency covered by the insurance should occur after the beginning and before the end of the effective period of the insurance. Thus, no insurance benefit payments should be made for any disability or death of a worker resulting from a contingency that had occurred before the worker enrolled

行政院勞工委員會七十七年四月十四日台七七勞保二字第六五三0號函謂：「依同條例（勞工保險條例）第十九條規定，被保險人或其受益人請領保險給付，以於保險效力開始後停止前發生保險事故者為限，故有關勞工於加保前發生事故導致之殘廢或死亡，應不予核發任何保險給付。」就勞工於加保前發生傷病導致之死亡，增加該死亡給付保險事故之原因須於保險有效期間發生，始得為保險給付之條件；同委員會七十九年三月十日台七九勞保三字第四四五一號函謂：「被保險人如經查證於加保前已有嚴重身心障害或明顯外在症

in the insurance program." In respect of the death of a worker resulting from any injury or sickness occurring prior to his or her participating in the insurance program, the foregoing directive has imposed an additional condition that no insurance benefit payments should be made unless the cause of the insurance contingency occurred during the effective period of the insurance. The Directive Ref. No. T79LB3-4451 issued by the same Council on March 10, 1990 read, "In case an insured person is confirmed to have contracted any serious physical or mental disease or apparent external symptoms, or to have been positively diagnosed as suffering from such diseases as lupus erythematosus, cancer or uremia prior to his or her participating in the insurance program, neither cash benefit nor medical care benefit should be claimed for that particular contingency." Since the cash benefit mentioned above covers death benefits, the foregoing directive is considered to have imposed an additional condition on the claim for death benefits by stipulating "no prior disease of the specified kinds before participating in the insurance pro-

狀或已診斷確定罹患紅斑性狼瘡症、癌症及尿毒症等疾病者，均不得就該事故請領現金給付及醫療給付。」其中現金給付涵蓋死亡給付，是就請領死亡給付增加「於加保前須無罹患各該特定疾病」之條件。上開函釋適用於死亡給付部分，就依法加保之勞工因罹患癌症等特定病症或其他傷病，於保險有效期間死亡者，以各該傷病須在保險有效期間發生為條件，其受益人始得請領死亡給付，乃對於受益人請領死亡保險給付之權利，增加勞工保險條例所無之限制，與憲法第二十三條所定法律保留原則有違，於此範圍內，應不再適用。至罹患何種特定疾病及其與保險有效期間之時間上如何關聯，得依保險法理並參酌其他社會安全制度，排除於勞工保險給付之外，乃屬立法形成問題。

gram." To the extent that the aforesaid directives apply to death benefits, they have imposed additional restrictions on the right of a beneficiary to claim insurance benefit payments, which are not provided for by the Labor Insurance Act, because they state that a beneficiary of an insured person who articipated in the labor insurance program pursuant to law and died of cancer or any other specified disease or injury or sickness during the effective period of the insurance may not claim death benefits unless the respective injury or sickness occurred during the effective period of the insurance. As such, they are inconsistent with the principle of legal reservation as embodied by Article 23 of the Constitution and shall no longer apply to the extent of such inconsistency. As for the correlation between the suffering from any particular diseases and the effective period of insurance, as well as the exclusion of such diseases from labor insurance benefits based on rationales of insurance law and considerations of other social security systems, it should be an issue subject to legislative discretion.

The Directive Ref. No. T82LB 315865 issued by the Council of Labor Affairs on March 16, 1993 stated, "In case an insured person is confirmed to have been positively diagnosed as suffering from lupus erythematosus or cancer prior to his or her participation in the insurance program, and he or she had a relapse through a period of remission after enrolling in the insurance program, the contingency should be regarded as having occurred after the effective period of the insurance and thus insurance benefit may be claimed in accordance with the provisions of the Labor Insurance Act." The aforesaid directive has made an interpretation in favor of a worker who suffered from lupus erythematosus or cancer prior to his or her participation in the insurance program and had a relapse through a period of remission after joining the insurance program, which does not relate to the issue of whether death benefits may be claimed in respect of a worker who, during the effective period of the insurance, died of any specified disease from which he or she already suffered prior to his or her participation in the insurance program.

行政院勞工委員會八十二年三月十六日台八二勞保三字第一五八六五號函謂：「有關被保險人如經查證於加保前已診斷確定罹患紅斑性狼瘡及癌症，歷經『緩解期』（Remission ）於加保後再發病者，視為加保生效後發生之事故，得依勞工保險條例之規定請領保險給付。」係就加保前罹患紅斑性狼瘡及癌症，歷經緩解期於加保後再發病之勞工，為有利之闡示，與勞工於加保前已罹患特定疾病，於保險有效期間，因該特定疾病死亡時，得否請領死亡給付尚無關聯，非屬本件解釋範圍，併此敘明。

Thus, it should be noted that it is beyond the scope of this Interpretation.

J. Y. Interpretation No.610（March 3, 2006）*

ISSUE: Is the Public Functionaries Discipline Act constitutional in providing that the thirty-day peremptory period for filing of application for reconsideration of a disciplinary action imposed upon a public functionary begins to run from the date on which the relevant criminal decision becomes final and conclusive?

RELEVANT LAWS:

The Constitution, Articles 7 and 16（憲法第七條、第十六條）; Code of Criminal Procedure, Article 360（刑事訴訟法第三百六十條）; Code of Civil Procedure, Article 500, Paragraph 2（民事訴訟法第五百條第二項）; Administrative Proceedings Act, Article 276, Paragraph 2（行政訴訟法第二百七十六條第二項）; Public Functionaries Discipline Act, Article 29; Article 33, Paragraph 1, Subparagraph 4; Article 34, Subparagraph 2（公務員懲戒法第二十九條、第三十三條第一項第四款、第三十四條第二款）; Constitutional Interpretation Procedure Act, Article 5, Paragraph 1, Subparagraph 2; Paragraph 3（司法院大法官審理案件法第五條第一項第二款、第三項）: J. Y. Interpretation No. 446（司法院釋字第四四六號解釋）

KEYWORDS:

public functionary（公務員）, reconsideration（再審議）,

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* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

person disciplined（受懲戒處分人）, final and conclusive criminal decision（刑事確定裁判）, private prosecutor（自訴人）, related person（關係人）, judicial relief（司法救濟）, fundamental procedural right（程序性基本權）, due process of law（正當法律程序）, peremptory period（不變期間）, stability of law（法安定性）, raise an objection（聲明不服）, waive/withdraw the appeal（捨棄／撤回上訴）, judgment of "not guilty"（無罪判決）, rule of equal protection（平等保護原則）, recusal system（迴避制度）, concurrent imposition of criminal punishment and disciplinary sanction（刑懲併行）, imposition of disciplinary sanction after criminal punishment（刑先懲後）.**

HOLDING: The Public Functionaries Discipline Act provides in Article 34, Subparagraph 2, that referral or application for reconsideration under Article 33, Paragraph 1, Subparagraph 4, thereof shall be made within thirty days from the date on which the relevant criminal decision becomes final and conclusive. Nevertheless, in situations where the person disciplined is a defendant in a criminal decision but may not raise an objection to the decision, whereas only the other party may raise an objection and

解釋文：公務員懲戒法第三十四條第二款規定，依同法第三十三條第一項第四款為原因，移請或聲請再審議者，應自相關之刑事裁判確定之日起三十日內為之。該期間起算日之規定，於受懲戒處分人為該刑事裁判之被告，而其對該裁判不得聲明不服，僅他造當事人得聲明不服；以及受懲戒處分人非該刑事裁判之被告，僅其與該裁判相關等情形；因現行刑事訴訟法制就檢察官或自訴人何時收受裁判之送達、其得聲明不服而未聲明不服以及該等裁判於何時確定等事項，並無法院、檢察官（署）

where the person disciplined is not a defendant in the criminal decision but is the person related thereto, it is impossible for the person disciplined to know the date on which the decision will become final and conclusive and to file an application for reconsideration in due time because, under the current system of criminal procedure, the court, public prosecutor (or prosecutor's office) or private prosecutor is not required to notify the defendant or the related person of such matters as the date on which service of the judgment is received by the public prosecutor or private prosecutor, the fact that an objection may be raised but has not been raised and the date on which the decision will become final and conclusive. The provision of the Disciplinary Act that the period for application for reconsideration shall begin to run from the date such decision becomes final and conclusive without taking into consideration the distinct status of the person disciplined in the relevant criminal action and whether the person knew about the fact at the time when the decision became final and conclusive, is contrary to the rule of equal protection of the people's

或自訴人應通知被告及關係人等之規定，致該等受懲戒處分人未能知悉該類裁判確定之日，據以依首開規定聲請再審議。是上開期間起算日之規定，未區分受懲戒處分人於相關刑事確定裁判之不同訴訟地位，及其於該裁判確定時是否知悉此事實，一律以該裁判確定日為再審議聲請期間之起算日，與憲法第七條及第十六條人民訴訟權之平等保障意旨不符。上開受懲戒處分人以相關之刑事確定裁判聲請再審議之法定期間，應自其知悉該裁判確定之日起算，方符上開憲法規定之本旨。首開規定與此解釋意旨不符部分，應不再適用。本院釋字第四四六號解釋，應予補充。

right of action under Article 7 and Article 16 of the Constitution. Consequently, the peremptory period in which the person disciplined in this case may apply for reconsideration based on the relevant final and conclusive criminal decision shall begin from the date such decision becomes final and conclusive to be conformable with the purpose of the Constitution. The provisions cited above, being inconsistent with the essence of this interpretation, must be rendered inoperative, and our interpretation No. 446 shall be supplemented hereby.

REASONING: The people's right of action under Article 16 of the Constitution is a fundamental procedural right of the people to seek judicial relief in the case of infringement of their right. Its substance can be realized only by the enactment of relevant laws by the legislature. But this fundamental procedural right of the people can be brought into full operation only if the laws relating to the process of judicial relief enacted by the legislature are consistent with the aim of due process of law and the doctrine of

解釋理由書：憲法第十六條所定人民之訴訟權，乃人民於其權利遭受侵害時得請求司法救濟之程序性基本權，其具體內容，應由立法機關制定相關法律，始得實現。惟立法機關所制定有關訴訟救濟程序之法律，應合乎正當法律程序及憲法第七條平等保障之意旨，人民之程序基本權方得以充分實現。公務員之懲戒事項，屬司法權之範圍，現由公務員懲戒委員會（下稱公懲會）審理，懲戒處分影響人民服公職之權利至鉅，立法形成之懲戒案件再審議制度，自應符合上開原則，始能給予受

equal protection under Article 7 of the Constitution. Matters in connection with disciplinary sanctions imposed on public functionaries come under the judicial power and are currently heard by the Commission on Disciplinary Sanctions on Public Functionaries (hereinafter the "Disciplinary Commission"). Because disciplinary sanctions greatly affect the right of the people to serve as public functionaries, the system of reconsideration established by the legislature for cases of disciplinary sanctions must of course conform to the aforesaid principles so that the person disciplined may be accorded reasonable protection of his or her right to suit.

懲戒處分人合理之訴訟權保障。

The Public Functionaries Discipline Act provides by Article 33, Paragraph 1, Subparagraph 4, that where the facts found in a final and conclusive criminal decision are distinguishable from the facts supporting the original sanction resolved upon, the original agency referring the case for consideration or the person disciplined may refer the case or file an application, as the case may be, for reconsid-

公務員懲戒法（下稱公懲法）第三十三條第一項第四款規定：原議決後，其相關之刑事確定裁判所認定之事實，與原議決相異者，原移送機關或受懲戒處分人，得移請或聲請再審議。其立法目的係在對公務員之懲戒一經議決即行確定，如認定事實有誤，並無其他補救措施所設之特別救濟制度。受懲戒處分人因此即於一定條件下享有聲請再審議之訴訟權。同法第三十四條第二款

eration. The purpose of the law is to establish a special system of relief to rectify the situation where no other remedial measures are available once the resolution to impose a disciplinary action upon the public functionary has become conclusive notwithstanding any error found in the facts. The person disciplined is thus afforded by this system the right of action by way of an application for reconsideration under certain conditions. The Disciplinary Act further provides in Article 34, Subparagraph 2, that referral or application for reconsideration "by any of the reasons specified in Article 33, Paragraph 1, Subparagraphs 2 to 4" shall be made "within thirty days from the date on which the relevant criminal decision becomes final and conclusive." The legislative intent is to set a limit on the period in which the referral or application for reconsideration may be made and to specify the commencement date of such period in order to maintain the stability of law. In the situation where the person disciplined is a defendant in a criminal decision who is entitled to raise an objection and the other party (the public prosecutor or pri-

規定，移請或聲請再審議，「依前條第一項第二款至第四款為原因者，自相關之刑事裁判確定之日起三十日內」為之。其立法意旨則在限制移請或聲請再審議之期間及規範該期間之起算日，以維護法安定性。該期間起算日之規定，於受懲戒處分人為刑事裁判之被告而得聲明不服，他造當事人（即檢察官或自訴人）亦得聲明不服而捨棄或撤回上訴之情形，因刑事訴訟法第三百六十條規定：「捨棄上訴權或撤回上訴，書記官應速通知他造當事人」，則該受懲戒處分人於受通知後，對該裁判是否聲明不服及該裁判應於何日確定，可自行決定及計算，其聲請再審議之期間應自該裁判確定之日起算，固無問題。惟於(1)受懲戒處分人為相關刑事裁判之被告，與他造當事人俱得聲明不服，而他造當事人不為聲明不服之情形；或(2)受懲戒處分人為刑事裁判之被告，而其對該裁判（如無罪判決）不得聲明不服，僅他造當事人得聲明不服；或(3)受懲戒處分人非該刑事裁判之被告，僅其與該裁判相關等情形；因現行刑事訴訟法制就檢察官或自訴人何時收受裁判之送達、其得聲明不服而未聲明不服暨該等裁判於何時確定等事項，並無法院、檢察官（署）或自訴人應通知被告及關係

vate prosecutor) may also raise an objection but chooses to waive or withdraw the appeal, the period for filing an application for reconsideration shall of course begin from the date on which the decision becomes final and conclusive because the person disciplined ought to be able to decide by himself or herself whether to raise an objection and to find out the date on which the criminal decision becomes final and conclusive after receiving a notification served upon him or her in pursuance of Article 360 of the Code of Criminal Procedure, which provides: "The court clerk shall promptly notify the opposing party of waiver or withdrawal of the right to appeal." However, in the situation where: (1) the person disciplined is a defendant in a relevant criminal decision to which both parties may raise an objection but the other party has not done so; (2) the person disciplined is a defendant in a criminal decision to which he or she may not raise an objection (e.g., a judgment of "not guilty"), whereas the other party only may raise an objection thereto; or (3) the person disciplined is not a defendant in the criminal decision but is a related per-

人等之規定，致該等受懲戒處分人未能知悉該類裁判之確定日，據以依上開規定聲請再審議；且因該期間屬不變期間，一旦逾期，即生失權之效果。則上開期間起算日之規定，未區分受懲戒處分人於相關刑事裁判之不同訴訟地位，及其於該裁判確定時是否知悉此事實，一律以該裁判確定之日作為再審議聲請期間之起算日，因欠缺合理正當之理由足資證明採取此種相同規範之必要性，顯係對於不同事物未予合理之差別待遇，是系爭規定違反平等原則。

son, it is impossible for the person disciplined to know the date on which the decision will become final and conclusive and to file an application for reconsideration in due time because, under the current system of criminal procedure, the court, public prosecutor (or prosecutor's office) or private prosecutor is not required to notify the defendant or the related person of such matters as the date on which service of the judgment is received by the public prosecutor or private prosecutor, the fact that an objection may be raised but has not been raised and the date on which the decision will become final and conclusive. Moreover, the period is a peremptory period, of which a lapse will result in loss of the right. The provision of the Disciplinary Act that the period for application for reconsideration shall invariably begin to run from the date such decision becomes final and conclusive without taking into consideration the distinct status of the disciplined person in the relevant criminal action and whether the person knew about the fact at the time when the decision became final and conclusive, is not supported by proper and

reasonable grounds to show adequately the necessity of making such uniformly applicable provision and has obviously failed to make reasonable differentiation in dealing with matters of different nature. It is therefore contradictory to the rule of equal protection.

Other statutory provisions with respect to the date a peremptory period begins to run, similar to the period for application for reconsideration of a disciplined public functionary, include the Code of Civil Procedure, Article 500, Paragraph 2, and the Administrative Proceedings Act, Article 276, Paragraph 2, which provide respectively, with respect to the peremptory period for institution of an action for a new trial: "The period specified in the preceding paragraph begins to run from the time when the judgment becomes final and conclusive or, where the judgment becomes final and conclusive before the service thereof, from the time of service; but if the party does not know the cause of the action for a new trial until after the judgment has become final and conclusive, it begins to run from the time when

類似上開公務員懲戒聲請再審議之不變期間起算日規範，民事訴訟法第五百條第二項及行政訴訟法第二百七十六條第二項，就提起再審之訴之不變期間起算日，分別規定：「前項期間，自判決確定時起算，判決於送達前確定者，自送達時起算；其再審之理由發生或知悉在後者，均自知悉時起算。但自判決確定後已逾五年者，不得提起。」及「前項期間自判決確定時起算。但再審之理由知悉在後者，自知悉時起算。」均係針對各該訴訟特別救濟事由之不同情形，分別規定該不變期間不同之起算日，就不同事物為合理之差別待遇。故前述懲戒案件之受懲戒處分人，依公懲法第三十三條第一項第四款為原因，擬聲請再審議而未能知悉其相關刑事裁判之確定日者，該不變期間應自其知悉該裁判確定之日起算，方符訴訟權平等保障之要求。公懲法第三十四條第

he or she obtains knowledge of the cause; however, no action for a new trial may be instituted after the expiration of five years from the day when the judgment became final and conclusive," and "The period specified in the preceding paragraph begins to run from the time when the judgment becomes final and conclusive; but if the party does not know the cause of the action for a new trial until after the judgment has become final and conclusive, it begins to run from the time when he or she obtains knowledge of the cause." These laws are designed to provide reasonable differentiation in dealing with different matters and specify different commencement dates of such peremptory period in light of different causes of special relief in the action. Therefore, to meet the requirement of equal protection of the right of action, the peremptory period in which a person disciplined who wishes to apply for reconsideration under the Disciplinary Act, Article 33, Paragraph 1, Subparagraph 4, but has no way to know the date on which the relevant criminal decision becomes final and conclusive, must file such an application shall commence

二款關於再審議聲請期間起算日之規定，與上開解釋意旨不符部分，與憲法第七條及第十六條規定之本旨有所牴觸，應不再適用，公懲法及相關法令並應修正，另為妥適之規範，以回復合憲之狀態。惟於修正前，公懲會應按本解釋之意旨，以是類受懲戒處分人知悉相關刑事裁判確定之日，作為其聲請再審議期間之起算日。至於本聲請案已受公懲會駁回再審議聲請之聲請人等，得依本解釋之意旨聲請再審議，該期間自本解釋送達之日起算。本院釋字第四四六號解釋所稱聲請再審議法定期間之起算日，「就得聲明不服之第一審及第二審裁判言，固應自裁判確定之日起算」一節，應予補充解釋如上。

from the date known to him or her as the date such decision becomes final and conclusive. The provision set forth in Article 34, Subparagraph 2, of the Disciplinary Act in respect of the commencement date of the period for filing of the application for reconsideration is inconsistent with the essence of our interpretation given above and is thus contradictory to the purposes provided in Article 7 and Article 16 of the Constitution, and shall be rendered inoperative. Additionally, amendments must be made to the Disciplinary Act and all relevant laws, regulations and appropriate rules must be established to meet the constitutional requirement. Before the laws are amended, however, the date known to the person disciplined as the date on which the relevant criminal decision becomes final and conclusive shall be taken by the Disciplinary Commission as the commencement date of the period for filing the application for reconsideration in compliance with this interpretation. As for the petitioners in this case who have had their applications for reconsideration denied by the Disciplinary Commission, further applications for reconsideration

may be filed on the ground of this interpretation and the period for filing such applications shall begin to run from the date of service of this interpretation. Our holding in J. Y. Interpretation No. 446 that the commencement date of the peremptory period for filing of an application for reconsideration "in the case of a decision delivered by courts of the first instance and appeal to which an objection may be raised, the period shall begin to run from the date the decision becomes final and conclusive," shall be supplemented with the holding in this interpretation.

Regarding that part of the petition requesting our additional interpretation on the issue of whether the current system of discipline of public functionaries is contradictory to the purpose of Article 16 of the Constitution in protecting the right of action on the ground that the system fails to put into practice the recusal system (pursuant to Article 29 of the Disciplinary Act which makes the Code of Criminal Procedure applicable *mutatis mutandis*) and that it adopts the practice of "concur-

至聲請人等認現行公務員懲戒制度未落實迴避制度（公懲法第二十九條準用刑事訴訟法）暨其應採取「刑先懲後」而非現行之「刑懲併行」制度，均有違憲法第十六條訴訟權保障之意旨，併請解釋部分，因該等事項所涉及之相關規定並非本件確定終局議決所適用之法令，核與司法院大法官審理案件法第五條第一項第二款規定不符，依同條第三項規定，應不受理，併此敘明。

rent imposition of criminal punishment and disciplinary sanction" instead of "imposition of disciplinary sanction after criminal punishment" does not meet the requirement of the Constitutional Interpretation Procedure Act, Article 5, Paragraph 1, Subparagraph 2, as the provisions involved in such matters are not the laws or regulations applied in making the final and conclusive resolution in this case, and the petition must therefore be denied in pursuance of Paragraph 3 of the same article.

Justice Yu-Tien Tseng filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion in part, in which Justice Tzu-Yi Lin and Justice Tzong-Li Hsu joined.

Justice Feng-Zhi Peng filed dissenting opinion, in which Justice Pi-Hu Hsu joined.

本號解釋曾大法官有田提出協同意見書；許大法官玉秀、林大法官子儀、許大法官宗力共同提出部分協同意見書；彭大法官鳳至、徐大法官璧湖共同提出不同意見書。

J. Y. Interpretation No.611（May 26, 2006）*

ISSUE: Are the provisions of Article 15-II of the Enforcement Rules of the Public Functionaries Appointment Act, as amended in 1996, unconstitutional?

RELEVANT LAWS:

Articles 18 and 23 of the Constitution（憲法第十八條、第二十三條）; Article 17-III and -IV of the Public Functionaries Appointment Act as amended and promulgated on November 14, 1996（中華民國八十五年十一月十四日修正公布之公務人員任用法第十七條第三項、第四項）; Article 39 of the Public Functionaries Appointment Act（公務人員任用法第三十九條）; Article 15-II of the Enforcement Rules of the Public Functionaries Appointment Act as amended and promulgated on December 10, 1996（八十五年十二月十日修正發布之公務人員任用法施行細則第十五條第二項）.

KEYWORDS:

public functionary（公務人員）, transfer and promotion（陞遷）, recommended appointment rank（薦任）, designated appointment rank（委任）, supplementary interpretation（補充性之解釋）, principle of legal reservation（法律保留原則）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: Article 18 of the Constitution guarantees the people's right to hold public offices, which encompasses the right of a public functionary to be appointed, promoted and transferred pursuant to law after taking his or her office. The essential contents of the appointment, promotion and transfer shall be prescribed by law. If the competent authority, while setting forth the applicable enforcement rules by the authorization of law, does not take a distorted view of the general legal construction methodology in making supplementary interpretations in respect of the applicable provisions concerning appointments and promotions, there is no violation of the principle of legal reservation to the extent that it is consistent with the relevant constitutional principles and legal intentions.

解釋文：憲法第十八條保障人民服公職之權利，包括公務人員任職後依法令晉敘陞遷之權。晉敘陞遷之重要內容應以法律定之。主管機關依法律授權訂定施行細則時，為適用相關任用及晉敘之規定而作補充性之解釋，如無違於一般法律解釋方法，於符合相關憲法原則及法律意旨之限度內，即與法律保留原則無所牴觸。

The Enforcement Rules of the Public Functionaries Appointment Act as amended and promulgated on December 10, 1996, were set forth under the authorization of Article 39 of the Public Functionaries Appointment Act. Article 15-II of said Rules provides, "'The offices be-

中華民國八十五年十二月十日修正發布之公務人員任用法施行細則，係依公務人員任用法第三十九條授權所訂定，該細則第十五條第二項規定「本法第十七條第四項所稱『薦任第七職等以下職務』，指職務之列等最高為薦任第七職等者而言」，乃主管機關就同年十

low the seventh recommended appointment rank' referred to in Article 17-IV of the Act shall mean those offices whose highest rank is the seventh recommended appointment rank." The foregoing is a supplementary interpretation made by the competent authority in respect of the provisions of Article 17-IV of the Public Functionaries Appointment Act as amended and promulgated on November 14, 1996, which falls within the scope of reasonable interpretation of the enabling statute. Therefore, it does not violate the right of the people to hold public offices as guaranteed under Article 18 of the Constitution nor does it violate the principle of legal reservation as embodied under Article 23 thereof.

一月十四日修正公布之公務人員任用法第十七條第四項規定所為補充性之解釋，尚在母法合理解釋範圍之內，與憲法第十八條保障人民服公職權利及第二十三條法律保留原則均無違背。

REASONING: Article 18 of the Constitution guarantees the people's right to hold public offices, which encompasses the right of a public functionary to be appointed, promoted and transferred pursuant to law after taking his or her office. The essential contents of the appointment, promotion and transfer shall be prescribed by law. If the competent authority, while

解釋理由書：憲法第十八條保障人民服公職之權利，包括公務人員任職後依法令晉敘陞遷之權。晉敘陞遷之重要內容應以法律定之。主管機關依法律授權訂定施行細則時，為適用相關任用及晉敘之規定而作補充性之解釋，如無違於一般法律解釋方法，於符合相關憲法原則及法律意旨之限度內，即與法律保留原則無所牴觸。

setting forth the applicable enforcement rules by the authorization of law, does not take a distorted view [See comments above.] of the general legal construction methodology in making supplementary interpretations in respect of the applicable provisions concerning appointments and promotions, there is no violation of the principle of legal reservation to the extent that it is consistent with the relevant constitutional principles and legal intentions.

Article 17-III of the Public Functionaries Appointment Act as amended and promulgated on November 14, 1996, (hereinafter referred to as the "Appointment Act") provides that if a public functionary with the fifth designated appointment rank, who is certified by the Ministry of Civil Service as qualified for the highest base salary, has received Grade A twice and Grade B or above once for the year-end performance evaluation during the last three years and successfully completed the training program for promotion to the recommended appointment rank while possessing certain other qualifications, he or she shall be eligible to be

八十五年十一月十四日修正公布之公務人員任用法（以下簡稱任用法）第十七條第三項規定，委任公務人員經銓敘部審定合格實授敘委任第五職等本俸最高級，最近三年年終考績二年列甲等、一年列乙等以上，並經晉升薦任官等訓練合格，且具備一定資格者，取得升任薦任第六職等任用資格，不須經升官等考試及格，不受同條第一項規定之限制。旨在既有考試陞遷制度外另設考績升等管道，使服務成績優良者得有陞遷機會。惟立法機關為避免對文官制度造成重大衝擊，阻礙考試及格任薦任官等人員日後之陞遷管道，以及影響中高級公務人員素質，故對於依該規定取得薦任第六職等任用資格者，就其考績、

promoted to the sixth recommended appointment rank without having to pass any promotion examination notwithstanding the provisions of Paragraph I of said Article. The aforesaid provision is designed to further establish a channel for performance-based promotion in addition to the existing promotional system via examinations, thus enabling those with excellent service records to have an opportunity to be promoted. Nevertheless, in order to prevent any major impact on the civil service system, any blocking of the promotional channel for those who qualify for the recommended appointment rank by passing examinations, and any restrictions on the qualifications of middle- and high-ranking government officials, the legislature has set forth certain conditions in respect of the performance, years of service, etc., for those who are eligible to be promoted to the sixth recommended appointment rank pursuant to said provision. Furthermore, Article 17-IV of said Act provides that any person eligible to be promoted to the recommended appointment rank based on performance shall be qualified to hold an office below

服務年資訂有一定之條件，並於同法第十七條第四項規定，除具有同條第一項第一款、第二款、第四款所定考試及格之資格者外，考績取得薦任官等者，以擔任薦任第七職等以下職務為限，對升任薦任官等後所得擔任職務之職務列等有所限制，藉以平衡考試陞遷之比重，乃立法形成之自由。

the seventh recommended appointment rank only unless otherwise qualified by means of passing any of the examinations provided in Subparagraphs 1, 2 and 4 of Paragraph I of said Article. The aforesaid provision has set limitations on the offices to be held by a public functionary who is promoted to the recommended appointment rank so as to balance the promotions based on examinations. It is rightfully within the legislative discretion to do so.

Article 17-IV of the aforesaid Appointment Act provides that any person eligible to be promoted to the recommended appointment rank based on performance shall be qualified to hold an office below the seventh recommended appointment rank only. As for the phrase "…to hold an office below the seventh recommended appointment rank only," it is too vague and ambiguous regarding the legislative reasons and statutory contexts to allow any clear determination of whether a person promoted to the recommended appointment rank based on performance shall be eligible to take an office not higher than the seventh recommended

上開任用法第十七條第四項規定，考績升任薦任官等者，以擔任薦任第七職等以下職務為限，所謂「以擔任薦任第七職等以下職務為限」，究係指以考績升任薦任官等者，最高只能擔任薦任第七職等之職務？抑係僅能擔任職務之列等最高列薦任第七職等以下之職務為限？揆諸立法理由，有欠明確；法條文義，未見明晰，有待解釋。故主管機關衡酌憲法第十八條保障人民服公職之權利以及維護公務人員陞遷制度之健全，於八十五年十二月十日修正發布之公務人員任用法施行細則第十五條第二項規定「本法第十七條第四項所稱『薦任第七職等以下職務』，係職務之列等最高為薦任第七職等者而言」，乃對該

appointment rank or that such a person shall be eligible to hold an office whose highest rank is below the seventh recommended appointment rank. Therefore, in order to preserve the integrity of the promotional system for civil servants, the competent authority, after considering the provisions of Article 18 of the Constitution, which guarantees the people's right to hold public offices, set forth in Article 15-II of the Enforcement Rules of the Public Functionaries Appointment Act as amended and promulgated on December 10, 1996 that "'The offices below the seventh recommended appointment rank' referred to in Article 17-IV of the Act shall mean those offices whose highest rank is the seventh recommended appointment rank." The foregoing is a supplementary interpretation in respect of the aforesaid provisions, which should fall within the scope of reasonable interpretation of the enabling statute, considering the resulting consequences. In other words, a public functionary with the fifth designated appointment rank who is promoted based on his or her performance is thus prevented from holding an office

項規定為補充性之解釋，就其能避免委任第五職等公務人員因考績升等，而其本身依母法規定，至多僅能升任至第七職等，卻占職務列等最高超過第七職等以上之職務，致使一職務得跨列至超過第七職等以上之職務列等設計失去意義而言，該規定尚在母法合理解釋範圍之內，與任用法第十七條第四項限制考績升薦任官等人員陞遷之規定並無牴觸，亦與憲法第十八條保障人民服公職權利及第二十三條法律保留原則均無違背。

whose highest rank is above the seventh recommended appointment rank when such a public functionary cannot be promoted to a rank higher than the seventh rank according to the enabling statute; otherwise, the ranking design, which should disallow one office having precedence over another office whose highest rank is above the seventh rank, will be rendered meaningless. Therefore, the said provision does not contradict the provisions of Article 17-IV of the Appointment Act, which sets limitations on promotions for those personnel who are promoted to the recommended appointment rank based on performance. Moreover, it does not violate the right of the people to hold public offices as guaranteed under Article 18 of the Constitution nor does it violate the principle of legal reservation as embodied under Article 23 thereof.

J. Y. Interpretation No.612（June 16, 2006）*

ISSUE: Are the provisions of Article 31 (i) of the erstwhile Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs unconstitutional?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）; Article 15-I (as amended and promulgated on April 9, 1980; amended and rearranged as the 1st part of Article 20 on November 20, 1985; further amended on November 11, 1988）and Article 15-II (as amended and rearranged as Article 21 on November 20, 1985）of the Waste Disposal Act（廢棄物清理法第十五條第一項（中華民國六十九年四月九日修正公布；七十四年十一月二十日修正改列第二十條前段；七十七年十一月十一日再修正）、第十五條第二項（七十四年十一月二十日修正改列第二十一條））; Articles 14, 31 (i), 5 and 12 (as amended and issued on August 5, 1998）and Article 7 (as amended and issued on June 29, 1999）of the Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs (as formulated and issued on November 19, 1997; abolished on October 9, 2002)（公民營廢棄物清除處理機構管理輔導辦法（八十六年十一月十九日訂定發布；九十一年十月九日發布廢

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

止）第十四條、第三十一條第一款，第五條、第十二條（八十七年八月五日修正發布），第七條（八十八年六月二十九日修正發布））

KEYWORDS:

right of work（工作權）, general authorization（概括授權）, Waste Disposal Act（廢棄物清理法）, qualifications of specialized technical personnel（專業技術人員資格）, purpose of authorization（授權目的）, certificate of qualification（合格證書）, scope of authorization（授權範圍）.**

HOLDING: Article 15 of the Constitution provides that the people's right of work shall be guaranteed; that is, the people have the freedom to work and choose their occupations. In order to promote public interests, restrictions may be imposed by law or orders as delegated by law on the means of engaging in work and on the necessary qualifications or other requirements to the extent that they are in line with Article 23 of the Constitution. Where the law delegates the power of issuing orders to the competent authority for the purpose of making supplementary provisions, the contents thereof shall be in line with the legislative intent, and shall

解釋文：憲法第十五條規定人民之工作權應予保障，人民從事工作並有選擇職業之自由，如為增進公共利益，於符合憲法第二十三條規定之限度內，對於從事工作之方式及必備之資格或其他要件，得以法律或經法律授權之命令限制之。其以法律授權主管機關發布命令為補充規定者，內容須符合立法意旨，且不得逾越母法規定之範圍。其在母法概括授權下所發布者，是否超越法律授權，不應拘泥於法條所用之文字，而應就該法律本身之立法目的，及整體規定之關聯意義為綜合判斷，迭經本院解釋闡明在案。

not go beyond the scope of the enabling statute. As has been made clear by this Court in its previous interpretations, where an order is issued under the general authorization of the enabling statute, a comprehensive judgment shall be made in respect of the legislative purposes of the law itself and the associated meanings of the provisions on the whole, instead of adhering to the letter of the law, so as to determine whether it goes beyond the scope of legal authorization or not.

Under Article 21 of the Waste Disposal Act as amended and promulgated on November 20, 1985, the central competent authority shall prescribe the regulations governing the supervision of and assistance to public and private waste cleanup and disposal organs, as well as the qualifications of the specialized technical personnel. Although the said enabling provision did not specify the content and scope of the qualifications of the specialized technical personnel, it should be reasoned, based on construction of the law on the whole, that the lawmakers' intent was to delegate the power to the compe-

中華民國七十四年十一月二十日修正公布之廢棄物清理法第二十一條規定，公、民營廢棄物清除、處理機構管理輔導辦法及專業技術人員之資格，由中央主管機關定之。此一授權條款雖未就專業技術人員資格之授權內容與範圍為明確之規定，惟依法律整體解釋，應可推知立法者有意授權主管機關，除就專業技術人員資格之認定外，尚包括主管機關對於專業技術人員如何適當執行其職務之監督等事項，以達成有效管理輔導公、民營廢棄物清除、處理機構之授權目的。

tent authority to decide not only on the qualifications of the specialized technical personnel, but also on such matters as the supervision of how said technical personnel should properly perform their duties, so as to fulfill the authorized purposes of effectively supervising and assisting the public and private waste cleanup and disposal organs.

Pursuant to the aforesaid authorization, the Environmental Protection Administration, Executive Yuan, formulated and issued the Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs (abolished) on November 19, 1997. Article 31 (i) thereof provided, "In circumstances where the disposal organs broke the law or operated improperly, thus seriously polluting the environment or jeopardizing human health, the competent authority shall revoke the certificates of qualification for the cleanup or disposal technicians hired by such organs." The said provision refers to such circumstances where the waste cleanup or disposal organs broke the law or operated

行政院環境保護署依據前開授權於八十六年十一月十九日訂定發布之公民營廢棄物清除處理機構管理輔導辦法（已廢止），其第三十一條第一款規定：清除、處理技術員因其所受僱之清除、處理機構違法或不當營運，致污染環境或危害人體健康，情節重大者，主管機關應撤銷其合格證書，係指廢棄物清除、處理機構有導致重大污染環境或危害人體健康之違法或不當營運情形，而在清除、處理技術員執行職務之範圍內者，主管機關應撤銷清除、處理技術員合格證書而言，並未逾越前開廢棄物清理法第二十一條之授權範圍，乃為達成有效管理輔導公、民營廢棄物清除、處理機構之授權目的，以改善環境衛生，維護國民健康之有效方法，其對人民工作權之限制，尚未逾越必要程度，

improperly so as to seriously pollute the environment or to jeopardize human health, for which the competent authority shall revoke the certificates of qualification for the cleanup or disposal technicians within the scope of their employment and duty. Thus it does not go beyond the scope of authorization mandated by Article 21 of the said Waste Disposal Act. Instead, it is an effective method of improving environmental sanitation and preserving the public health by means of achieving the authorized purposes of effectively supervising and assisting the public and private waste cleanup and disposal organs. The restrictions imposed on the people's right of work do not go beyond the necessary extent, and are not only consistent with the provisions of Article 23 of the Constitution, but also in line with the intent of Article 15 thereof.

符合憲法第二十三條之規定，與憲法第十五條之意旨，亦無違背。

REASONING: Article 15 of the Constitution provides that the people's right of work shall be guaranteed; that is, the people have the freedom to work and choose their occupations. In order to promote public interests, restrictions may

解釋理由書：憲法第十五條規定人民之工作權應予保障，人民從事工作並有選擇職業之自由，如為增進公共利益，於符合憲法第二十三條規定之限度內，對於從事工作之方式及必備之資格或其他要件，得以法律或經法律授權

be imposed by law or orders as delegated by law on the means of engaging in work and on the necessary qualifications or other requirements to the extent that they are in line with Article 23 of the Constitution. Where the law delegates the power of issuing orders to the competent authority for the purpose of making supplementary provisions, the contents thereof shall be in line with the legislative intent, and shall not go beyond the scope of the enabling statute. As has been made clear by this Court in its previous interpretations, where an order is issued under the general authorization of the enabling statute, a comprehensive judgment shall be made in respect of the legislative purposes of the law itself and the associated meanings of the provisions on the whole, instead of adhering to the letter of the law, so as to determine whether it goes beyond the scope of legal authorization or not.

之命令限制之。其以法律授權主管機關發布命令為補充規定者，內容須符合立法意旨，且不得逾越母法規定之範圍。其在母法概括授權下所發布者，是否超越法律授權，不應拘泥於法條所用之文字，而應就該法律本身之立法目的，及整體規定之關聯意義為綜合判斷，迭經本院解釋闡明在案。

In the light of the prosperous development of businesses and industries, the expansion of industrial production, the complexity of materials used, and the frequent elimination and replacement of

鑒於工商發達，產業生產擴增，物品使用之材料複雜且汰換頻仍，致廢棄物產量甚鉅、種類繁多，其中不乏污染性及有害性物質，有賴專業廢棄物清除處理機構及技術人員處理，以避免造

products, the amount and variety of waste have become overwhelming, much of which is polluting and noxious, and requires the handling by specialized waste cleanup and disposal organs and personnel so as to prevent environmental pollution and to forestall the damage to public health and the environment. In order to ensure that the tools, methods, equipment and places used by a private waste cleanup and disposal organ to dispose of the waste meet technological and professional demands, Article 15-I of the Waste Disposal Act as amended and promulgated on April 9, 1980, added a provision requiring the placement of specialized technical personnel, which read, "A private waste disposal organ shall first effect the registration for an industry or a business, then specify its specialized technical personnel and the tools, methods, equipment and places for cleanup, disposal and storage, and last apply to the local competent authority for the issuance of a license before it can be commissioned to clean up and dispose of waste." With regard to the qualifications of specialized technical personnel, a second paragraph was added

成環境污染，並防範危害國民健康及環境生態於未然。六十九年四月九日修正公布之廢棄物清理法，為求民營廢棄物清除處理機構處理廢棄物之工具、方法、設備及場所等符合科技及專業要求，其第十五條第一項增列設置專業技術人員規定：「民營廢棄物清除處理機構，應先辦理工商登記，並列明專業技術人員及清除、處理、貯存之工具、方法、設備暨場所，申請當地主管機關核發許可證後，始得接受清除處理廢棄物之委託」；又關於專業技術人員之資格，為求省市達成一致標準，同條增列第二項規定：「前項專業技術人員資格，由中央主管機關定之」。嗣於七十四年十一月二十日修正公布之廢棄物清理法，將前開第十五條第一項規定修正改列第二十條前段；又為有效管理輔導公民營廢棄物清除處理機構，有增訂管理輔導辦法之必要，並將前開第十五條第二項移列修正第二十一條規定：「前條公、民營廢棄物清除、處理機構管理輔導辦法及專業技術人員之資格，由中央主管機關定之」（以下簡稱舊廢棄物清理法第二十一條規定）。上述第二十條前段規定復於七十七年十一月十一日修正規定：「公、民營廢棄物清除、處理機構經營廢棄物之貯存、清除或處理

to the aforesaid article to bring the provincial and municipal standards into agreement, which read, "The qualifications of the specialized technical personnel mentioned in the preceding paragraph shall be prescribed by the central competent authority." The aforesaid Article 15-I of the Waste Disposal Act was subsequently amended and rearranged as the first part of Article 20 on November 20, 1985. Furthermore, as it was found necessary to revise and augment the regulations regarding the supervision of and assistance to public and private waste cleanup and disposal organs so as to more effectively supervise and assist the same, the aforesaid Article 15-II of said Act was amended and rearranged as Article 21 thereof, which read, "The central competent authority shall prescribe the regulations governing the supervision of and assistance to public and private waste cleanup and disposal organs, as well as the qualifications of the specialized technical personnel, mentioned in the preceding article" (hereinafter referred to as Article 21 of the former Waste Disposal Act). The provisions of the first part of

業務，應列明專業技術人員與貯存清除、處理之工具、方法、設備及場所，向地方主管機關申請核發許可證」（以下簡稱舊廢棄物清理法第二十條前段規定）。前開舊廢棄物清理法第二十條前段及第二十一條規定，對於公、民營廢棄物清除、處理機構經營者及專業技術人員之工作權固有所限制，並以列明專業技術人員作為限制公、民營廢棄物清除、處理機構經營該業務之要件，惟衡諸現代廢棄物有賴專業處理，以預防環境污染而危害國民健康及環境生態事件發生，否則一旦發生損害，其影響可能延續數代而難以回復，事後制裁已非達成防制環境污染立法目的之最有效手段，故其限制，洵屬正當。

Article 20 mentioned above were further amended on November 11, 1988, which read, "A public or private waste cleanup and disposal organ shall, in operating the business of waste storage, cleanup or disposal, specify its specialized technical personnel and the tools, methods, equipment and places for storage, cleanup and disposal, and apply to the local competent authority for the issuance of a license" (hereinafter referred to as the first part of Article 20 of the former Waste Disposal Act). Although the aforesaid provisions of the first part of Article 20 and Article 21 of the former Waste Disposal Act imposed restrictions on the operators of public and private waste cleanup and disposal organs and their specialized technical personnel's right of work, and conditioned the operation of the said business on the specifications of the specialized technical personnel, such restrictions were indeed rightfully imposed because, considering the fact that specialized waste treatment and disposal is essential in a modern industrialized nation for the prevention of environmental pollution and the occurrences that may jeopardize the public

health and the environment, and that, once the damage is done, the negative effects may well last for generations to come and recovery is hardly likely, *post facto* punishment will not be the most effective means of achieving the legislative purpose of preventing environmental pollution.

Article 21 of the former Waste Disposal Act provided, "The central competent authority shall prescribe the regulations governing the supervision of and assistance to public and private waste cleanup and disposal organs, as well as the qualifications of the specialized technical personnel, mentioned in the preceding article." Although the said enabling provision did not specify the content and scope of the qualifications of the specialized technical personnel, the intent of the Waste Disposal Act, in providing for the placement of specialized technical personnel, was to ensure that public and private waste cleanup and disposal organs, in operating the business of waste storage, cleanup or disposal, meet technological and professional demands. Therefore, it should be reasoned, based on construction

舊廢棄物清理法第二十一條規定：「前條公、民營廢棄物清除、處理機構管理輔導辦法及專業技術人員之資格，由中央主管機關定之」。此一授權條款雖未就專業技術人員資格之授權內容與範圍為明確之規定，惟廢棄物清理法所以設置專業技術人員之目的，係因應公、民營廢棄物清除、處理機構經營廢棄物之貯存、清除或處理業務時之科技及專業需求，故依法律整體解釋，上開授權條款賦予主管機關之權限，除專業技術人員資格之認定外，尚包括主管機關對於專業技術人員如何適當執行其職務之監督等事項，以達成有效管理輔導公、民營廢棄物清除、處理機構之授權目的。

of the law on the whole, that the lawmakers' intent was to delegate the power to the competent authority to decide not only on the qualifications of the specialized technical personnel, but also on such matters as the supervision of how said technical personnel should properly perform their duties, so as to fulfill the authorized purposes of effectively supervising and assisting the public and private waste cleanup and disposal organs.

Pursuant to Article 21 of the former Waste Disposal Act, the Environmental Protection Administration, Executive Yuan, formulated and issued the Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs on November 19, 1997 (hereinafter referred to as the Former Regulation on Supervision and Assistance, which was abolished on October 9, 2002). Article 14 thereof provided, "A cleanup and disposal technician shall engage in the practice of waste cleanup and disposal only after he or she obtains a certificate of qualification issued by the competent authority (Paragraph I). A

行政院環境保護署於八十六年十一月十九日依據舊廢棄物清理法第二十一條規定，訂定發布公民營廢棄物清除處理機構管理輔導辦法（以下簡稱舊管理輔導辦法，此辦法於九十一年十月九日發布廢止），其第十四條規定：「清除、處理技術員應取得主管機關核發之合格證書，始得從事廢棄物清除、處理業務（第一項）。清除、處理技術員從事清除、處理業務，應負責其所受僱之清除、處理機構之正常營運及解決廢棄物清除、處理技術問題，並應審查有關許可證申請書、定期監測報告、契約書、遞送聯單及營運紀錄，確定內容無訛後，簽名蓋章（第二項）」。再者，專業技術人員之設置，為公、民營廢棄

cleanup and disposal technician, in engaging in the practice of waste cleanup and disposal, shall be responsible for the normal operation of the cleanup and disposal organ that hires him or her and the resolution of the technical issues relating to waste cleanup and disposal, and shall review the applications for relevant licenses, periodic monitoring reports, contracts, delivery slips and operation records and affix his or her signature and seal thereto after making sure that the contents thereof are true and correct (Paragraph II).” Furthermore, the placement of specialized technical personnel is a prerequisite to the application for the issuance of a license or for the extension of the validity of the license by public and private waste cleanup and disposal organs (*See* Article 20 of the former Waste Disposal Act, Articles 5 and 12 of the Regulation on the Supervision of and Assistance to Public and Private Waste Cleanup and Disposal Organs as amended and issued on August 5, 1998, and Article 7 thereof as amended and issued on June 29, 1999). Accordingly, in line with Article 14-II of the aforesaid Former Regulation on Supervision and

物清除、處理機構申請核發許可證或申請展延許可證有效期間之要件（舊廢棄物清理法第二十條、八十七年八月五日修正發布公民營廢棄物清除處理機構管理輔導辦法第五條、第十二條，八十八年六月二十九日修正發布同辦法第七條參照）。是廢棄物清除、處理技術員受僱於清除、處理機構後，依上開舊管理輔導辦法第十四條第二項規定，應負責該機構之正常營運，解決廢棄物清除、處理技術問題，並審查相關文件，擔負該機構能否有效清除、處理廢棄物之重任，以預防環境污染而危害國民健康及環境生態事件發生。因此舊管理輔導辦法第三十一條第一款規定，清除、處理技術員因其所受僱之清除、處理機構違法或不當營運，致污染環境或危害人體健康，情節重大者，主管機關應撤銷其合格證書，係指廢棄物清除、處理機構有導致重大污染環境或危害人體健康之違法或不當營運情形，而在清除、處理技術員執行職務之範圍內者，主管機關應撤銷清除、處理技術員合格證書而言，並未逾越前開廢棄物清理法第二十一條授權主管機關對於專業技術人員如何適當執行其職務之監督範圍。又其旨在促使清除、處理廢棄物之專業技術人員，除應具備專業技術外，並應確實執

Assistance, a waste cleanup and disposal technician who is employed by a cleanup and disposal organ shall be responsible for the normal operation of the organ, resolution of the technical issues relating to waste cleanup and disposal, and shall review relevant documentation, thus shouldering the heavy responsibility of making sure that the organ is able to effectively clean up and dispose of waste, so as to prevent environmental pollution and to forestall any damage to the public health and the environment. As such, Article 31 (i) of the Former Regulation on Supervision and Assistance provided, "In circumstances where the cleanup or disposal organs broke the law or operated improperly, thus seriously polluting the environment or jeopardizing human health, the competent authority shall revoke the certificates of qualification for the cleanup or disposal technicians hired by such organs." The said provision refers to such circumstances where the waste cleanup or disposal organs broke the law or improperly operated so as to seriously pollute the environment or to jeopardize human health, for which the competent authority

行其職務，乃為達成前開廢棄物清理法第二十一條管理公、民營廢棄物清除、處理機構之授權目的，以實現清除、處理廢棄物，改善環境衛生，維護國民健康之廢棄物清理法立法目的之有效手段。且以清除、處理技術員所受僱之清除、處理機構所造成污染環境或危害人體健康，情節重大之違法或不當營運，作為撤銷其合格證書之要件，衡酌此等行為對於環境衛生、國民健康危害甚鉅，並考量法益受侵害之程度及態樣，而以撤銷不適任之清除、處理技術員合格證書作為手段，核與規範目的之達成具有正當合理之關聯，不生違背不當聯結禁止原則之問題，並未逾越必要之範圍，符合憲法第二十三條之規定，與憲法第十五條保障工作權之意旨，尚無違背。

shall revoke the certificates of qualification for the cleanup or disposal technicians within the scope of their employment and duty. Thus it does not go beyond the scope of authorization mandated by Article 21 of the said Waste Disposal Act, which dictates how specialized technical personnel should properly perform their duties. Furthermore, the provision is intended to urge waste cleanup and disposal technicians not only to possess the requisite professional skills, but also to carry out their duties faithfully. As such, it is an effective method of improving environmental sanitation and preserving the public health by means of achieving the authorized purposes of effectively supervising and assisting the public and private waste cleanup and disposal organs as contemplated by Article 21 of the aforesaid Waste Disposal Act. In addition, where a waste cleanup and disposal technician's certificate of qualifications is revoked on the condition that the waste cleanup and disposal organ which hired him or her was in violation of the law or operating improperly, thus seriously polluting the environment or jeopardizing human health, a

justifiable and rational basis may be found between the achievement of the regulatory end and the means of revoking an incompetent cleanup and disposal technician's certificate of qualifications after taking into account the tremendous negative impact that such action will exert on the environmental sanitation and public health, as well as the extent and type of legally protected interests that will be violated. Therefore, there is no violation of the principle against irrational basis. The restrictions do not go beyond the necessary extent, and are not only consistent with the provisions of Article 23 of the Constitution, but are also in line with the intent of Article 15 thereof, which guarantees the right of work.

Justice Feng-Zhi Peng filed concurring opinion, in which Justice Pi-Hu Hsu joined.

Justice Yih-Nan Liaw filed dissenting opinion, in which Justice Ho-Hsiung Wang joined.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋彭大法官鳳至、徐大法官璧湖共同提出協同意見書；廖大法官義男、王大法官和雄共同提出不同意見書；許大法官玉秀提出不同意見書。

J. Y. Interpretation No.613（July 21, 2006）*

ISSUE: Are the provisions of Articles 4 and 16 of the Organic Act of the National Communications Commission unconstitutional?

RELEVANT LAWS:

Articles 11, 16, 53 and 56 of the Constitution（憲法第十一條、第十六條、第五十三條、第五十六條）; Article 3-II of the Amendments to the Constitution（憲法增修條文第三條第二項）; J.Y. Interpretations Nos. 391 and 585（司法院釋字第三九一號解釋、第五八五號解釋）; Articles 4 and 16 of the Organic Act of the National Communications Commission（國家通訊傳播委員會組織法第四條、第十六條）; Article 80 of the Administrative Appeal Act（訴願法第八十條）; Articles 117 and 128 of the Administrative Procedure Act（行政程序法第一百十七條、第一百二十八條）; Article 4-II of the Public Functionaries Discipline Act（公務員懲戒法第四條第二項）.

KEYWORDS:

Independent agency（獨立機關）, power to decide on personnel affairs（人事決定權）, administrative unity（行政一體）, politics of accountability（責任政治）, separation of powers（權力分立）, proportionality of various political parties（政黨比例）, freedom of communications（通訊傳播自由）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: It is clearly stipulated in Article 53 of the Constitution that the Executive Yuan shall be the highest administrative organ of the state. Under the principle of administrative unity, the Executive Yuan must be held responsible for the overall performance of all the agencies subordinate to the said Yuan, including the National Communications Commission (hereinafter referred to as the "NCC"), and shall have the power to decide on personnel affairs in respect of members of the NCC because the success or failure of the NCC will hinge closely on the candidates for membership in the NCC. Under the principle of separation of powers, the Legislative Yuan, which exercises the legislative power, is not precluded from imposing certain restrictions on the Executive Yuan's power to decide on personnel affairs in respect of members of the NCC for purposes of checks and balances. However, there are still some limits on such checks and balances. For instance, there should be no violation of an unambiguous constitutional provision, nor should there be any substantial deprivation of the power to decide on person-

解釋文：行政院為國家最高行政機關，憲法第五十三條定有明文，基於行政一體，須為包括國家通訊傳播委員會（以下簡稱通傳會）在內之所有行政院所屬機關之整體施政表現負責，並因通傳會施政之良窳，與通傳會委員之人選有密切關係，因而應擁有對通傳會委員之人事決定權。基於權力分立原則，行使立法權之立法院對行政院有關通傳會委員之人事決定權固非不能施以一定限制，以為制衡，惟制衡仍有其界限，除不能牴觸憲法明白規定外，亦不能將人事決定權予以實質剝奪或逕行取而代之。國家通訊傳播委員會組織法（以下簡稱通傳會組織法）第四條第二項通傳會委員「由各政黨（團）接受各界舉薦，並依其在立法院所占席次比例共推薦十五名、行政院院長推薦三名，交由提名審查委員會（以下簡稱審查會）審查。各政黨（團）應於本法施行日起十五日內完成推薦」之規定、同條第三項「審查會應於本法施行日起十日內，由各政黨（團）依其在立法院所占席次比例推薦十一名學者、專家組成。審查會應於接受推薦名單後，二十日內完成審查，本項審查應以聽證會程序公開為之，並以記名投票表決。審查會先以審查會委員總額五分之三以上為可否

nel affairs or direct takeover of such power. Article 4-II of the Organic Act of the National Communications Commission (hereinafter referred to as the "NCC Organic Act") provides that candidates for membership in the NCC "shall first be recommended by people from all walks of life to the various political parties (groups) which, in turn, shall recommend a total of fifteen (15) members based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who, together with the three (3) members to be recommended by the Premier, shall be reviewed by the Nomination Review Committee (hereinafter referred to as the "NRC"), and that the various political parties (groups) shall complete their recommendations within fifteen (15) days as from the date of the promulgation hereof." Paragraph III thereof further provides that "the NRC shall consist of a total of eleven (11) scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan within ten (10) days as

之同意，如同意者未達十三名時，其缺額隨即以審查會委員總額二分之一以上為可否之同意」及同條第四項「前二項之推薦，各政黨（團）未於期限內完成者，視為放棄」關於委員選任程序部分之規定，及同條第六項「委員任滿三個月前，應依第二項、第三項程序提名新任委員；委員出缺過半時，其缺額依第二項、第三項程序辦理，繼任委員任期至原任期屆滿為止」關於委員任滿提名及出缺提名之規定，實質上幾近完全剝奪行政院之人事決定權，逾越立法機關對行政院人事決定權制衡之界限，違反責任政治暨權力分立原則。又上開規定等將剝奪自行政院之人事決定權，實質上移轉由立法院各政黨（團）與由各政黨（團）依其在立法院所占席次比例推薦組成之審查會共同行使，影響人民對通傳會應超越政治之公正性信賴，違背通傳會設計為獨立機關之建制目的，與憲法所保障通訊傳播自由之意旨亦有不符。是上開規定應自本解釋公布之日起，至遲於中華民國九十七年十二月三十一日失其效力。失去效力之前，通傳會所作成之行為，並不因前開規定經本院宣告違憲而影響其適法性，人員與業務之移撥，亦不受影響。

from the date of the promulgation hereof, that the NRC shall, within twenty (20) days upon receipt of the recommended list, complete the review, which shall be conducted by means of public hearings and put to vote in the form of open balloting, and that the NRC shall first vote for approval of the candidates by more than three-fifths of its total members and, if the total number of candidates so approved does not reach thirteen (13), candidates to fill the vacancies shall subsequently be approved by more than one-half of its total members." And, Paragraph IV thereof provides, "The recommendations referred to in the two preceding paragraphs shall be deemed as waived if not made by the respective political parties (groups) before the applicable deadlines." The foregoing provisions deal with the procedure for the selection of members whereas Paragraph VI of said Article provides for the nomination of new members to succeed outgoing members upon expiry of their term and the nomination of same in case of any vacancy, which reads as follows: "Three (3) months before the expiry of the term for members of the NCC, members for the

new term shall be nominated in accordance with the procedure set forth in Paragraphs II and III hereof; if vacancies reach more than half of the total number of members, such vacancies shall be filled in accordance with the procedure set forth in Paragraphs II and III hereof and the term of the succeeding members shall last till the expiry of the original term." The foregoing provisions practically deprive the Executive Yuan of substantially all of its power to decide on personnel affairs, which transgresses the limits on the checks and balances exercisable by the legislature on the Executive Yuan's power to decide on personnel affairs, thus violating the principles of politics of accountability and separation of powers. In addition, the aforesaid provisions have, in essence, transferred the Executive Yuan's power to decide on personnel affairs to the various political parties (groups) of the Legislative Yuan and the NRC, which is composed of members recommended by such political parties (groups) based on the percentages of the numbers of their seats in the Legislative Yuan, thus affecting the impartiality and reliability of the

NCC in the eyes of the people who believe that it shall function above politics. As such, the purpose of establishing the NCC as an independent agency is defeated, and the constitutional intent of safeguarding the freedom of communications is not complied with. Therefore, the foregoing provisions shall become void no later than December 31, 2008. Prior to the voidance of the aforesaid provisions due to their unconstitutionality as declared by this Court, the legality of any and all acts performed by the NCC will remain unaffected, as will the transfer of personnel and affairs.

As for the bottom half of Article 4-III of the NCC Organic Act regarding the appointment of members of the NCC by the Premier, as well as Paragraph V thereof, which provides that "this Commission shall be convened on its own initiative three (3) days after the appointment of their members, who shall elect the Chairperson and Vice-Chairperson among themselves, and the Premier shall appoint same within seven (7) days upon their election, that the Chairperson and Vice-

通傳會組織法第四條第三項後段規定通傳會委員由行政院院長任命之部分，及同條第五項「本會應於任命後三日內自行集會成立，並互選正、副主任委員，行政院院長應於選出後七日內任命。主任委員、副主任委員應分屬不同政黨（團）推薦人選；行政院院長推薦之委員視同執政黨推薦人選」等規定，於憲法第五十六條並無牴觸。

Chairperson shall be candidates who were recommended by different political parties (groups), and that the members recommended by the Premier shall be deemed as having been recommended by the ruling party," no violation of Article 56 of the Constitution is found in respect of such provisions.

Article 16-I of the NCC Organic Act provides, "During the period from the date of implementation of the Basic Act for Communications till the day when this Commission is established, in respect of any and all decisions made by the original authorities in charge of the applicable laws and regulations regarding communications on the matters listed below, the aggrieved party, whether a corporation or an individual, may file an application to this Commission for review within three (3) months upon its establishment except for those cases for which procedures for administrative remedies have already been brought: (i) Policies regarding the supervision and management of communications; (ii) The supervision and management of, and license approval, issuance

通傳會組織法第十六條第一項規定：「自通訊傳播基本法施行之日起至本會成立之日前，通訊傳播相關法規之原主管機關就下列各款所做之決定，權利受損之法人團體、個人，於本會成立起三個月內，得向本會提起覆審。但已提起行政救濟程序者，不在此限：一、通訊傳播監理政策。二、通訊傳播事業營運之監督管理、證照核發、換發及廣播、電視事業之停播、證照核發、換發或證照吊銷處分。三、廣播電視事業組織及其負責人與經理人資格之審定。四、通訊傳播系統及設備之審驗。五、廣播電視事業設立之許可與許可之廢止、電波發射功率之變更、停播或吊銷執照之處分、股權之轉讓、名稱或負責人變更之許可。」係立法者基於法律制度變革等政策考量，而就特定事項為特殊之救濟制度設計，尚難謂已逾越憲法

and replacement for, communications enterprises, as well as the suspension of broadcasting, license approval, issuance and replacement for, or invalidation of license for, television enterprises; (iii) The review of the qualifications for broadcasting and television enterprises, as well as their responsible persons and managers; (iv) The review and examination of communications systems and equipment; and (v) The approval of establishment of broadcasting and television enterprises, as well as the annulment of such approval; modification of the power of electric waves; suspension of broadcasting or invalidation of license; share transfer; approval of the change of name or responsible person." The said provision is designed by the lawmakers to serve as a special relief system in respect of a special matter based on such policy considerations as the reform of the legal systems, which has not gone beyond the constitutional limits. Furthermore, where the NCC accepts an application for review, it is unclear whether it should revoke the original administrative act since no specific criteria are found in the NCC Or-

所容許之範圍。而通傳會於受理覆審申請，應否撤銷違法之原處分，其具體標準通傳會組織法並未規定，仍應受行政程序法第一百十七條但書之規範。同條第二項規定：「覆審決定，應回復原狀時，政府應即回復原狀；如不能回復原狀者，應予補償。」則屬立法者配合上開特殊救濟制度設計，衡酌法安定性之維護與信賴利益之保護所為之配套設計，亦尚未逾越憲法所容許之範圍。

ganic Act. Therefore, the proviso of Article 117 of the Administrative Procedure Act shall still govern. Paragraph II of the aforesaid article provides, "Where rehabilitation is required by the decision made upon review, the government shall so rehabilitate forthwith; where rehabilitation is not practicable, compensation shall be given." The said provision is a complementary design made by the legislators with a view to operating in coordination with the aforesaid special relief system after they considered factors such as the preservation of the stability of the law and the principle of reliance protection, which also falls within the constitutionally permissible scope.

Additionally, though the Petitioner has petitioned this Court for a preliminary injunction before an interpretation for the case at issue is made, it nevertheless is no longer necessary to examine the issue now that an interpretation has been rendered for the case at issue.

又本件聲請人聲請於本案解釋作成前為暫時處分部分，因本案業經作成解釋，已無審酌之必要。

REASONING:

解釋理由書：

1. A petition for the interpretation of

一、本件聲請人行政院行使職

the Constitution has been filed by the Petitioner, i.e., the Executive Yuan, since the Petitioner, in exercising its functions and duties, has doubts as to the constitutionality of Article 4 of the NCC Organic Act concerning the organization of the NCC and the procedures by which members are appointed, as well as Article 16 thereof. Furthermore, it also has doubt as to the application of constitutional provisions while exercising its functions and duties in applying Articles 53 and 56 of the Constitution. Additionally, it has disputes with the Legislative Yuan concerning the application of a constitutional provision over the issue of whether the latter has the authority to pass any enactment regarding the Executive Yuan's power to decide on personnel affairs in respect of an agency subordinate to it, thus substantially depriving the Premier of his or her nomination power. We are of the opinion that this matter should be heard since it is consistent with the provisions of Article 5-I (i) of the Constitutional Interpretation. Procedure Act. Procedure Act.

權，適用通傳會組織法第四條有關通傳會之組織及委員產生方式部分暨第十六條，發生有牴觸憲法之疑義；又因行使職權，適用憲法第五十三條及第五十六條規定，發生適用憲法之疑義；復就立法院是否有權立法，就行政院所屬行政機關之人事決定權，實質剝奪行政院院長之提名權等，與立法院行使職權發生適用憲法之爭議，聲請解釋憲法，核與司法院大法官審理案件法第五條第一項第一款規定相符，應予受理，合先敘明。

2. The purposes of the administration

二、行政旨在執行法律，處理公

shall be to implement the laws, handle public affairs, shape social policy, pursue well-being for all, and realize the national goals. Due to the complexity and diversity of missions, various departments must be set up so as to implement different tasks individually and separately based on different areas of specialization. However, the diversified offices and positions were not established so that each department could do things in its own way. Rather, the overall focus is on the division of labor. The administration must consider things from all perspectives. No matter how the labor is to be divided, it is up to the highest administrative head to devise an overall plan and to direct and supervise so as to boost efficiency and to enable the state to work effectively as a whole. The foregoing is the essence of the principle of administrative unity. Article 53 of the Constitution clearly provides that the Executive Yuan shall be the highest administrative organ of the state. The intent of the article is to maintain administrative unity, thus enabling all of the state's administrative affairs, except as otherwise provided by the Constitution, to be incorporated

共事務，形成社會生活，追求全民福祉，進而實現國家目的，雖因任務繁雜、多元，而須分設不同部門，使依不同專業配置不同任務，分別執行，惟設官分職目的絕不在各自為政，而是著眼於分工合作，蓋行政必須有整體之考量，無論如何分工，最終仍須歸屬最高行政首長統籌指揮監督，方能促進合作，提昇效能，並使具有一體性之國家有效運作，此即所謂行政一體原則。憲法第五十三條明定行政院為國家最高行政機關，其目的在於維護行政一體，使所有國家之行政事務，除憲法別有規定外，均納入以行政院為金字塔頂端之層級式行政體制掌理，經由層級節制，最終並均歸由位階最高之行政院之指揮監督。民主政治以責任政治為重要內涵，現代法治國家組織政府，推行政務，應直接或間接對人民負責。根據憲法增修條文第三條第二項規定，行政院應對立法院負責，此乃我國憲法基於責任政治原理所為之制度性設計。是憲法第五十三條所揭示之行政一體，其意旨亦在使所有行政院掌理之行政事務，因接受行政院院長之指揮監督，而得經由行政院對立法院負責之途徑，落實對人民負責之憲法要求。

into a hierarchical administrative system where the Executive Yuan is situated at the top, and to be ultimately subject to the direction and supervision of the highest-standing organ, the Executive Yuan, via hierarchical control. Democracy consists essentially in politics of accountability. A modern rule-of-law nation, in organizing its government and implementing its government affairs, should be accountable to its people either directly or indirectly. According to Article 3-II of the Amendments to the Constitution, the Executive Yuan shall be responsible to the Legislative Yuan, which is an institutional design under our constitution based on the doctrine of political accountability. Therefore, the principle of administrative unity as revealed by Article 53 of the Constitution is also intended to hold the Premier responsible for all of the administrative affairs under the control and supervision of the Executive Yuan, thus making a reality the constitutional requirement that the Executive Yuan answers to the people via the Legislative Yuan.

Accordingly, where the Legislative

據此，立法院如經由立法設置獨

Yuan establishes an independent agency through legislation, separating a particular class of administrative affairs from the tasks originally entrusted to the Executive Yuan, removing it from the hierarchical administrative system and transferring it to an independent agency so as to enable the agency to exercise its functions and duties independently and autonomously pursuant to law, the administrative unity and the politics of accountability will inevitably be diminished. Nevertheless, the primary purpose of recognizing the existence of an independent agency is merely to preclude the direction and supervision of the superior agency over the decisions made in respect of particular cases through the administrative hierarchy to the extent prescribed by law, thus maintaining the independent agency's freedom from political interference and giving it more autonomy to make independent decisions based on its expertise. Under our constitutional framework, where the Executive Yuan is the highest administrative organ of the state, certain power to decide on personnel affairs in respect of important positions for an independent agency

立機關，將原行政院所掌理特定領域之行政事務從層級式行政體制獨立而出，劃歸獨立機關行使，使其得依據法律獨立行使職權，自主運作，對行政一體及責任政治即不免有所減損。惟承認獨立機關之存在，其主要目的僅在法律規定範圍內，排除上級機關在層級式行政體制下所為對具體個案決定之指揮與監督，使獨立機關有更多不受政治干擾，依專業自主決定之空間。於我國以行政院作為國家最高行政機關之憲法架構下，賦予獨立機關獨立性與自主性之同時，仍應保留行政院院長對獨立機關重要人事一定之決定權限，俾行政院院長得藉由對獨立機關重要人員行使獨立機關職權之付託，就包括獨立機關在內之所有所屬行政機關之整體施政表現負責，以落實行政一體及責任政治。行政院院長更迭時，獨立機關委員若因享有任期保障，而毋庸與行政院院長同進退，雖行政院院長因此無從重新任命獨立機關之委員，亦與責任政治無違，且根據公務員懲戒法第四條第二項規定，行政院院長於獨立機關委員有違法、失職情事，而情節重大，仍得依職權先行停止其職務，因行政院院長仍得行使此一最低限度人事監督權，是尚能維繫向立法院負責之關係。然獨立機關之存在

should still be reserved for the Premier even if the independent agency is accorded independence and autonomy so that the Premier may be responsible for the overall performance of all the agencies subordinate to the said Yuan, including the independent agency, by means of entrusting the exercise of the independent agency's authorities to important personnel of such agency, thus realizing the concepts of administrative unity and political accountability. If the commissioners of an independent agency need not step down along with the Premier due to a guaranteed term of office, there is no violation of the politics of accountability despite the fact that the Premier has no way of reappointing the commissioners of the independent agency. Besides, pursuant to the provisions of Article 4-II of the Public Functionaries Discipline Act, the Premier may still *ex officio* suspend the office of a commissioner of an independent agency in case of any major breach of law or dereliction of duty by the commissioner. Since the Premier may still exercise the power to supervise personnel affairs to the least degree, his accountability towards

對行政一體及責任政治既然有所減損，其設置應屬例外。唯有設置獨立機關之目的確係在追求憲法上公共利益，所職司任務之特殊性，確有正當理由足以證立設置獨立機關之必要性，重要事項以聽證程序決定，任務執行績效亦能透明、公開，以方便公眾監督，加上立法院原就有權經由立法與預算審議監督獨立機關之運作，綜合各項因素整體以觀，如仍得判斷一定程度之民主正當性基礎尚能維持不墜，足以彌補行政一體及責任政治之缺損者，始不致於違憲。

the Legislative Yuan can nonetheless be maintained. However, since the existence of an independent agency will diminish the administrative unity and the politics of accountability, its establishment should be an exception. The constitutionality of establishing an independent agency will be upheld only if the purpose of its establishment is indeed to pursue constitutional public interests, if the particularity of the mission justifies the necessity of its establishment, if important matters are determined by means of hearings, if the performance of the execution of its mission is made transparent and public for purpose of public supervision, and if, owing to the vested authority of the Legislative Yuan to supervise the operation of the independent agency through legislation and budget review and having considered any and all factors on the whole, a certain degree of democratic legitimacy can be sufficiently preserved to compensate for the diminished administrative unity and politics of accountability.

3. The freedom of speech as guaranteed by Article 11 of the Constitution em-

三、憲法第十一條所保障之言論自由，其內容包括通訊傳播自由，亦即

bodies the freedom of communications, namely, the freedom to operate or utilize broadcasting, television and other communications and mass media networks to obtain information and publish speeches. Communications and mass media are the means and platforms by which public opinions are formed. In a free democracy where the constitution is honored, they should serve such public functions as supervising any and all state organs that exercise public authority, including the executive (including the President), legislative, judicial, examination and control branches, as well as supervising the political parties whose objectives are to come into power and influence national policies. In light of the said functions of mass media, the freedom of communications not only signifies the passive prevention of infringement by the state's public authority, but also imposes on the legislators the duty to actively devise various organizations, procedures and substantive norms so as to prevent information monopoly and ensure that pluralistic views and opinions of the society can be expressed and distributed via the plat-

經營或使用廣播、電視與其他通訊傳播網路等設施，以取得資訊及發表言論之自由。通訊傳播媒體是形成公共意見之媒介與平台，在自由民主憲政國家，具有監督包括總統、行政、立法、司法、考試與監察等所有行使公權力之國家機關，以及監督以贏取執政權、影響國家政策為目的之政黨之公共功能。鑑於媒體此項功能，憲法所保障之通訊傳播自由之意義，即非僅止於消極防止國家公權力之侵害，尚進一步積極課予立法者立法義務，經由各種組織、程序與實體規範之設計，以防止資訊壟斷，確保社會多元意見得經由通訊傳播媒體之平台表達與散布，形成公共討論之自由領域。是立法者如將職司通訊傳播監理之通傳會設計為依法獨立行使職權之獨立機關，使其從層級式行政指揮監督體系獨立而出，得以擁有更多依專業自主決定之空間，因有助於摒除上級機關與政黨可能之政治或不當干預，以確保社會多元意見之表達、散布與公共監督目的之達成，自尚可認定與憲法所保障通訊傳播自由之意旨相符。

forms of communications and mass media, thus creating a free forum for public discussions. Therefore, if the lawmakers intend to make the NCC, which is in charge of the supervision and management of communications, an independent agency that may exercise its functions and duties independently pursuant to the law, thus removing it from the hierarchical administrative system of command and supervision while giving it more autonomy to make independent decisions based on its expertise, it should be considered to be consistent with the constitutional intent of protecting the freedom of communications in that it is conducive to the elimination of any potential political or inappropriate interference from superior agencies and political parties, thus ensuring the expression and distribution of diversified opinions of the society and serving the purposes of public supervision.

4. The Executive Yuan, as the highest administrative organ of the state, must be held responsible for the overall performance of all the agencies subordinate to the said Yuan, including the NCC, under

四、按作為國家最高行政機關之行政院固因基於行政一體，必須為包括通傳會在內之所有行政院所屬機關之整體施政表現負責，並因通傳會施政之良窳，與通傳會委員之人選有密切關係，

the principle of administrative unity, and shall have the power to decide on personnel affairs in respect of members of the NCC because the success or failure of the NCC will hinge closely on the candidates appointed to be members of the NCC. Nevertheless, the Legislative Yuan, which exercises the legislative power, is not precluded from imposing certain restrictions on the Executive Yuan's power to decide on personnel affairs in respect of members of the NCC for purposes of checks and balances so as to prevent the Executive Yuan from arbitrarily exercising the power to appoint personnel, thus jeopardizing the independence of the NCC. The principle of separation of powers, as a fundamental constitutional principle, signifies not only the division of powers whereby all state affairs are assigned to various state organs with the right organizations, systems and functions so as to enable state decisions to be made more appropriately, but also suggests the checks and balances of powers whereby powers are mutually containing and restraining so as to avoid infringement upon the people's freedoms and rights due to

而擁有對通傳會委員之具體人事決定權，然為避免行政院恣意行使其中之人事任免權，致損及通傳會之獨立性，行使立法權之立法院對行政院有關通傳會委員之人事決定權仍非不能施以一定限制，以為制衡。蓋作為憲法基本原則之一之權力分立原則，其意義不僅在於權力之區分，將所有國家事務分配由組織、制度與功能等各方面均較適當之國家機關擔當履行，以使國家決定更能有效達到正確之境地，要亦在於權力之制衡，即權力之相互牽制與抑制，以避免權力因無限制之濫用，而致侵害人民自由權利。惟權力之相互制衡仍有其界限，除不能牴觸憲法明文規定外，亦不能侵犯各該憲法機關之權力核心領域，或對其他憲法機關權力之行使造成實質妨礙（本院釋字第五八五號解釋參照）或導致責任政治遭受破壞（本院釋字第三九一號解釋參照），例如剝奪其他憲法機關為履行憲法賦予之任務所必要之基礎人事與預算；或剝奪憲法所賦予其他國家機關之核心任務；或逕行取而代之，而使機關彼此間權力關係失衡等等情形是。

unrestrained misuse of the powers. However, there are still some limits on the checks and balances of powers. There should be no violation of an unambiguous constitutional provision, nor should there be any encroachment upon the core areas of the powers of various constitutional organs or restriction of the exercise of powers by other constitutional organs (*See* J. Y. Interpretation No. 585) or breach of the politics of accountability (*See* J. Y. Interpretation No. 391). An example may be the deprivation of the basic personnel and budget necessary for another constitutional organ to perform its constitutionally mandated duties, or the deprivation of the core mission of another state organ entrusted to it by the Constitution, or direct takeover of another organ's power, thus resulting in imbalance of powers between the organs involved.

The checks and balances as imposed by the legislative power on the executive power in respect of the power to decide on the personnel affairs for an independent agency, in general, are manifested in the restrictions on the personnel's qualifica-

立法權對行政權所擁有關於獨立機關之人事決定權之制衡，一般表現在對用人資格之限制，以確保獨立機關之專業性，暨表現在任期保障與法定去職原因等條件之設定上，以維護獨立機關之獨立性，俾其構成員得免於外部干

tions, which are intended to ensure the specialization of the independent agency, and also in the formulation of conditions such as a guaranteed term of office and statutory grounds for removal from office, which are designed to maintain the independence of the independent agency with a view to shielding the members of such agency from external interference and enabling them to exercise their functions and duties independently. However, in light of the fact that the mass media under the supervision of the NCC serve such function as shaping public opinions to supervise the government and political parties, the freedom of communications necessitates strong demand for an NCC that is free of political considerations and interferences. As such, if the legislative power intends to further reduce the political influence of the Executive Yuan on the composition of the NCC to promote the public confidence in the NCC's fair enforcement of the law by means of setting forth a ceiling on the number of the NCC members who come from the same political party, or adding a provision in respect of overlapping terms of office, or

擾，獨立行使職權。然鑑於通傳會所監督之通訊傳播媒體有形成公共意見，以監督政府及政黨之功能，通訊傳播自由對通傳會之超越政治考量與干擾因而有更強烈之要求，是立法權如欲進一步降低行政院對通傳會組成之政治影響，以提昇人民對通傳會公正執法之信賴，而規定通傳會委員同黨籍人數之上限，或增加通傳會委員交錯任期之規定，乃至由立法院或多元人民團體參與行政院對通傳會委員之人事決定等，只要該制衡設計確有助於降低、摒除政治力之影響，以提昇通傳會之獨立性，進而建立人民對通傳會能超然於政黨利益之考量與影響，公正執法之信賴，自亦為憲法所保障之通訊傳播自由所許。至於立法院或其他多元人民團體如何參與行政院對通傳會委員之人事決定，立法者雖有一定之自由形成空間，惟仍以不侵犯行政權之核心領域，或對行政院權力之行使造成實質妨礙為限。

even empowering the Legislative Yuan or diversified civil associations to participate in the decision-making process with the Executive Yuan regarding the candidates for membership in the NCC, it is permissible under the freedom of communications as guaranteed by the Constitution as long as the design of the checks and balances at issue may indeed help reduce or eliminate the political influence to promote the independence of the NCC and to further build up the public confidence in the NCC's freedom from considerations and influence of partisan interests and its fair enforcement of the law. As to the question of how the Legislative Yuan or other diversified civil associations will participate in the decision-making process with the Executive Yuan regarding the candidates for membership in the NCC, the legislators are free to a certain extent to formulate the rules. Yet there should be no encroachment upon the core areas of the executive power, nor any restriction of the exercise of the Executive Yuan's power.

According to Article 4-II and –III of 惟依通傳會組織法第四條第二、

the NCC Organic Act, however, a total of fifteen members of the NCC will be recommended based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, and, together with the three members to be recommended by the Premier, shall be reviewed by the NRC, which is composed of eleven scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, via a two-round majority review by more than three-fifths and one-half of its total members, respectively. And, upon completion of the review, the Premier shall nominate those who appear on the list as approved by the NRC within seven (7) days and appoint same upon confirmation by the Legislative Yuan. Given the fact that the Premier can recommend only three out of the eighteen candidates for membership in the NCC, that he has no say in the personnel affairs during the review, that he is bound by the list as approved by the NRC, which is formed according to the percentages of the numbers of seats of the respec-

三項規定，通傳會委員竟由各政黨（團）依其在立法院所占席次比例共推薦十五名，行政院院長推薦三名，交由各政黨（團）依其在立法院所占席次比例推薦十一名學者、專家組成之審查會以五分之三與二分之一兩輪多數決審查，審查完成後，行政院院長應於七日內依審查會通過同意之名單提名，並送立法院同意後即任命之。由於行政院院長僅能推薦十八位通傳會委員候選人中之三位，審查階段對人事則完全無置喙餘地，並且受各政黨（團）依政黨比例推薦組成之審查會審查通過之名單所拘束，有義務予以提名，送請立法院同意，對經立法院同意之人選並有義務任命為通傳會委員，足見行政院所擁有者事實上僅剩名義上之提名與任命權，以及在整體選任程序中實質意義極其有限之六分之一通傳會委員候選人之推薦權，其人事決定權實質上可謂業已幾近完全遭到剝奪。又行政掌法律之執行，執行則賴人事，無人即無行政，是行政權依法就具體之人事，不分一般事務官或政治任命之政務人員，擁有決定權，要屬當然，且是民主法治國家行政權發揮功能所不可或缺之前提要件。據此，上開規定將國家最高行政機關之行政院就通傳會委員之具體人事決定權實質上

tive parties (groups) in the Legislative Yuan, and that he is obligated to nominate those appearing on the said list, to send the nominations to the Legislative Yuan for the latter's confirmation, and to appoint those candidates confirmed by the Legislative Yuan as members of the NCC, it is very clear that the Executive Yuan, in fact, has mere nominal authority to nominate and appoint and substantially limited power to recommend only one-sixth of the candidates for members of the NCC during the entire selection procedure. In essence, the Premier is deprived of virtually all of his power to decide on personnel affairs. In addition, the executive is in charge of the enforcement of the laws whereas the enforcement depends on the personnel. There is no administration without the personnel. Therefore, it is only natural that the executive should have the authority by law to decide on specific personnel matters, irrespective of whether such matters concern general government employees or political appointees, and such authority should be an indispensable prerequisite for the executive power of a democratic rule-of-law

幾近完全剝奪，除為憲法上責任政治原則所不許，並因導致行政、立法兩權關係明顯失衡，而牴觸權力分立原則。

nation to perform its functions to the utmost extent. Accordingly, the aforesaid provisions, in substantially depriving the Executive Yuan of virtually all of its power to decide on specific personnel affairs in respect of the members of the NCC, are in conflict with the constitutional principle of politics of accountability, and are contrary to the principle of separation of powers since they lead to apparent imbalance between the executive and legislative powers.

5. As for the issue of whether the provisions are unconstitutional that empower the various political parties (groups) to recommend candidates for membership in the NCC based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, and to recommend scholars and experts to form the NRC based on such percentages, it depends on whether such participation provisions substantially deprive the Executive Yuan of its power to decide on personnel affairs. The aforesaid provisions have, in essence, transferred the power to decide on personnel affairs

五、至於各政黨（團）依其在立法院所占席次比例推薦通傳會委員候選人，與依其在立法院所占席次比例推薦學者、專家組成審查會審查通傳會委員候選人之規定，是否違憲，端視該參與之規定是否將行政院之人事決定權予以實質剝奪而定。茲上開規定只將剝奪自行政院之人事決定權，實質上移轉由立法院各政黨（團）與由各政黨（團）依政黨比例推薦組成之審查會共同行使，明顯已逾越參與之界限，而與限制行政人事決定權之制衡功能有所扞格。況上開規定之目的既係本於通訊傳播自由之意旨，降低政治力對通傳會職權行使之影響，進而建立人民對通傳會得以公正

from the Executive Yuan to the various political parties (groups) of the Legislative Yuan and the NRC, which is composed of members recommended by such political parties (groups) based on the percentages of the numbers of their seats in the Legislative Yuan, and which obviously oversteps the limits of participation and runs counter to the checks and balances in restricting the executive power to decide on personnel affairs. Besides, since the purpose of the aforesaid provisions is to reduce the political clout on the exercise of the NCC's functions and duties and to further promote the public confidence in the NCC's fair enforcement of the law, it is questionable whether the means serve the said purpose. Although the lawmakers have certain legislative discretion to decide how to reduce the political influence on the exercise of the NCC's authorities and to further build up the people's confidence in the NCC's fair enforcement of the law, the design of the system should move in the direction of less partisan interference and more public confidence in the fairness of the said agency. Nevertheless, the aforesaid provisions have accom-

執法之信賴，則其所採手段是否與上開目的相符，即不無疑義。按立法者如何降低政治力對通傳會之影響，進而建立人民對通傳會得以公正執法之信賴，固有立法自由形成空間，惟其建制理應朝愈少政黨干預，愈有利於建立人民對其公正性之信賴之方向設計。然上開規定卻反其道而行，邀來政黨之積極介入，賦予其依席次比例推薦及導致實質提名通傳會委員之特殊地位，影響人民對通傳會超越政治之公正性信賴。是上開規定違背通傳會設計為獨立機關之建制目的，亦與憲法所保障通訊傳播自由之意旨不符。

plished exactly the opposite by inviting active intervention from political parties and granting them a special status to recommend and, in essence, nominate, members of the NCC based on the percentages of the numbers of their seats, thus affecting the impartiality and reliability of the NCC in the eyes of the people who believe that it shall function above politics. As such, the purpose of establishing the NCC as an independent agency is defeated, and the constitutional intent of safeguarding the freedom of communications is not complied with.

6. As for the provisions of Article 4-III of the NCC Organic Act regarding the appointment of members of the NCC by the Premier, as well as Paragraph V thereof, which provides that the Chairperson and Vice-Chairperson will be elected by and from among the members before their appointment by the Premier, there is some doubt as to whether Article 56 of the Constitution is violated. Although the NCC is equivalent to a second-level organ such as a ministry or commission according to its organization, it can not be con-

六、系爭通傳會組織法第四條第三項規定通傳會委員由行政院院長任命，以及同條第五項規定通傳會正、副主任委員由通傳會委員互選，並由行政院院長任命，涉及違反憲法第五十六條之疑義部分。按通傳會根據其組織編制，其層級固相當於部會等二級機關，惟通傳會既屬獨立機關性質，依法獨立行使職權，其委員之任期亦有法律規定，毋須與行政院院長同進退，為強調專業性，委員並有資格限制，凡此均與層級指揮監督體系下之行政院所屬一般部會難以相提並論，故即使規定通傳會

sidered as being on a par with the general ministries and commissions subordinate to the Executive Yuan which are under the hierarchical system since it is an independent agency that exercises its functions and duties pursuant to law and its members whose qualifications are limited so as to emphasize their areas of specialization need not step down along with the Premier due to a legally prescribed term of office. Hence one cannot jump to the conclusion that the aforesaid provisions are in violation of Article 56 of the Constitution even though the provisions that members of the NCC are appointed by the Premier and the Chairperson and Vice-Chairperson thereof are elected by and from among the members before their appointment by the Premier are distinct from Article 56 of the Constitution, which provides that the ministers and chairpersons of various commissions shall be appointed by the President of the Republic upon the recommendation of the Premier. The scope of said Article 56 does not extend so far as to cover an independent agency. Additionally, as long as the Executive Yuan is not substantially deprived

委員由行政院院長任命，正、副主任委員則由委員互選，再由行政院院長任命，雖與憲法第五十六條有關行政院各部會首長由行政院院長提請總統任命之規定有間，尚難逕執憲法第五十六條規定指摘之，蓋第五十六條之規範範圍並不及於獨立機關。且只要行政院對於通傳會委員之人事決定權未遭實質剝奪，即使正、副主任委員係由委員互選，亦不致有違反權力分立與責任政治之虞。又通傳會為獨立機關，性質既有別於一般部會，則憲法第五十六條關於行政院副院長、各部會首長及不管部會之政務委員，由行政院院長提請總統任命之規定，自不因允許立法院或其他多元人民團體參與通傳會委員之選任而受影響，自不待言。

of its power to decide on the personnel affairs in respect of members of the NCC, there will be no violation of the principles of separation of powers and politics of accountability even if the Chairperson and Vice-Chairperson are elected by and from among the members themselves. Furthermore, as the NCC is an independent agency which, in nature, differs from the general ministries and commissions, it goes without saying that Article 56 of the Constitution, which provides that the Vice Premier, Ministers and Chairpersons of various Commissions, and Ministers without Portfolio shall be appointed by the President of the Republic upon the recommendation of the Premier, will remain unaffected by the fact that the Legislative Yuan or other diversified civil associations are allowed to participate in the selection of members of the NCC.

7. Article 16-I of the NCC Organic Act provides, "During the period from the date of implementation of the Basic Act for Communications till the day when this Commission is established, in respect of any and all decisions made by the original

七、通傳會組織法第十六條第一項規定：「自通訊傳播基本法施行之日起至本會成立之日前，通訊傳播相關法規之原主管機關就下列各款所做之決定，權利受損之法人團體、個人，於本會成立起三個月內，得向本會提起覆

authorities in charge of the applicable laws and regulations regarding communications on the matters listed below, the aggrieved party, whether a corporation or an individual, may file an application to this Commission for review within three (3) months upon its establishment except for those cases for which procedures for administrative remedies have already been brought: (i) Policies regarding the supervision and management of communications; (ii) The supervision and management of, and license approval, issuance and replacement for, communications enterprises, as well as the suspension of broadcasting, license approval, issuance and replacement for, or invalidation of license for, television enterprises; (iii) The review of the qualifications for broadcasting and television enterprises, as well as their responsible persons and managers; (iv) The review and examination of communications systems and equipment; and (v) The approval of establishment of broadcasting and television enterprises, as well as the annulment of such approval; modification of the power of electric waves; suspension of broadcasting or in-

審。但已提起行政救濟程序者，不在此限：一、通訊傳播監理政策。二、通訊傳播事業營運之監督管理、證照核發、換發及廣播、電視事業之停播、證照核發、換發或證照吊銷處分。三、廣播電視事業組織及其負責人與經理人資格之審定。四、通訊傳播系統及設備之審驗。五、廣播電視事業設立之許可與許可之廢止、電波發射功率之變更、停播或吊銷執照之處分、股權之轉讓、名稱或負責人變更之許可。」賦予受特定不利處分而未提起行政救濟程序者，得於通傳會成立起三個月內，向通傳會提起覆審。其係賦予已逾提起訴願期間之受特定不利處分者，仍有得提起訴願之權利，而屬一種特別救濟規定，雖對法安定性之維護有所不周，惟其尚未逾越憲法所可容許之範疇。蓋憲法第十六條保障人民有訴願之權，其具體內容與能否獲得適當之保障，均有賴立法者之積極形成與建制，立法者對訴願制度因此享有廣泛之形成自由。除立法者未積極建制人民行使訴願權之必備要件，或未提供人民最低程度之正當程序保障外，本院對於立法者之形成自由宜予最大之尊重。

validation of license; share transfer; approval of the change of name or responsible person." The foregoing provision entitles those who were subjected to unfavorable administrative decisions but failed to initiate the procedures for administrative remedies to file an application to the NCC for review within three (3) months upon its establishment. In granting those who were subjected to unfavorable administrative decisions the right to file an appeal after the lapse of the period for filing an administrative appeal, the provision should be considered as a special relief, which does not necessarily preserve the stability of the law but nonetheless falls within the constitutionally permissible scope. Article 16 of the Constitution guarantees the people's right of lodging complaints. The specific contents thereof, as well as whether there will be adequate protection, will depend on the active formulation and institution by the lawmakers, who thus shall have broad discretion in respect of the system of administrative appeals. Except where the legislators fail to actively set forth the requisites for filing an administrative appeal or fail to

provide the people with minimal due process protection, this Court will show its utmost deference to the legislative discretion of the lawmakers.

It should be noted that, where the person subject to an administrative disposition failed to file for administrative relief or filed an administrative appeal only after the lapse of the statutory period, the original agency which made the administrative disposition or its superior agency, having considered relevant factors such as public and private interests, may *ex officio* withdraw the original disposition, and that the person subject to an administrative disposition may also apply to the administrative agency for withdrawal, abolishment or modification of the original disposition. Article 80 of the Administrative Appeal Act, as well as Articles 117 and 128 of the Administrative Procedure Act, are examples of such provisions set forth based on the aforesaid intention. According to Article 128 of the Administrative Procedure Act, the person subject to an administrative disposition may apply to the administrative agency for withdrawal,

按行政處分相對人未提起行政救濟，或提起訴願時，已逾法定期間，原處分機關或其上級機關本得衡酌公、私益等相關因素，依職權撤銷原處分；行政處分相對人亦非不得向行政機關申請撤銷、廢止或變更原處分，訴願法第八十條及行政程序法第一百十七條、第一百二十八條即係本此意旨所為之相關規定。依行政程序法第一百二十八條之規定，行政處分之相對人必須符合下列條件，始得向行政機關申請撤銷、廢止或變更原處分：一、須(1)具有持續效力之行政處分所依據之事實事後發生有利於相對人或利害關係人之變更者；或(2)發生新事實或發現新證據者，但以如經斟酌可受較有利益之處分者為限；或(3)其他具有相當於行政訴訟法所定再審事由且足以影響行政處分者等三種情形之一。二、必須非因重大過失而未能在行政程序或救濟程序主張上列事由（同條第一項規定參照）。三、該項申請必須自法定救濟期間經過後三個月內提出；如其事由發生在後或知悉在後

abolishment or modification of the original disposition only if the following conditions are met: (i) (1) Where the facts on which an administrative disposition with continuous force was based have subsequently changed to the advantage of the person subject to the disposition or the person affected thereby; or (2) Where new facts have occurred or fresh evidence has been discovered provided that, upon consideration, a more advantageous disposition is available [for the person subject to the disposition or the person affected thereby]; or (3) Where there are other causes similar to those set forth in the Administrative Proceedings Act for retrial, which are sufficient to affect the administrative disposition; (ii) The person subject to the disposition or the person affected thereby did not fail to make a statement regarding any of the abovementioned causes during the administrative procedure or the remedial proceeding out of his or her gross negligence (*See* Paragraph I of said Article); and (iii) An application under the preceding paragraph shall be filed within three (3) months after the lapse of the statutory period of remedy. If

者，則自發生或知悉時起算，但自法定救濟期間經過後已逾五年者，不得申請（同條第二項規定參照）。上開通傳會組織法第十六條第一項規定，與之相較並未設有類似之條件限制，而一律允許受特定不利處分且未提起行政救濟之人民，得於一定期間內向通傳會請求就同一事件重新作成決定；雖較其他受不利行政處分之一般人民享有較多之行政救濟機會，惟因係立法者基於法律制度變革等政策考量，而就特定事項為特殊之救濟制度設計，尚難謂已逾越憲法所容許之範圍。而通傳會於受理覆審申請，要否撤銷原處分，其具體標準通傳會組織法並未規定，仍應受行政程序法第一百十七條但書之規範。至通傳會組織法第十六條第二項規定：「覆審決定，應回復原狀時，政府應即回復原狀；如不能回復原狀者，應予補償。」屬立法者配合上開特殊救濟制度設計，衡酌法安定性之維護與信賴利益之保護所為之配套設計，亦尚未逾越憲法所容許之範圍。

the cause occurs or is known thereafter, the period shall begin from the time it occurs or is known; provided, however, that no application may be made five (5) years after the lapse of the statutory period of remedy (*See* Paragraph II of said Article). The aforesaid Article 16-I of the NCC Organic Act, when compared with the foregoing, does not set forth similar conditions but allows a person subject to unfavorable disposition who has failed to resort to administrative remedies to apply to the NCC within a certain period for a new decision on the same matter. Despite the fact that more opportunities for administrative relief are available for such persons when compared with other people subject to unfavorable dispositions, no constitutionally defined limits have been exceeded since the lawmakers have meant to design a special relief system in respect of a special matter based on such policy considerations as the reform of the legal systems. Furthermore, where the NCC accepts an application for review, it is unclear whether it should revoke the original administrative act since no specific criteria are found in the NCC Or-

ganic Act. Therefore, the proviso of Article 117 of the Administrative Procedure Act shall still govern. Paragraph II of the aforesaid article provides, "Where rehabilitation is required by the decision made upon review, the government shall so rehabilitate forthwith; where rehabilitation is not practicable, compensation shall be given." The said provision is a complementary design made by the legislators with a view to operating in coordination with the aforesaid special relief system after they considered factors such as the preservation of the stability of the law and the principle of reliance protection, which also falls within the constitutionally permissible scope.

8. Given the above, the Premier is substantially deprived of his power to decide on the personnel affairs in respect of members of the NCC due to Article 4-II of the NCC Organic Act, which provides to the effect that the various political parties (groups) shall recommend members of the NCC based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who

八、綜上所述，通傳會組織法第四條第二項規定關於各政黨（團）依其在立法院席次比例推薦通傳會委員並交由提名審查會審查之部分，第三項及第四項規定關於審查會由各政黨（團）依其在立法院席次比例推薦學者專家組成與其審查通傳會委員候選人之程序，以及行政院院長應依審查會通過同意之名單提名，並送立法院同意之部分，及第六項關於委員任滿或出缺應依上開第

shall be reviewed by the NRC, Paragraphs III and IV thereof, which provide to the effect that the NRC shall consist of scholars and experts as recommended by the various political parties (groups) based on the percentages of the numbers of seats of the respective parties (groups) in the Legislative Yuan, who will review candidates for membership in the NCC pursuant to the procedure specified therein, and that the Premier shall nominate those who appear on the list as approved by the NRC and send said list to the Legislative Yuan for the latter's confirmation, and Paragraph VI thereof, which provides to the effect that, in case of expiry of term of office or vacancy for any member of the NCC, the nomination or complementary election for new members shall be conducted in accordance with the procedure set forth in Paragraphs II and III thereof. Thus the foregoing provisions are contrary to the constitutional principles of the politics of accountability and separation of powers. Nevertheless, in light of the fact that amending the law will take some time and that, if the said provisions become null and void forthwith, the exercise

二、三項程序提名及補選之規定，實質剝奪行政院院長對通傳會委員之人事決定權，牴觸憲法所規定之責任政治與權力分立原則，惟鑑於修法尚須經歷一定時程，且該規定倘即時失效，勢必導致通傳會職權之行使陷於停頓，未必有利於憲法保障人民通訊傳播自由之行使，自須予以相當之期間俾資肆應。系爭通傳會組織法第四條第二、三、四、六項規定有關通傳會委員選任之部分，至遲應於九十七年十二月三十一日失其效力。失去效力之前，通傳會所作成之行為，並不因前開規定經本院宣告違憲而影響其適法性，人員與業務之移撥，亦不受影響。至通傳會組織法第四條第三、五項有關通傳會委員由行政院院長任命，正、副主任委員由委員互選，並由行政院院長任命之規定，並不違反憲法第五十六條規定。通傳會組織法第十六條係立法者所設之特別救濟規定，不受行政程序法第一百二十八條之限制，通傳會就申請覆審案件，亦僅能就原處分是否適法審查之，從而與憲法保障人民權利之意旨，尚無不符。

of the NCC's authorities will inevitably come to a halt and thus this circumstance may not necessarily be conducive to the people's exercise of the freedom of communications as guaranteed by the Constitution, it is only appropriate that a reasonable period of adaptation and adjustment should be provided. The said provisions of Article 4-II, -III, -IV and -VI of the NCC Organic Act shall become void no later than December 31, 2008. Prior to the voidance of the aforesaid provisions due to their unconstitutionality as declared by this Court, the legality of any and all actions taken by the NCC will remain unaffected, as will the transfer of personnel and affairs. As for Article 4-III and -V of the NCC Organic Act, which provide to the effect that the members of the NCC shall be appointed by the Premier whereas the Chairperson and Vice-Chairperson shall be elected by and from among the members themselves before their appointment by the Premier, they are not found to be in violation of Article 56 of the Constitution. Article 16 of the NCC Organic Act provides for a special relief designed by the lawmakers, which is not

subject to Article 128 of the Administrative Procedure Act. Besides, the NCC may merely review whether the original disposition is lawful where an application for review is filed with it. Thus it is not inconsistent with the constitutional intent to protect the rights of the people.

9. Although the Petitioner has petitioned this Court for a preliminary injunction before an interpretation for the case at issue is made, it nevertheless is no longer necessary to examine the issue now that an interpretation has been rendered for the case at issue.

九、本件聲請人聲請於本案解釋作成前為暫時處分部分，因本案業經作成解釋，已無審酌之必要，併此指明。

Justice Tzong-Li Hsu filed concurring opinion.

Justice Syue-Ming Yu filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Tzu-Yi Lin filed concurring opinion in part.

Justice Ho-Hsiung Wang filed dissenting opinion in part, in which Justice Tsay-Chuan Hsieh joined.

本號解釋許大法官宗力、余大法官雪明分別提出協同意見書；許大法官玉秀、林大法官子儀分別提出部分協同意見書；王大法官和雄、謝大法官在全共同提出部分不同意見書。

J. Y. Interpretation No.614（July 28, 2006）*

ISSUE: Are the provisions of Article 12-III of the Enforcement Rules of the Public Functionaries Retirement Act unconstitutional?

RELEVANT LAWS:

Articles 7, 18 and 23 of the Constitution（憲法第七條、第十八條、第二十三條）; J. Y. Interpretations Nos. 443, 542 and 575（司法院釋字第四四三號、五四二、五七五號解釋）; Article 17 of the Public Functionaries Retirement Act（公務人員退休法第十七條）; Article 12-II and –III of the Enforcement Rules of the Public Functionaries Retirement Act (as amended and issued on November 13, 1998)（公務人員退休法施行細則第十二條第二項、第三項（中華民國八十七年十一月十三日修正發布））.

KEYWORDS:

principle of legal reservation（法律保留原則）, principle of a constitutional state（法治國原則）, *Leistungsverwaltung*（給付行政）, substantive equality（實質平等）, employee of a state-owned enterprise（公營事業人員）, combination of years of service（年資併計）.**

HOLDING: The modern principle of a constitutional state is specifically manifested by the principle of legal reser-

解釋文：憲法上之法律保留原則乃現代法治國原則之具體表現，不僅規範國家與人民之關係，亦涉及行政、

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

vation under the Constitution. Not only does it regulate the relations between the state and the people, but it also involves the division of powers and authorities between the executive and legislative branches. If the people's freedoms and rights are not restricted by a measure of *Leistungsverwaltung*, there should be no violation of the principle of legal reservation under Article 23 of the Constitution, which concerns the restriction of fundamental rights of the people. If, however, any significant matter is involved, e.g., public interests or protection of fundamental rights of the people, the competent authority, in principle, should not formulate and issue any regulation without express authorization of the law (*see* J. Y. Interpretation No. 443). Although the Constitution is silent as to whether the years of service for a public functionary can be combined with his or her years of service as an employee of a state-owned enterprise for the purpose of calculating his or her retirement pension, the legislature may nonetheless enact appropriate laws in this respect pursuant to the constitutional intention of ensuring the lively-

立法兩權之權限分配。給付行政措施如未限制人民之自由權利，固尚難謂與憲法第二十三條規定之限制人民基本權利之法律保留原則有違，惟如涉及公共利益或實現人民基本權利之保障等重大事項者，原則上仍應有法律或法律明確之授權為依據，主管機關始得據以訂定法規命令（本院釋字第四四三號解釋理由書參照）。公務人員曾任公營事業人員者，其服務於公營事業之期間，得否併入公務人員年資，以為退休金計算之基礎，憲法雖未規定，立法機關仍非不得本諸憲法照顧公務人員生活之意旨，以法律定之。在此類法律制定施行前，主管機關依法律授權訂定之法規命令，或逕行訂定相關規定為合理之規範以供遵循者，因其內容非限制人民之自由權利，尚難謂與憲法第二十三條規定之法律保留原則有違。惟曾任公營事業人員轉任公務人員時，其退休相關權益乃涉及公共利益之重大事項，仍應以法律或法律明確授權之命令定之為宜，併此指明。

hood of a public functionary. Prior to the implementation of such laws, any regulations issued by the competent authority under the authorization of the law or any relevant and reasonable rules set forth by same are not contrary to the principle of legal reservation under Article 23 of the Constitution because they are not designed to impose restrictions on the freedoms or rights of the people. Nevertheless, it should be noted that the relevant rights and interests of a public functionary who was once an employee of a state-owned enterprise involve significant public interests and, as such, they should be appropriately prescribed either by law or by legally mandated regulations.

If a regulation formulated and issued by the competent authority under the authorization of the law is of a compensatory nature, it shall also be bound by applicable constitutional principles, including, in particular, the principle of equality (*see* J. Y. Interpretation No. 542). The Examination Yuan, pursuant to the mandate of Article 17 of the Public Functionaries Retirement Act, formulated and issued the

主管機關依法律授權所訂定之法規命令，其屬給付性質者，亦應受相關憲法原則，尤其是平等原則之拘束（本院釋字第五四二號解釋參照）。考試院依據公務人員退休法第十七條授權訂定之施行細則，於中華民國八十七年十一月十三日修正發布該施行細則第十二條第三項，就公營事業之人員轉任為適用公務人員退休法之公務人員後，如何併計其於公營事業任職期間年資之規定，

Enforcement Rules of the Public Functionaries Retirement Act and amended Article 12-III of said Rules on November 13, 1998, which provides different treatment with respect to the combination of years of service for a public functionary who was once an employee of a state-owned enterprise but later became a public functionary to whom the Public Functionaries Retirement Act applies, as distinguished from the treatment with respect to political appointees, public school education staff or military personnel, which is provided in Paragraph II thereof. Such discriminatory provisions are rational but not arbitrary or unreasonable in that the competent authority has taken into consideration the differences between the overall design of the retirement system for employees of state-owned enterprises and that for the public functionaries to whom the Public Functionaries Retirement Act applies, as well as for political appointees, public school education staff or military personnel, including such factors as their compensatory structures, bases of retirement fund payments, compensation criteria, etc. Thus, they are not in conflict with

與同條第二項就政務人員、公立學校教育人員或軍職人員轉任時，如何併計年資之規定不同，乃主管機關考量公營事業人員與適用公務人員退休法之公務人員及政務人員、公立學校教育人員、軍職人員之薪給結構、退撫基金之繳納基礎、給付標準等整體退休制度之設計均有所不同，所為之合理差別規定，尚難認係恣意或不合理，與憲法第七條平等原則亦無違背。

the principle of equality embodied in Article 7 of the Constitution.

REASONING: The modern principle of a constitutional state is specifically manifested by the principle of legal reservation under the Constitution. Not only does it regulate the relations between the state and the people, but it also involves the division of powers and authorities between the executive and legislative branches. If the people's freedoms and rights are not restricted by a measure of *Leistungsverwaltung*, there should be no violation of the principle of legal reservation under Article 23 of the Constitution, which concerns the restriction of fundamental rights of the people. If, however, any significant matter is involved, e.g., public interests or protection of fundamental rights of the people, the competent authority, in principle, should not formulate and issue any regulation without express authorization of the law.

解釋理由書：憲法上之法律保留原則乃現代法治國原則之具體表現，不僅規範國家與人民之關係，亦涉及行政、立法兩權之權限分配。給付行政措施如未限制人民之自由權利，固尚難謂與憲法第二十三條規定之限制基本權利之法律保留原則有違，惟如涉及公共利益或實現人民基本權利之保障等重大事項者，原則上仍應有法律或法律明確之授權為依據，主管機關始得據以訂定法規命令。

Article 18 of the Constitution provides for the people's right to hold public offices, which is intended to guarantee the

憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事公務，暨由此衍生享有之身分保障、俸給

people's right to perform public functions pursuant to law and hence the right to enjoy the protection of their status as such, as well as the right to claim remunerations, retirement pensions, etc. In contrast, the state shall be obligated to provide the public functionaries with remunerations, retirement pensions and so on to maintain their livelihood. Although the Constitution is silent as to whether the years of service for a public functionary can be combined with his or her years of service as an employee of a state-owned enterprise for the purpose of calculating his or her retirement pension, the legislature may nonetheless enact appropriate laws in this respect pursuant to the constitutional intention of ensuring the livelihood of a public functionary. Nevertheless, so far as a measure of *Leistungsverwaltung* is concerned, the law allows more latitude than when any restriction on the rights or interests of the people is imposed (*see* J. Y. Interpretation No. 443). Prior to the implementation of such laws, since the combination of years of service for a public functionary who was once an employee of a state-owned enterprise cannot be af-

與退休金請求等權利。國家則對公務人員有給予俸給、退休金等維持其生活之義務。公務人員曾任公營事業人員者，其服務於公營事業之期間，得否併入公務人員年資，以為退休金計算之基礎，憲法雖未規定，立法機關仍非不得本諸憲法照顧公務人員生活之意旨，以法律定之。惟關於給付行政措施，其受法律規範之密度，自較限制人民權益者寬鬆（本院釋字第四四三號解釋理由書參照），在此類法律制定施行前，曾任公營事業人員無從辦理併計年資，主管機關自得發布相關規定為必要合理之規範，以供遵循。主管機關針對曾任公營事業之人員，於轉任公務人員時，其原服務年資如何併計，依法律授權訂定法規命令，或逕行訂定相關規定為合理之規範以供遵循者，因其內容非限制人民之自由權利，尚難謂與憲法第二十三條規定之法律保留原則有違（本院釋字第五七五號解釋參照）。惟曾任公營事業人員轉任公務人員時，其退休相關權益乃涉及公共利益之重大事項，依現代法治國家行政、立法兩權之權限分配原則，仍應以法律或法律明確授權之命令定之為宜，併此指明。

fected, the competent authority may, as a matter of course, issue applicable rules to follow in handling such affairs. In deciding how to combine the years of service for a public functionary who was once an employee of a state-owned enterprise, any regulations issued by the competent authority under the authorization of the law or any relevant and reasonable rules set forth by same are not contrary to the principle of legal reservation under Article 23 of the Constitution because they are not designed to impose restrictions on the freedoms or rights of the people (*see* J. Y. Interpretation No. 575). Nevertheless, it should be noted that the relevant rights and interests of a public functionary who was once an employee of a state-owned enterprise involve significant public interests and, as such, they should be appropriately prescribed either by law or by legally mandated regulations.

If a regulation formulated and issued by the competent authority under the authorization of the law is of a compensatory nature, it shall also be bound by applicable constitutional principles, include-

主管機關依法律授權所訂定之法規命令，其屬給付性質者，亦應受相關憲法原則，尤其是平等原則之拘束。憲法第七條規定，中華民國人民在法律上一律平等，其內涵並非指絕對、機械之

ing, in particular, the principle of equality. Article 7 of the Constitution provides that all citizens of the Republic of China shall be equal before the law. The connotation of said provision does not refer to the absolute, mechanical equality in form, but rather to the substantive equality of the people's legal status. In light of the constitutional value system and the legislative purpose, the legislature may take into account the nature of the matters to be regulated and thus provide rationally discriminatory treatment. The existing laws have set forth different definitions for government employees due to the differences in their respective legislative purposes. In order to deal with the differences in the nature of the positions of various categories of government employees, the competent authority may design different rules regarding the appointment, remuneration, reward, evaluation, retirement, and so forth for different personnel subject to different systems. When a person is transferred from one system to another, his or her years of service cannot be directly added up. In view of the fairness of the personnel system, a conversion system is

形式上平等，而係保障人民在法律上地位之實質平等；立法機關基於憲法之價值體系及立法目的，自得斟酌規範事物性質之差異而為合理之差別對待。現行法律對公務員之界定，因各該法律之立法目的而有所不同，主管機關因應各類公務員職務性質之差異性，就不同制度人員間設計不同之任用、敘薪、考績（成）、考核及退休等規定，於相互轉任時，其年資之計算原無從直接予以併計，基於人事制度之公平性，故有年資併計換算規定之設計。原任公營事業勞工保險局之人員，其退休制度係適用財政部所屬國營金融保險事業人員退休撫卹及資遣辦法相關規定，而非適用公務人員退休法之規定，本係基於不同政府機關間退休撫卹制度、基金繳納基礎及領取給付計算之不同所為相異之設計，考試院依據公務人員退休法第十七條之授權訂定施行細則，於八十七年十一月十三日修正發布該細則第十二條第三項規定：「公務人員在本法修正施行後，曾任依規定得予併計之其他公職或公營事業人員之年資，應於轉任公務人員時，由服務機關轉送基金管理機關按其任職年資、等級對照公務人員繳費標準換算複利終值之總和，通知服務機關轉知公務人員一次繳入退撫基金帳戶，始

designed for the purpose of combining the years of service. A person who was formerly an employee of the Labor Insurance Bureau, a state-owned enterprise, is subject to the Regulation Governing the Pension and Severance Payment for Ministry-of-Finance-Operated Financial or Insurance Enterprise Employees, instead of the Public Functionaries Retirement Act. The different designs are due to the differences between the various governmental organs in their retirement systems, bases of fund payment, as well as the calculation of benefits. The Examination Yuan, pursuant to the mandate of Article 17 of the Public Functionaries Retirement Act, formulated and issued the Enforcement Rules of the Public Functionaries Retirement Act (hereinafter referred to as "Enforcement Rules") and amended Article 12-III of said Rules on November 13, 1998, which provides, "After the amendment and implementation of the Act, the years of service for a public functionary may not be combined with his or her years of service as an employee of any other public office or state-owned enterprise unless the agency he or she now serves transfers the

得併計其任職年資」，係就公營事業之人員轉任為適用公務人員退休法之公務人員後，如何併計其於公營事業任職期間年資之規定，其未如同施行細則第十二條第二項規定：「公務人員在本法修正施行後，曾任政務人員、公立學校教育人員或軍職人員之年資，應於轉任公務人員時，將其原繳未曾領取之基金費用之本息移撥退撫基金帳戶，始得併計其任職年資」，使曾任公營事業人員亦同於政務人員、公立學校教育人員或軍職人員，於轉任時得以將原繳未曾領取之基金費用之本息逕行移撥至轉任後之公務人員退撫基金帳戶，並據以採計年資，乃主管機關考量政務人員、公立學校教育人員或軍職人員之退休撫卹制度之設計規畫與適用公務人員退休法之公務人員一致，於制度基礎相同之前提下，允許將其直接移撥至公務人員退撫基金帳戶，並據以採計年資；至公營事業人員，因薪資結構採行單一薪給制，且按照平均薪資或現職待遇特定比例計算退休給與，該類人員與適用公務人員退休制度者，二者之退撫基金之提撥基礎、提撥比率、給付標準與基金之運用管理等整體之制度設計及考量重點均不盡相同，故上開施行細則第十二條第三項，使曾任其他公職或公營事業之人

aggregate of the total value with the compound interests converted by the fund management authority upon comparing his or her seniority in office and rank with the payment criteria for public functionaries, and in turn notifies the public functionary to transfer such aggregate in one lump sum to the retirement pension fund." The said provision concerns the combination of years of service for a public functionary who was once an employee of a state-owned enterprise but later became a public functionary to whom the Public Functionaries Retirement Act applies, which is different from Article 12-III of said Enforcement Rules, providing, "After the amendment and implementation of the Act, the years of service for a public functionary may not be combined with his or her years of service as a political appointee, public school education staff member or military serviceman unless the paid-but-unclaimed principal and interests for his or her fund payments are transferred to the retirement pension fund." The said provision enables a former employee of a state-owned enterprise, like a political appointee, public school educa-

員，於轉任公務人員時，得選擇自行負擔轉任前之公提儲金部分以併計轉任前後之年資，或不予併計，而非當然採計或一律不予採計之規定，係合理考量制度間之差異及謀求人事制度間之平衡，針對年資併計換算規定所為之相異設計，雖與政務人員、公立學校教育人員或軍職人員有別，尚難認係恣意或不合理，與憲法第七條平等原則，亦無違背。

tion staff member or military serviceman, to directly transfer his or her paid-but-unclaimed principal and interests for his or her fund payments to the public functionaries' retirement pension fund upon his or her assignment to the new post, and it also recognizes his or her earlier years of service. The logic behind the provision is that the competent authority would permit the direct transfer thereof to the public functionaries' retirement pension fund and recognize their years of service accordingly due to its view that the designs and plans of the retirement and severance systems in respect of political appointees, public school education staff or military personnel are consistent with those concerning public functionaries to whom the Public Functionaries Retirement Act applies, and thus they are on an equal footing. As for an employee of a state-owned enterprise, a single-remuneration system is adopted as his or her salary structure and the retirement benefit is calculated based on a particular percentage of his or her average salary or current remuneration. As such, the retirement system for such an employee and that for one

who is subject to the Public Functionaries Retirement Act are different in their overall systematic designs and emphases, including such factors as bases of contributions, percentages of contributions, compensation criteria, fund use and management, etc. Thus, Article 12-III of the said Enforcement Rules provides that a person who once worked for any other public office or a state-owned enterprise may choose to receive the publicly contributed portion on his or her own so as to combine the years of service prior and subsequent to his or her new assignment, or not to so combine, instead of accepting an automatic combination or non-combination of the relevant years of service. The different designs in respect of the conversion of seniority and the combination of years of service under the aforesaid provisions have taken into account the different systems and are intended to seek a balance between different personnel systems. Therefore, they are not arbitrary or unreasonable despite the different treatment for political appointees, public school education staff or military personnel, nor are they in conflict with the principle of

equality embodied in Article 7 of the Constitution.

J. Y. Interpretation No.615（July 28, 2006）*

ISSUE: Are the provisions of Article 25-II of the Enforcement Rules of the Income Tax Act and its related directives unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 17-I (ii) of the Income Tax Act（as amended and promulgated on January 3, 2001）(所得稅法第十七條第一項第二款（九十年一月三日修正公布）); Article 25-II of the Enforcement Rules of the Income Tax Act (as amended and issued on August 16, 1984)（所得稅法施行細則第二十五條第二項（七十三年八月十六日修正發布）） ; Directive Ref. No. TTS-801799973 issued by the Ministry of Finance on February 11, 1992; Directive Ref. No. TTS-871934606 issued by same on March 19, 1998（財政部八十一年二月十一日台財稅字第八〇一七九九九七三號函、八十七年三月十九日台財稅字第八七一九三四六〇六號函）.

KEYWORDS:

standard deduction（標準扣除額）, itemized deduction（列舉扣除額）, selection of filing method for deduction（申報減除方式之選擇）, taxpayer's participation in the tax collection procedure（納稅義務人參與稅負稽徵程序）, principle of taxation by law（租稅法律原則）, collection accuracy（稽徵正確）, collection expediency（稽徵便宜）, economic effect of the collection procedure（稽徵程序經濟效能）, stability of taxation（租稅安定）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: Article 25-II of the Enforcement Rules of the Income Tax Act provides that a taxpayer who has opted for standard deductions may not file a request for a change to itemized deductions once his or her final income tax return is assessed by the tax collection authority as to his or her tax liabilities. The said provision does not overstep the scope of Article 17-I (ii) of the Income Tax Act as amended and promulgated on January 3, 2001. The Directive Ref. No. TTS-801799973 issued by the Ministry of Finance on February 11, 1992, and Directive Ref. No. TTS-871934606 issued by same on March 19, 1998, are interpretations made under said ministry's statutory authorities and powers with respect to the aforesaid provisions and do not impose any additional restriction that is not stated in said provisions. As such, they are not contrary to the principle of taxation by law under Article 19 of the Constitution.

解釋文：所得稅法施行細則第二十五條第二項規定，納稅義務人選定適用標準扣除額者，於其結算申報案件經稽徵機關核定應納稅額之後，不得要求變更適用列舉扣除額，並未逾越九十年一月三日修正公布之所得稅法第十七條第一項第二款之規範目的；財政部八十一年二月十一日台財稅字第八〇一七九九九七三號及八十七年三月十九日台財稅字第八七一九三四六〇六號函釋，係就上開規定之適用原則，依法定職權而為闡釋，並未增加該等規定所無之限制，均與憲法第十九條租稅法律原則無違。

REASONING: The Petitioner has petitioned for interpretation of the Constitution in respect of Article 25 (Paragraph II) of the Enforcement Rules

解釋理由書：本件聲請人就臺北高等行政法院九十二年度簡字第七三三號判決及最高行政法院九十四年度裁字第〇一三六五號裁定所適用之所得稅

of the Income Tax Act and Directive Ref. No. TTS-801799973 issued by the Ministry of Finance on February 11, 1992, and Directive Ref. No. TTS-871934606 issued by same on March 19, 1998, which were applied in Judgment C.T. No. 733 (Taipei H. Ad. Ct., 2003), as well as Ruling C.T. No. 01365 (Sup. Ad. Ct., 2005). The said Supreme Administrative Court ruling was issued to dismiss the appeal filed by the Petitioner against the aforesaid judgment rendered by the Taipei High Administrative Court by means of summary proceedings, on the ground that the appeal was procedurally illegal since it did not meet the requirement that the legal opinion involved in a legal action be of a matter of principle, and thus the ruling did not apply the foregoing provisions and directives. It should be noted that the aforesaid judgment of the Taipei High Administrative Court should be the final and conclusive judgment and an interpretation should be made in respect of the abovementioned provisions and directives as applied by said judgment because the Petitioner has exhausted the means of judicial hierarchical relief and has petitioned for interpreta-

法施行細則第二十五條（第二項）規定及財政部八十一年二月十一日台財稅字第八〇一七九九九七三號、八十七年三月十九日台財稅字第八七一九三四六〇六號函釋，聲請解釋憲法。查上開最高行政法院裁定係以聲請人對上開臺北高等行政法院適用簡易程序之判決提起上訴，不符合訴訟事件所涉及之法律見解具有原則性之要件，不予許可，並未適用上開法規及函釋，而以上訴不合法從程序上予以駁回。因聲請人已依法定程序盡其審級救濟，且非對裁判適用法律所表示之見解，而係對上開法令是否違憲聲請解釋，故應以上開臺北高等行政法院判決為確定終局判決，就其所適用之上開法規及函釋予以解釋，合先敘明。

tion as to whether the foregoing provisions and directives, rather than the opinions expressed by the court in its judgment, are unconstitutional.

Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the State shall, in imposing duty on the people to pay tax or granting tax abatements or exemption to the people, prescribe by law such requisite elements of taxation as taxpaying bodies, taxable objects, tax bases, tax rates and so forth.

憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率等租稅構成要件，以法律明定之。

Article 17-I (ii) of the Income Tax Act as amended and promulgated on January 3, 2001 provides that, in subtracting the deductions from the gross consolidated income of an individual so as to calculate his or her net consolidated income, a taxpayer may select either the "standard deduction" or "itemized deduction." What the legislators intended is that the selection of the filing method for deduction allows a taxpayer to participate in the tax collection procedure for pur-

九十年一月三日修正公布之所得稅法第十七條第一項第二款規定，納稅義務人於結算申報綜合所得稅，就個人綜合所得總額減除扣除額以計算所得淨額時，得就標準扣除額或列舉扣除額擇一申報減除。查扣除額申報減除方式之選擇，乃立法者基於租稅正確與稽徵便宜之目的，准許納稅義務人參與稅負稽徵程序，而可以選擇租稅負擔較小或申報較方便之減除方式，供稽徵機關為應納稅額之核定。惟為避免納稅義務人申報減除方式之選擇，導致租稅法律關係

poses of collection accuracy and collection expediency, whereby he or she may select a less onerous or more convenient deduction method for the collection authority to assess his or her tax liabilities. Nevertheless, in order to avoid any uncertainty of legal relationship under tax law due to the taxpayer's selection of filing method for deduction, thus defeating the aforesaid purpose, reasonable restrictions should be imposed. The Ministry of Finance, under the authority of Article 121 of the Income Tax Act, amended and announced as Article 25-II of the Enforcement Rules of said Act, which provides, "A taxpayer who has opted for standard deductions or who is deemed to have opted for standard deductions pursuant to the preceding paragraph, may not file a request for a change to itemized deductions once his or her final income tax return is assessed by the tax collection authority as to his or her tax liabilities." The said provision has set the collection authority's assessment of a taxpayer's tax liabilities as the time limit for his or her selection as mentioned above. It is a reasonable method to effectively preserve

不確定，而不能實現上述規範之目的，有為合理限制之必要。財政部依所得稅法第一百二十一條授權訂定該法施行細則，於七十三年八月十六日修正發布該細則第二十五條第二項規定：「經納稅義務人選定適用標準扣除額，或依前項規定視為已選定適用標準扣除額者，於其結算申報案件經稽徵機關核定後，不得要求變更適用列舉扣除額。」乃以稽徵機關是否完成應納稅額之核定，作為納稅義務人上開選擇之期限規定，係為有效維護租稅安定之合理手段，已調和稽徵正確、稽徵程序經濟效能暨租稅安定之原則，要無逾越上開所得稅法第十七條第一項第二款之規範目的，與憲法第十九條租稅法律原則並無違背。

the stability of taxation, which has harmonized such principles as collection accuracy, economic effect of collection procedure and stability of taxation. As such, it does not overstep the scope of the aforesaid Article 17-I (ii) of the Income Tax Act, nor is it contrary to the principle of taxation by law under Article 19 of the Constitution.

If the competent authority, by its statutory authorities and powers, issues necessary directives in applying various provisions of the tax laws without contradicting the general methodologies in legal construction and such directives are in line with the applicable legislative purposes of the respective laws, there is no violation of the principle of taxation by law as embodied in Article 19 of the Constitution. The Directive Ref. No. TTS-801799973 issued by the Ministry of Finance on February 11, 1992 read, "…since the taxpayer xx had opted for the standard deductions in filing his consolidated income tax return for the year 1988, for which the tax collection authority made assessment, no request for change to

主管機關本於法定職權於適用相關租稅法律規定所為釋示，如無違於一般法律解釋方法，於符合立法意旨之限度內，即無違反憲法第十九條規定之租稅法律原則。財政部八十一年二月十一日台財稅字第八〇一七九九九七三號函：「……本件納稅義務人××七十七年度綜合所得稅結算申報案既已選定適用標準扣除額，並經稽徵機關核定，雖核定內容有誤申請更正，依首開規定亦不得要求變更適用列舉扣除額。」八十七年三月十九日台財稅字第八七一九三四六〇六號函：「綜合所得稅納稅義務人未依限辦理結算申報，但在稽徵機關核定應納稅額前補辦申報者，可適用公職人員選舉罷免法第四十五條之四及總統副總統選舉罷免法第三十八條規定，列報候選人競選經費列舉扣除額、

itemized deductions should be made in accordance with the provisions mentioned above even if an application for correction of assessment had been made due to inaccuracy." The Directive Ref. No. TTS-871934606 issued by same on March 19, 1998, further read, "Where a taxpayer failed to file his or her consolidated income tax return by the deadline but made a deferred filing before the collection authority assessed his or her tax liabilities, he or she may claim itemized deduction for campaign expenditures of a candidate or an individual's contribution to campaign expenditures of candidates and a legally founded political party under Article 45-4 of the Public Officials Election and Recall Act and Article 38 of the Presidential and Vice Presidential Election and Recall Act; where the taxpayer has filed the tax return by the deadline and opted for the standard deduction or is deemed by the collection authority to have selected the standard deduction, the same shall apply if a deferred filing is made prior to the collection authority's assessment; however, where the collection authority has made an assessment, the foregoing shall not apply." The competent authority's interpretation of the provisions of Article 17, Paragraph 1, Subparagraph 2 and Article 25, Paragraph 2 of the Income Tax Act and Article 25, Paragraph 2 of the Enforcement Rules of the Income Tax Act based on its statutory power, that is, the principle that once the tax authority has assessed the amount of tax payable, the taxpayer may not change the previously selected deduction method, does not add restrictions not found in the Income Tax Act and its Enforcement Rules, and is not in violation of the principle of tax legislation under Article 19 of the Constitution.

個人對候選人與依法設立政黨捐贈列舉扣除額；如納稅義務人已依限辦理結算申報，經選定填明適用標準扣除額或經稽徵機關視為已選定適用標準扣除額，其結算申報案件經稽徵機關核定前申請補報者亦同；惟經稽徵機關核定之案件，則不適用上述申請補報列舉扣除額之規定。」係主管機關基於法定職權，闡釋上開所得稅法第十七條第一項第二款及所得稅法施行細則第二十五條第二項之適用原則，既經稅捐稽徵機關核定應納稅額之後，即不得變更之前已選定之扣除額申報方式，並未增加所得稅法及其施行細則所無之限制，自與憲法第十九條租稅法律原則無違。

going provisions concerning the deferred filing for itemized deductions shall not be applicable." The foregoing directives are interpretations made by the competent authority under its statutory authorities and powers with respect to the aforesaid Article 17-I (ii) of the Income Tax Act and Article 25-II of the Enforcement Rules of the Income Tax Act, which opined that a previously selected filing method for deduction may not be changed once an assessment of tax liabilities is made by the tax collection authority. Thus, no additional restriction is imposed other than those set forth in the Income Tax Act and its Enforcement Rules. As such, they are not contrary to the principle of taxation by law under Article 19 of the Constitution.

As for the petition made by the Petitioner that the abovementioned ruling issued by the Supreme Administrative Court and the judgment rendered by the Taipei High Administrative Court be declared unconstitutional and hence revoked, a court judgment is not subject to constitutional review under the current

至於聲請人另聲請將首開最高行政法院裁定及臺北高等行政法院判決宣告違憲，並均予撤銷一節，因依現行法制，法院裁判本身尚不得為違憲審查之客體，本院亦不得予以撤銷，是此部分聲請，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不予受理。

legal system, nor is this Court allowed to revoke same. Therefore, said petition is inconsistent with Article 5-I (ii) of the Constitutional Interpretation Procedure Act and, under Paragraph III of said article, shall be dismissed.

Justice Yu-hsiu Hsu filed concurring opinion in part.

本號解釋許大法官玉秀提出部分協同意見書。

J.Y. Interpretation No.616（September 15, 2006）*

ISSUE: Are the provisions of Article 108, Paragraph 1, and Article 108-1, Paragraph 1, of the Income Tax Act constitutional in requiring payment by the taxpayer of a surcharge for late filing of a tax return?

RELEVANT LAWS:

The Constitution, Articles 15 and 23（憲法第十五條、第二十三條）; Income Tax Act, Article 108, Paragraph 1, as amended on December 30, 1989; Article 108-1, Paragraph 1, as amended on December 30, 1997（所得稅法，七十八年十二月三十日修正公布第一百零八條第一項，八十六年十二月三十日修正公布第一百零八條之一第一項）; J.Y. Interpretation No. 356（司法院釋字第三五六號解釋）.

KEYWORDS:

taxpayer（納稅義務人）; final income tax return（結算申報）; assessed income/tax（核定所得額／稅額）; late filing surcharge（滯報金）; undistributed profits（未分配盈餘）; punishment for tax evasion（漏稅罰）; punishment for misconduct（行為罰）.**

HOLDING: The Income Tax Act, as amended on December 30, 1989, provides in Article 108, Paragraph 1:

解釋文：中華民國七十八年十二月三十日修正公布之所得稅法第一百零八條第一項規定：「納稅義務人違反

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

"Where a taxpayer failed to file the final income tax return within the period specified in Articles 71 and 72 hereof but has thereafter filed the return pursuant to Paragraph 1 of Article 79 hereof, and the taxing authority has made an assessment of his/her income and the amount of tax payable upon investigation carried out on the basis of such return, he/she shall be required to pay a late filing surcharge in an amount equal to ten per cent of the tax assessed to be payable by him/her. The amount of such late filing surcharge shall be no less than NT$1,500." Article 108-1, Paragraph 1, of the Act, as amended on December 30, 1997, provides: "Where a business entity failed to file a report on its undistributed profits within the period specified in Article 102-2 hereof, but has thereafter filed such a report pursuant to Paragraph 2 of Article 102-3 hereof, and the taxing authority has made an assessment of its undistributed profits and the amount of additional tax payable upon investigation carried out on the basis of such report, it shall be required to pay a late filing surcharge in an amount equal to 10% of the amount of additional income

第七十一條及第七十二條規定，未依限辦理結算申報，但已依第七十九條第一項規定補辦結算申報，經稽徵機關據以調查核定其所得額及應納稅額者，應按核定應納稅額另徵百分之十滯報金。滯報金之金額，不得少於一千五百元。」八十六年十二月三十日增訂公布之同法第一百零八條之一第一項規定：「營利事業違反第一百零二條之二規定，未依限辦理未分配盈餘申報，但已依第一百零二條之三第二項規定補辦申報，經稽徵機關據以調查核定其未分配盈餘及應加徵之稅額者，應按核定應加徵之稅額另徵百分之十滯報金。滯報金之金額，不得少於一千五百元。」乃對納稅義務人未於法定期限內履行申報義務之制裁，其違規情節有區分輕重程度之可能與必要者，自應根據違反義務本身情節之輕重程度為之。上開規定在納稅義務人已繳納其應納稅款之情形下，行為罰仍依應納稅額固定之比例加徵滯報金，又無合理最高額之限制，顯已逾越處罰之必要程度而違反憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之意旨有違，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

tax so assessed. The amount of such late filing surcharge shall be no less than NT$1,500." These provisions are intended to impose punishment on the taxpayer who fails to perform his/her duty to file a tax return or report within the statutory period of time. Where it is possible and necessary to make differentiation in the degrees of seriousness of the act of breach, the punishment to be imposed shall of course be based upon the degree of seriousness of the act of breach *per se*. The above-quoted provisions, which require the imposition of punishment on a taxpayer for misconduct by way of payment of an additional late filing fee at a fixed rate of the tax payable without being subject to a reasonable limit on the maximum amount, despite the fact that the taxpayer has already paid the tax payable by him/her, have clearly gone beyond the necessary degree and are therefore contrary to the principle of proportionality under Article 23 of the Constitution and the purpose of Article 15 thereof in protecting the people's property right. They must be rendered ineffective not later than one year from the date of issue of this in-

terpretation.

REASONING: As expounded in our J.Y. Interpretation No. 356, punishment for violation of tax laws may be either a punishment for tax evasion to be imposed on a taxpayer for his/her act of evasion of tax or dues or a punishment for misconduct to be imposed on a taxpayer for his/her breach of the duty to act or not to act under tax laws. The Income Tax Act, as amended on December 30, 1989, provides in Article 108, Paragraph 1: "Where a taxpayer failed to file the final income tax return within the period specified in Articles 71 and 72 hereof but has thereafter filed the return pursuant to Paragraph 1 of Article 79 hereof, and the taxing authority has made an assessment of his/her income and the amount of tax payable upon investigation carried out on the basis of such return, he/she shall be required to pay a late filing surcharge in an amount equal to ten per cent of the tax assessed to be payable by him/her. The amount of such late filing surcharge shall be no less than NT$1,500." Article 108-1, Paragraph 1, of the Act, as amended on

解釋理由書：違反稅法之處罰，有因納稅義務人逃漏稅捐而予處罰之漏稅罰，有因納稅義務人違反稅法上之作為或不作為義務而予處罰之行為罰，業經本院釋字第三五六號解釋闡明在案。七十八年十二月三十日修正公布之所得稅法第一百零八條第一項規定：「納稅義務人違反第七十一條及第七十二條規定，未依限辦理結算申報，但已依第七十九條第一項規定補辦結算申報，經稽徵機關據以調查核定其所得額及應納稅額者，應按核定應納稅額另徵百分之十滯報金。滯報金之金額，不得少於一千五百元。」八十六年十二月三十日增訂公布之同法第一百零八條之一第一項規定：「營利事業違反第一百零二條之二規定，未依限辦理未分配盈餘申報，但已依第一百零二條之三第二項規定補辦申報，經稽徵機關據以調查核定其未分配盈餘及應加徵之稅額者，應按核定應加徵之稅額另徵百分之十滯報金。滯報金之金額，不得少於一千五百元。」乃對納稅義務人未於法定期限申報所得稅及營利事業未分配盈餘之制裁規定，旨在促使納稅義務人履行其依法申報之義務，俾能確實掌握稅源資料，

December 30, 1997, provides: "Where a business entity failed to file a report on its undistributed earnings within the period specified in Article 102-2 hereof, but has thereafter filed such a report pursuant to Paragraph 2 of Article 102-3 hereof, and the taxing authority has made an assessment of its undistributed earnings and the amount of additional tax payable upon investigation carried out on the basis of such report, it shall be required to pay a late filing surcharge in an amount equal to 10% of the amount of additional income tax so assessed. The amount of such late filing surcharge shall be no less than NT$1,500." These provisions are intended to impose punishment on the taxpayer who fails to perform his/her duty to file a tax return or report within the statutory period of time and are designed to encourage taxpayers to perform their duty to file tax returns as required by law so that data of taxable sources may be fully controlled and a reasonable tax assessment system may be established. The imposition of a late filing surcharge constitutes a punishment inflicted upon the taxpayer for breach of his/her duty to act and is a

建立合理之查核制度。加徵滯報金係對納稅義務人違反作為義務所為之制裁，乃罰鍰之一種，係對人民財產權之限制，具行為罰性質，其違規情節有區分輕重程度之可能與必要者，自應根據違反義務本身情節之輕重程度為之。上開所得稅法第一百零八條第一項及第一百零八條之一第一項之規定，在納稅義務人已繳納其應納稅款之情形下，行為罰仍依應納稅額固定之比例加徵滯報金，又無合理最高額之限制，顯已逾越處罰之必要程度而違反憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之意旨有違，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

form of fine. It sets a restraint on the property right of the people and is by nature a punishment for misconduct. Where it is possible and necessary to make differentiation in the degrees of seriousness of the act of breach, the punishment to be imposed shall of course be based upon the degree of seriousness of the act of breach *per se*. The above-quoted provisions of the Income Tax Act, Article 108, Paragraph 1, and Article 108-1, Paragraph 1, which require the imposition of punishment on a taxpayer for misconduct by way of an additional late filing fee at a fixed rate of the tax payable without being subject to a reasonable limit on the maximum amount, despite the fact that the taxpayer has already paid the tax payable by him/her, have clearly gone beyond the necessary degree and are therefore contrary to the principle of proportionality under Article 23 of the Constitution and the purpose of Article 15 thereof in protecting the people's property right. They must be rendered ineffective not later than one year from the date of issue of this interpretation.

J. Y. Interpretation No.617（October 26, 2006）*

ISSUE: Is Article 235 of the Criminal Code unconstitutional?

RELEVANT LAWS:

Articles 11 and 23 of the Constitution（憲法第十一條、第二十三條）; J.Y. Interpretations Nos. 407, 432, 521, 594 and 602（司法院釋字第四〇七號、第四三二號、第五二一號、第五九四號、第六〇二號解釋）; Article 235 of the Criminal Code（刑法第二百三十五條）; Articles 27 and 28 of the Child and Juvenile Sexual Transaction Prevention Act（兒童及少年性交易防制條例第二十七條、二十八條）; Article 5-I (ii) and -III of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款、第三項）.

KEYWORDS:

Freedom of speech（言論自由）, freedom of the press（出版自由）, sexually explicit language（性言論）, sexually explicit material（性資訊）, social decency（社會風化）, obscenity（猥褻）, evaluative and indefinite concepts of law（評價性之不確定法律概念）, legislative discretion（立法形成自由）, principle of proportionality（比例原則）, principle of clarity and definiteness of law（法律明確性原則）, minority cultural group（少數性文化族群）, equal and harmonious sexual values and mores of society（平等和諧之社會性價值秩序）.**

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

HOLDING: Article 11 of the Constitution guarantees the people's freedom of speech and publication for the purposes of ensuring the free flow of opinions and giving the people the opportunities to acquire sufficient information and to attain self-fulfillment. Whether it is for profit or not, the expression of sexually explicit language and the circulation of sexually explicit material should also be subject to constitutional protection of the freedom of speech and publication. Nevertheless, the freedom of speech and publication is not an absolute right under the Constitution but, instead, should be subject to a different scope of protection and reasonable restraints based on the nature thereof. To the extent that Article 23 of the Constitution is complied with, the State may impose adequate restrictions by enacting clear and unambiguous laws.

解釋文：憲法第十一條保障人民之言論及出版自由，旨在確保意見之自由流通，使人民有取得充分資訊及實現自我之機會。性言論之表現與性資訊之流通，不問是否出於營利之目的，亦應受上開憲法對言論及出版自由之保障。惟憲法對言論及出版自由之保障並非絕對，應依其性質而有不同之保護範疇及限制之準則，國家於符合憲法第二十三條規定意旨之範圍內，得以法律明確規定對之予以適當之限制。

In order to maintain sexual morality and social decency, the constitutional interpreters should, in principle, give due respect to the lawmakers in respect of the latter's judgment on the common values held by the majority of the society where

為維持男女生活中之性道德感情與社會風化，立法機關如制定法律加以規範，則釋憲者就立法者關於社會多數共通價值所為之判斷，原則上應予尊重。惟為貫徹憲法第十一條保障人民言論及出版自由之本旨，除為維護社會多

the legislative organ designs a law to regulate the subject. However, in order to implement the intent of Article 11 of the Constitution guaranteeing the people's freedom of speech and publication, a minority cultural group's sense of sexual morality and its cognition of social decency regarding the circulation of sexually explicit language or material, should nonetheless be protected except where it is necessary to maintain the common sexual values and mores of the majority of the society by imposing restrictions through the enactment of laws.

數共通之性價值秩序所必要而得以法律加以限制者外，仍應對少數性文化族群依其性道德感情與對社會風化之認知而形諸為性言論表現或性資訊流通者，予以保障。

The distribution, broadcast, sale, and public display of obscene material or objects enabling others to read, view or hear same as provided under Article 235-I of the Criminal Code should be so interpreted as to refer to such act where any obscene material whose content includes violence, sexual abuse or bestiality but is lacking in artistic, medical or educational value is disseminated, or where no adequate protective and isolating measure is adopted before any other obscene material or object is distributed to the general pub-

刑法第二百三十五條第一項規定所謂散布、播送、販賣、公然陳列猥褻之資訊或物品，或以他法供人觀覽、聽聞之行為，係指對含有暴力、性虐待或人獸性交等而無藝術性、醫學性或教育性價值之猥褻資訊或物品為傳布，或對其他客觀上足以刺激或滿足性慾，而令一般人感覺不堪呈現於眾或不能忍受而排拒之猥褻資訊或物品，未採取適當之安全隔絕措施而傳布，使一般人得以見聞之行為；同條第二項規定所謂意圖散布、播送、販賣而製造、持有猥褻資訊、物品之行為，亦僅指意圖傳布含有

lic that is so sexually stimulating or gratifying from an objective standpoint that an average person will either find it not publicly presentable or find it so intolerable as to be repulsive. Likewise, the manufacture or possession of obscene material or objects with intent to distribute, broadcast or sell as provided in Paragraph II of said article merely refers to such act where any obscene material whose content includes violence, sexual abuse or bestiality but is lacking in artistic, medical or educational value is manufactured or possessed with the intent to disseminate same, or where, with the intent not to adopt adequate protective and isolating measures before disseminating to the general public any other obscene material or object that is so sexually stimulating or gratifying by objective standards that the average person will either find it not publicly presentable or find it so intolerable as to be repulsive, such material or object is manufactured or possessed. As for the provision that such acts as manufacture and possession are regarded as having the same degree of illegality as distribution, broadcast and sale in determining the requisite elements for the

暴力、性虐待或人獸性交等而無藝術性、醫學性或教育性價值之猥褻資訊或物品而製造、持有之行為，或對其他客觀上足以刺激或滿足性慾，而令一般人感覺不堪呈現於眾或不能忍受而排拒之猥褻資訊或物品，意圖不採取適當安全隔絕措施之傳布，使一般人得以見聞而製造或持有該等猥褻資訊、物品之情形，至對於製造、持有等原屬散布、播送及販賣等之預備行為，擬制為與散布、播送及販賣等傳布性資訊或物品之構成要件行為具有相同之不法程度，乃屬立法之形成自由；同條第三項規定針對猥褻之文字、圖畫、聲音或影像之附著物及物品，不問屬於犯人與否，一概沒收，亦僅限於違反前二項規定之猥褻資訊附著物及物品。依本解釋意旨，上開規定對性言論之表現與性資訊之流通，並未為過度之封鎖與歧視，對人民言論及出版自由之限制尚屬合理，與憲法第二十三條之比例原則要無不符，並未違背憲法第十一條保障人民言論及出版自由之本旨。

distribution of sexually explicit material or objects, it rightfully falls within the scope of legislative discretion. As to Paragraph III of said article, which provides that the objects and matters to which obscene words, pictures or images are affixed shall be confiscated regardless of whether they belong to the offender, the application thereof is also limited to those objects and matters to which obscene material in violation of the two aforesaid provisions is affixed. In light of the rationale of this Interpretation, the foregoing provisions do not impose excessive restrictions on or discrimination against the expression of sexually explicit language and the circulation of sexually explicit material, and, as such, are reasonable restraints on the people's freedom of speech and publication, which is consistent with the principle of proportionality embodied in Article 23 of the Constitution. Therefore, there is no violation of the guarantee of the people's freedom of speech and freedom of publication as provided in Article 11 of the Constitution.

Although the term "obscene" as used 刑法第二百三十五條規定所稱猥

in the context of obscene material or objects in Article 235 of the Criminal Code is an indefinite concept of law, it should be limited to something that, by objective standards, can stimulate or satisfy a prurient interest, whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures, and that may generate among average people a feeling of shame or distaste, thereby offending their sense of sexual morality and undermining social decency (*See* J.Y. Interpretation No. 407). Since the meaning of the term is not incomprehensible to the general public or to those who are subject to regulation, and may be made clear through judicial review, there should be no violation of the principle of clarity and definiteness of law.

褻之資訊、物品，其中「猥褻」雖屬評價性之不確定法律概念，然所謂猥褻，指客觀上足以刺激或滿足性慾，其內容可與性器官、性行為及性文化之描繪與論述聯結，且須以引起普通一般人羞恥或厭惡感而侵害性的道德感情，有礙於社會風化者為限（本院釋字第四〇七號解釋參照），其意義並非一般人難以理解，且為受規範者所得預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。

REASONING: Article 11 of the Constitution guarantees the people's freedom of speech and publication for the purposes of ensuring the free flow of opinions and giving the people opportunities to acquire sufficient information and to attain self-fulfillment. Whether it is for

解釋理由書：憲法第十一條保障人民之言論及出版自由，旨在確保意見之自由流通，使人民有取得充分資訊及實現自我之機會。性言論之表現與性資訊之流通，不問是否出於營利之目的，亦應受上開憲法對言論及出版自由之保障。惟憲法對言論及出版自由之保

profit or not, the broadcast of sexually explicit language and circulation of sexually explicit material should also be subject to the constitutional protection of freedom of speech and publication. Nevertheless, the freedom of speech and publication is not an absolute right under the Constitution but, instead, should be subject to a different scope of protection and reasonable restraints based on the nature thereof. To the extent that Article 23 of the Constitution is complied with, the State may impose adequate restrictions by enacting clear and unambiguous laws.

障並非絕對，應依其性質而有不同之保護範疇及限制之準則，國家於符合憲法第二十三條規定意旨之範圍內，得以法律明確規定對之予以適當之限制。

Men and women together in a society. The ways they express their views on sex in speech, writing and culture have their respective historical precedents and cultural differences, which existed before the Constitution and the laws were formulated and have gradually shaped the sexual ideologies and behaviors generally accepted by the majority of society and thus represent social decency by objective standards. The concept of social decency constantly changes as society develops and social customs are transformed.

男女共營社會生活，其關於性言論、性資訊及性文化等之表現方式，有其歷史背景與文化差異，乃先於憲法與法律而存在，並逐漸形塑為社會多數人普遍認同之性觀念及行為模式，而客觀成為風化者。社會風化之概念，常隨社會發展、風俗變異而有所不同。然其本質上既為各個社會多數人普遍認同之性觀念及行為模式，自應由民意機關以多數判斷特定社會風化是否尚屬社會共通價值而為社會秩序之一部分，始具有充分之民主正當性。為維持男女生活中之性道德感情與社會風化，立法機關如制

Since, however, it essentially embraces the sexual ideologies and behaviors generally accepted by the majority of the society, it should be up to the elected body of representatives to decide whether social decency remains a commonly accepted value of the society and thus part of the social order before it is given any adequate democratic legitimacy. If the legislative organ enacts a law for the purpose of maintaining a sense of sexual morality between men and women and also of social decency, the constitutional interpreters should, in principle, give due respect to the judgment on the common values held by the majority of the society. Nevertheless, depending on the various sexual cognitions of members of the who hear or read any sexually explicit language or material, it may generate different effects on different individuals. An individual social group's distinctive cultural cognition, physical and mental development may give rise to a distinctive reaction to various types of sexually explicit language and materials. Therefore, in order to implement the intent of Article 11 of the Constitution in guaranteeing the people's freedom of speech and publication, except for those necessary to maintain the social order of the majority's common sexual values or those restricted by laws or orders issued pursuant to laws, the government should also protect the sexual speech or sexual information that minority sexual cultural groups express according to their sexual morality, emotion and cognition of social mores.

定法律加以規範，則釋憲者就立法者關於社會多數共通價值所為之判斷，原則上應予尊重。惟性言論與性資訊，因閱聽人不同之性認知而可能產生不同之效應，舉凡不同社群之不同文化認知、不同之生理及心理發展程度，對於不同種類及內容之性言論與性資訊，均可能產生不同之反應。故為貫徹憲法第十一條保障人民言論及出版自由之本旨，除為維護社會多數共通之性價值秩序所必要而得以法律或法律授權訂定之命令加以限制者外，仍應對少數性文化族群依其性道德感情與對社會風化之認知而形諸為性言論表現或性資訊流通者，予以保障。

ple's freedom of speech and publication, a minority cultural group's sense of sexual morality and its cognition of social decency regarding the circulation of sexually explicit language or materials, should nonetheless be protected except where it is necessary to maintain the common sexual values and mores of the majority of the society by imposing restrictions through the enactment of laws or regulations as mandated by law.

Any depiction or publication of, or relating to, sex is considered sexually explicit language or material. Obscene language or an obscene publication is something that, by objective standards, can stimulate or satisfy a prurient interest, generate among average people a feeling of shame or distaste, thereby offending their sense of sexual morality and undermining social decency. To distinguish obscene language or an obscene publication from legitimate artistic, medical or educational language or publications, one must examine the features and aims of the respective language or publications at issue as a whole, and render a judgment accord-

有關性之描述或出版品，屬於性言論或性資訊，如客觀上足以刺激或滿足性慾，並引起普通一般人羞恥或厭惡感而侵害性的道德感情，有礙於社會風化者，謂之猥褻之言論或出版品。猥褻之言論或出版品與藝術性、醫學性、教育性等之言論或出版品之區別，應就各該言論或出版品整體之特性及其目的而為觀察，並依當時之社會一般觀念定之，本院釋字第四〇七號解釋足資參照。

ing to the contemporary common values of the society.

Article 235 of the Criminal Code provides, “A person who distributes, broadcasts or sells material containing obscene language, or obscene pictures, sounds, images or other objects, or publicly displays or otherwise enables others to read, view or hear same shall be punished with imprisonment for not more than two years, detention and/or a fine of not more than thirty thousand yuan.” (Paragraph I) “The foregoing punishment shall also apply to a person who manufactures or possesses the kind of material containing language, pictures, sounds, images referred to in the preceding paragraph and the objects to which they are affixed or other matters with intent to distribute, broadcast or sell same.” (Paragraph II) “The objects and matters to which the words, pictures or images referred to in the two preceding paragraphs are affixed shall be confiscated regardless of whether they belong to the offender.” (Paragraph III) Therefore, if any sexually explicit material, upon being read, viewed

刑法第二百三十五條規定：「散布、播送或販賣猥褻之文字、圖畫、聲音、影像或其他物品，或公然陳列，或以他法供人觀覽、聽聞者，處二年以下有期徒刑、拘役或科或併科三萬元以下罰金。」（第一項）「意圖散布、播送、販賣而製造、持有前項文字、圖畫、聲音、影像及其附著物或其他物品者，亦同。」（第二項）「前二項之文字、圖畫、聲音或影像之附著物及物品，不問屬於犯人與否，沒收之。」（第三項）是性資訊或物品之閱聽，在客觀上足以引起普通一般人羞恥或厭惡感而侵害性的道德感情，有礙於社會風化者，對於平等和諧之社會性價值秩序顯有危害。侵害此等社會共同價值秩序之行為，即違反憲法上所保障之社會秩序，立法者制定法律加以管制，其管制目的核屬正當（United States Code, Title 18, Part Ⅰ, Chapter 71, Section 1460、日本刑法第一七五條可資參照）。又因其破壞社會性價值秩序，有其倫理可非難性，故以刑罰宣示憲法維護平等和諧之性價值秩序，以實現憲法維持社會秩序之目的，其手段亦屬合

or heard, or any sexually explicit object upon being viewed as the case may be, can stimulate or satisfy a prurient interest by objective standards, generate among average people a feeling of shame or distaste, thereby offending their sense of sexual morality and undermining social decency, it then poses a clear danger to the equal and harmonious sexual values and mores of the society. Any act that infringes upon such common values and mores of the society is an act that violates the social order as protected by the Constitution. Thus the lawmakers have a legitimate purpose to regulate such behaviors. (*See* United States Code, Title 18, Part I, Chapter 71, Section 1460; *see also* Article 175 of the Criminal Code of Japan) Moreover, as it breaches the sexual values and mores of the society and is thus ethically culpable, it should be considered as a reasonable means to declare by way of criminal punishment that the Constitution shall safeguard the equal and harmonious sexual values and mores so as to implement the constitutional objective to preserve the social order. Furthermore, in order to protect a minority cultural

理。另基於對少數性文化族群依其性道德感情與對性風化認知而形諸為性言論表現或性資訊流通者之保障，故以刑罰處罰之範圍，應以維護社會多數共通之性價值秩序所必要者為限。是前開規定第一項所謂散布、播送、販賣、公然陳列猥褻之資訊、物品，或以他法供人觀覽、聽聞行為，係指對含有暴力、性虐待或人獸性交等而無藝術性、醫學性或教育性價值之猥褻資訊、物品為傳布，或對其他足以刺激或滿足性慾，而令一般人感覺不堪呈現於眾或不能忍受而排拒之猥褻資訊、物品，未採取適當之安全隔絕措施（例如附加封套、警告標示或限於依法令特定之場所等）而為傳布，使一般人得以見聞之行為；同條第二項規定所謂意圖散布、播送、販賣而製造、持有猥褻資訊、物品之行為，亦僅指意圖傳布含有暴力、性虐待或人獸性交等而無藝術性、醫學性或教育性價值之猥褻資訊或物品而製造、持有之行為，或對其他客觀上足以刺激或滿足性慾，而令一般人感覺不堪呈現於眾或不能忍受而排拒之猥褻資訊、物品，意圖不採取適當安全隔絕措施之傳布，使一般人得以見聞，而製造或持有該等猥褻資訊、物品之情形，至於對於製造與持有等原屬散布、播送及販賣等之預備行

group's sense of sexual morality and its cognition of social decency regarding the circulation of sexually explicit speech or material, criminal punishment should be imposed only to the extent necessary to maintain the common sexual values and mores of the majority of the society. As such, the distribution, broadcast, sale, public display of obscene material or objects or otherwise enabling others to read, view or hear same as provided under Paragraph I of the aforesaid article should be so interpreted as to refer to such act where any obscene material or object whose content includes violence, sexual abuse or bestiality but is lacking in artistic, medical or educational value is disseminated, or where no adequate protective and isolating measure (e.g., no covering, warning, or limiting to places designated by law or order) is adopted before disseminating to the general public any other obscene material or object that is so sexually stimulating or gratifying from an objective standpoint that the average person will either find it not publicly presentable or find it so intolerable as to be repulsive. Likewise, the manufacture or pos-

為，擬制為與散布、播送及販賣等傳布性資訊或物品之構成要件行為具有相同之不法程度，乃屬立法之形成自由；同條第三項規定針對猥褻之文字、圖畫、聲音或影像之附著物及物品，不問屬於犯人與否，一概沒收，亦僅限於違反前二項規定之猥褻資訊附著物及物品。依本解釋意旨，上開規定對性言論之表現與性資訊之自由流通，並未為過度之封鎖與歧視，對人民言論及出版自由之限制尚屬合理，與憲法第二十三條之比例原則要無不符，並未違背憲法第十一條保障人民言論及出版自由之本旨。至性言論之表現與性資訊之流通，是否有害社會多數人普遍認同之性觀念或性道德感情，常隨社會發展、風俗變異而有所不同。法官於審判時，應依本解釋意旨，衡酌具體案情，判斷個別案件是否已達猥褻而應予處罰之程度；又兒童及少年性交易防制條例第二十七條及第二十八條之規定，為刑法第二百三十五條之特別法，其適用不受本解釋之影響，均併予指明。

session of obscene material with the intent to distribute, broadcast or sell as provided in Paragraph II of said article merely refers to such act where any obscene material or object whose content includes violence, sexual abuse or bestiality but is lacking in artistic, medical or educational value is manufactured or possessed with the intent to disseminate same, or where, with the intent not to adopt adequate protective and isolating measures before disseminating to the general public any other obscene material or object that is so sexually stimulating or gratifying by objective standards that the average person will either find it not publicly presentable or find it so intolerable as to be repulsive, such material or object is manufactured or possessed. As for the provision that such acts as manufacture and possession are regarded as having the same degree of illegality as distribution, broadcast and sale in determining the requisite elements for the distribution of sexual material or objects, it rightfully falls within the scope of legislative discretion. As to Paragraph III of said article, which provides that the objects and matters to which obscene words,

pictures or images are affixed shall be confiscated regardless of whether they belong to the offender, the application thereof is also limited to those objects and matters to which obscene material in violation of the two aforesaid provisions is affixed. In light of the rationale of this Interpretation, the foregoing provisions do not impose excessive restrictions on or discrimination against the expression of sexually explicit language and the circulation of sexually explicit material, and, as such, are reasonable restraints on the people's freedom of speech and publication, which is consistent with the principle of proportionality embodied in Article 23 of the Constitution. Therefore, there is no violation of the guarantee of the people's freedom of speech and freedom of publication as provided in Article 11 of the Constitution. As to the issue of whether any expression of sexually explicit language or circulation of sexual material is harmful to the sexual ideologies or sense of sexual morality generally accepted by the majority of the society, the answer may differ as it changes as the society develops and social customs are trans-

formed. At any given trial, a judge should, based on the intent of this Interpretation, consider the relevant facts of the case at issue and decide whether any obscenity exists and whether or not it is punishable. Additionally, it should be pointed out that Articles 27 and 28 of the Child and Juvenile Sexual Transaction Prevention Act are special provisions in the context of Article 235 of the Criminal Code and, as such, the application of said provisions should not be affected by this Interpretation.

Where the lawmakers adopt an indefinite concept of law to seek general application of the norm, there should be no violation of the principle of clarity and definiteness of law so long as the meaning of the term is not incomprehensible to the general public and the relevant facts of a given case connoted by the term are not incomprehensible to those who are subject to regulation after the legislative purposes and the regulatory legal system as a whole have been considered, which may be made clear through judicial review. This Court has consistently elaborated on the

立法者為求規範之普遍適用而使用不確定法律概念者，觀諸立法目的與法規範體系整體關聯，若其意義非難以理解，且所涵攝之個案事實為一般受規範者所得預見，並可經由司法審查加以確認，即與法律明確性原則不相違背，迭經本院釋字第四三二號、第五二一號、第五九四號及第六〇二號解釋闡釋在案。刑法第二百三十五條規定所稱猥褻之資訊、物品，其中「猥褻」雖屬評價性之不確定法律概念，然所謂猥褻，指客觀上足以刺激或滿足性慾，其內容可與性器官、性行為及性文化之描繪與論述聯結，且須以引起普通一般人羞恥

foregoing in its earlier interpretations, including J.Y. Interpretations Nos. 432, 521, 594 and 602. Thus, although the term "obscene" as used in the context of obscene material or objects in Article 235 of the Criminal Code is an indefinite concept of law, it should be limited to something that, by objective standards, can stimulate or satisfy a prurient interest, whose contents are associated with the portrayal and discussion of sexual organs, sexual behaviors and sexual cultures, and that may generate among average people a feeling of shame or distaste, thereby offending their sense of sexual morality and undermining social decency (*See* J.Y. Interpretation No. 407). Since the meaning of the term is not incomprehensible to the general public or to those who are subject to regulation and, as it may be made clear through judicial review, there should be no violation of the principle of clarity and definiteness of law.

或厭惡感而侵害性的道德感情，有礙於社會風化者為限（本院釋字第四〇七號解釋參照），其意義並非一般人難以理解，且為受規範者所得預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。

[Translation of miscellaneous matters omitted.]

末查聲請人賴〇〇指摘臺灣高等法院九十四年度上易字第一五六七號刑事確定終局判決，對於本院釋字第四〇七號解釋之適用，侵害憲法保障言論自

由、人格發展自由之部分，依現行法制，尚不得為違憲審查之客體，與司法院大法官審理案件法第五條第一項第二款之規定不合，依同條第三項規定，應不予受理，併此敘明。

Justice Tzu-Yi Lin filed dissenting opinion in part.

Justice Yu-hsiu Hsu filed dissenting opinion.

本號解釋林大法官子儀提出部分不同意見書；許大法官玉秀提出不同意見書。

J. Y. Interpretation No.618（November 3, 2006）*

ISSUE: Are the provisions of the first half of Article 21-I of the Act Governing Relations between People of the Taiwan Area and Mainland Area unconstitutional?

RELEVANT LAWS:

Articles 7, 18 and 23 of the Constitution（憲法第七條、第十八條、第二十三條）; Article 10 of the Amendments to the Constitution (as promulgated on May 1, 1991, and amended and renumbered as Article 11 on July 21, 1997)（憲法增修條文第十條（中華民國八十年五月一日制定公布，八十六年七月二十一日修正公布改列為第十一條））; J.Y. Interpretations Nos. 205, 371, 572 and 590（司法院釋字第二〇五號、第三七一號、第五七二號、第五九〇號解釋）; 1st half of Article 21-I of the Act Governing Relations between People of the Taiwan Area and Mainland Area (as amended and promulgated on December 20, 2000)（臺灣地區與大陸地區人民關係條例第二十一條第一項前段（八十九年十二月二十日修正公布））; Article 252 of the Administrative Litigation Act（行政訴訟法第二百五十二條）; Article 8-I of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第八條第一項）.

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

KEYWORDS:

Principle of equality（平等原則）, substantial equality（實質平等）, significant difference in essence（重大之本質差異）, constitutional value system（憲法之價值體系）, official duties under public law（公法上職務關係）, duty of loyalty（忠誠義務）, constitutional structure of a free democracy（自由民主憲政秩序）, clear and material defect（明顯之重大瑕疵）, principle of proportionality（比例原則）.**

HOLDING: Article 7 of the Constitution provides that all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law. Thus, the people, who shall have the right of taking public examinations and of holding public offices under Article 18 thereof, shall be equal under the law. The concept of "equal" as expressed thereunder shall refer to substantial equality. In light of the value system of the Constitution, the legislative branch may certainly consider the differences in the nature of the various matters subject to regulation and thus may create rational discriminatory treatment among the people accordingly. The fore-

解釋文：中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等，為憲法第七條所明定。其依同法第十八條應考試服公職之權，在法律上自亦應一律平等。惟此所謂平等，係指實質上之平等而言，立法機關基於憲法之價值體系，自得斟酌規範事物性質之差異而為合理之區別對待，本院釋字第二〇五號解釋理由書足資參照。且其基於合理之區別對待而以法律對人民基本權利所為之限制，亦應符合憲法第二十三條規定比例原則之要求。中華民國八十年五月一日制定公布之憲法增修條文第十條（八十六年七月二十一日修正公布改列為第十一條）規定：「自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特

going has been made clear in the reasoning of J.Y. Interpretation No. 205 rendered by this Court. Furthermore, the restrictions imposed by law on the fundamental rights of the people based on any rational discriminatory treatment should also satisfy the test of the principle of proportionality under Article 23 of the Constitution. Article 10 of the Amendments to the Constitution as promulgated on May 1, 1991 (as amended and renumbered as Article 11 on July 21, 1997) provides, "The rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs, may be specified by *sui generis* law." The Act Governing Relations between People of the Taiwan Area and Mainland Area (hereinafter referred to as the "Cross-Strait Relations Act") is the *sui generis* law enacted to regulate the rights and obligations between the people of the Chinese mainland area and those of the free area, as well as the disposition of other related affairs, prior to the nation's reunification.

別之規定。」臺灣地區與大陸地區人民關係條例（以下簡稱兩岸關係條例），即為國家統一前規範臺灣地區與大陸地區間人民權利義務關係及其他事務處理之特別立法。

The 1st half of Article 21-I of the Act Governing Relations between People of the Taiwan Area and Mainland Area as amended and promulgated on December 20, 2000, provides that no person from the Mainland Area who has been permitted to enter into the Taiwan Area may serve as a public functionary unless he or she has had a household registration in the Taiwan Area for at least ten years. The said provision is an extraordinary one with reasonable and justifiable objectives in that a public functionary, once appointed and employed by the State, shall be entrusted with official duties by the State under public law and owe a duty of loyalty to the State, that the public functionary shall not only obey the laws and orders but also take every action and adopt every policy possible that he or she considers is in the best interests of the State by keeping in mind the overall interests of the State since the exercise of his or her official duties will involve the public authorities of the State; and, further, that the security of the Taiwan Area, the welfare of the people of Taiwan, as well as the constitutional structure of a free democracy, must

八十九年十二月二十日修正公布之兩岸關係條例第二十一條第一項前段規定，大陸地區人民經許可進入臺灣地區者，非在臺灣地區設有戶籍滿十年，不得擔任公務人員部分，乃係基於公務人員經國家任用後，即與國家發生公法上職務關係及忠誠義務，其職務之行使，涉及國家之公權力，不僅應遵守法令，更應積極考量國家整體利益，採取一切有利於國家之行為與決策；並鑒於兩岸目前仍處於分治與對立之狀態，且政治、經濟與社會等體制具有重大之本質差異，為確保臺灣地區安全、民眾福祉暨維護自由民主之憲政秩序，所為之特別規定，其目的洵屬合理正當。基於原設籍大陸地區人民設籍臺灣地區未滿十年者，對自由民主憲政體制認識與其他臺灣地區人民容有差異，故對其擔任公務人員之資格與其他臺灣地區人民予以區別對待，亦屬合理，與憲法第七條之平等原則及憲法增修條文第十一條之意旨尚無違背。又系爭規定限制原設籍大陸地區人民，須在臺灣地區設有戶籍滿十年，作為擔任公務人員之要件，實乃考量原設籍大陸地區人民對自由民主憲政體制認識之差異，及融入臺灣社會需經過適應期間，且為使原設籍大陸地區人民於擔任公務人員時普遍獲得人民

be ensured and preserved in light of the status quo of two separate and antagonistic entities which are on opposite sides of the strait and significant differences in essence between the two sides in respect of the political, economic and social systems. Given the fact that a person who came from the Mainland Area but has had a household registration in the Taiwan Area for less than ten years may not be as familiar with the constitutional structure of a free democracy as the Taiwanese people, it is not unreasonable to give discriminatory treatment to such a person and not to the Taiwanese people of the Taiwan Area with respect to the qualifications to serve as a governmental employee, which is not in conflict with the principle of equality as embodied in Article 7 of the Constitution, nor contrary to the intent of Article 10 of the Amendments to the Constitution. In addition, the said provision, which requires a person who originally came from the Mainland Area to have had a household registration for at least ten years before he or she may be eligible to hold a public office, is based on the concerns that those who originally

對其所行使公權力之信賴，尤需有長時間之培養，系爭規定以十年為期，其手段仍在必要及合理之範圍內，立法者就此所為之斟酌判斷，尚無明顯而重大之瑕疵，難謂違反憲法第二十三條規定之比例原則。

came from the Mainland Area have a different view as to the constitutional structure of a free democracy and may need some time to adapt to and settle into the society of Taiwan. Moreover, it also may take a while for the Taiwanese people to place their trust in a person who came from the Mainland Area if and when he or she serves as a public functionary. Therefore, the ten-year period as specified by the provision at issue is nonetheless a necessary and reasonable means. The legislators, in making the relevant judgments in that regard, have not made any noticeable and significant oversights. Hence there is no violation of the principle of proportionality under Article 23 of the Constitution.

REASONING: The subject matter of this petition for interpretation is the Cross-Strait Relations Act. The petition is for the 1st half of Article 21-I of the Act Governing Relations between People of the Taiwan Area and Mainland Area as amended and promulgated on December 20, 2000, to be declared unconstitutional. The 1st half of Article 21-I of said Act

解釋理由書：本件聲請釋憲之標的，關於兩岸關係條例部分，乃聲請宣告八十九年十二月二十日修正公布之該條例第二十一條第一項前段規定違憲。該條例第二十一條第一項前段係關於大陸地區人民經許可進入臺灣地區者，非在臺灣地區設有戶籍滿十年，不得登記為公職候選人、擔任軍公教或公營事業機關（構）人員及組織政黨等規

provides that no person from the Mainland Area who has been permitted to enter into the Taiwan Area may register as a candidate for any public office, serve in any military, governmental or educational organization or state enterprise, or organize any political party unless he or she has had a household registration in the Taiwan Area for at least ten years. It should be noted, however, that the outcome of the judgment giving rise to this matter merely concerns the part of the said provision in respect of governmental service, so this Court, having examined the intent of J.Y. Interpretations Nos. 371, 572 and 590, will limit its constitutional review of the matter to the said part of the provision without touching upon the other parts thereof.

定。惟影響本件原因案件之裁判結果者僅其中限制擔任公務人員部分，爰依本院釋字第三七一號、第五七二號及第五九〇號解釋之意旨，本件僅就該部分之規定是否違憲為審查，其餘部分不在本件解釋範圍內，合先敘明。

Article 7 of the Constitution provides that all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law. Thus, the people, who shall have the right of taking public examinations and of holding public offices under Article 18 thereof, shall be equal under the law. The

中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等，為憲法第七條所明定。其依同法第十八條應考試服公職之權，在法律上自亦應一律平等。惟此所謂平等，係指實質上之平等而言，立法機關基於憲法之價值體系，自得斟酌規範事物性質之差異而為合理之區別對待，本院釋字第

concept of "equal" as expressed thereunder shall refer to substantial equality. In light of the value system of the Constitution, the legislative branch may certainly consider the differences in the nature of the various matters subject to regulation and thus may create rational discriminatory treatment among the people accordingly. The foregoing has been made clear in the reasoning of J.Y. Interpretation No. 205 rendered by this Court. Furthermore, the restrictions imposed by law on the fundamental rights of the people based on any rational discriminatory treatment should also satisfy the test of the principle of proportionality under Article 23 of the Constitution. Nevertheless, dealing with cross-strait affairs requires considerations and judgments on numerous factors relating to politics, economy and society. The constitutional interpreters, who are in charge of the judicial review of the law, should rightfully give due respect to the decisions made by the legislative branch, which represents the diverse opinions of the people, and have ample information on hand in that regard unless there has been any noticeable and significant over-

二〇五號解釋理由書足資參照。且其基於合理之區別對待而以法律對人民基本權利所為之限制，亦應符合憲法第二十三條規定比例原則之要求。惟兩岸關係事務，涉及政治、經濟與社會等諸多因素之考量與判斷，對於代表多元民意及掌握充分資訊之立法機關就此所為之決定，如非具有明顯之重大瑕疵，職司法律違憲審查之釋憲機關即宜予以尊重。

sight on the part of the legislative branch.

Article 10 of the Amendments to the Constitution as promulgated on May 1, 1991 (as amended and renumbered as Article 11 on July 21, 1997) provides, "The rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by *sui generis* law." The Act Governing Relations between People of the Taiwan Area and Mainland Area as promulgated on July 31, 1992, is the *sui generis* law enacted pursuant to the intent of the said article of the Amendments to the Constitution to regulate the rights and obligations between the people of the Chinese mainland area and those of the free area, as well as the disposition of other related affairs, prior to the nation's reunification. The 1st half of Article 21-I of the Act Governing Relations between People of the Taiwan Area and Mainland Area as amended and promulgated on December 20, 2000, provides that no person from the Mainland Area who has been permitted to enter into the Taiwan Area may serve as

八十年五月一日制定公布之憲法增修條文第十條（八十六年七月二十一日修正公布改列為第十一條）規定：「自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特別之規定。」八十一年七月三十一日公布之臺灣地區與大陸地區人民關係條例即係依據上開憲法增修條文之意旨所制定，為國家統一前規範臺灣地區與大陸地區間人民權利義務關係及其他事務處理之特別立法。八十九年十二月二十日修正公布之該條例第二十一條第一項前段規定，大陸地區人民經許可進入臺灣地區者，非在臺灣地區設有戶籍滿十年，不得擔任公務人員部分（與八十一年七月三十一日制定公布之第二十一條規定相同），乃係基於公務人員經國家任用後，即與國家發生公法上職務關係及忠誠義務，其職務之行使，涉及國家之公權力，不僅應遵守法令，更應積極考量國家整體利益，採取一切有利於國家之行為與決策，並鑒於兩岸目前仍處於分治與對立之狀態，且政治、經濟與社會等體制具有重大之本質差異，為確保臺灣地區安全、民眾福祉暨維護自由民主之憲政秩序，所為之特別規定，其

a public functionary unless he or she has had a household registration in the Taiwan Area for at least ten years (as was provided in Article 21 of said Act as enacted and promulgated on July 31, 1992). The said provision is an extraordinary one with reasonable and justifiable objectives in that a public functionary, once appointed and employed by the State, shall be entrusted with official duties by the State under public law and shall owe a duty of loyalty to the State, that the public functionary shall not only obey the laws and orders but also take every action and adopt every policy possible that he or she considers is in the best interests of the State by keeping in mind the overall interests of the State since the exercise of his or her official duties will involve the public authorities of the State; and, further, that the security of the Taiwan Area, the welfare of the people of Taiwan, as well as the constitutional structure of a free democracy, must be ensured and preserved in light of the status quo of two separate and antagonistic entities which are on opposite sides of the strait and significant differences in essence between

目的洵屬合理正當。基於原設籍大陸地區人民設籍臺灣地區未滿十年者，對自由民主憲政體制認識與其他臺灣地區人民容有差異，故對其擔任公務人員之資格與其他臺灣地區人民予以區別對待，亦屬合理，與憲法第七條之平等原則及憲法增修條文第十一條之意旨尚無違背。又系爭規定限制原設籍大陸地區人民，須在臺灣地區設有戶籍滿十年，作為擔任公務人員之要件，實乃考量原設籍大陸地區人民對自由民主憲政體制認識之差異，及融入臺灣社會需經過適應期間，且為使原設籍大陸地區人民於擔任公務人員時普遍獲得人民對其所行使公權力之信賴，尤需有長時間之培養，若採逐案審查，非僅個人主觀意向與人格特質及維護自由民主憲政秩序之認同程度難以嚴密查核，且徒增浩大之行政成本而難期正確與公平，則系爭規定以十年為期，其手段仍在必要及合理之範圍內。至於何種公務人員之何種職務於兩岸關係事務中，足以影響臺灣地區安全、民眾福祉暨自由民主之憲政秩序，釋憲機關對於立法機關就此所為之決定，宜予以尊重，系爭法律就此未作區分而予以不同之限制，尚無明顯而重大之瑕疵，難謂違反憲法第二十三條規定之比例原則。

the two sides in respect of the political, economic and social systems. Given the fact that a person who came from the Mainland Area but has had a household registration in the Taiwan Area for less than ten years may not be as familiar with the constitutional structure of a free democracy as the Taiwanese people, it is not unreasonable to give discriminatory treatment to such a person and not to the Taiwanese people of the Taiwan Area with respect to the qualifications to serve as a governmental employee, which is not in conflict with the principle of equality as embodied in Article 7 of the Constitution, nor contrary to the intent of Article 10 of the Amendments to the Constitution. In addition, the said provision, which requires a person who originally came from the Mainland Area to have had a household registration for at least ten years before he or she may be eligible to hold a public office, is based on the concerns that those who originally came from the Mainland Area have a different view as to the constitutional structure of a free democracy and may need some time to adapt to and settle into the society of

Taiwan. Moreover, it also may take a while for the Taiwanese people to place their trust in a person who came from the Mainland Area if and when he or she serves as a public functionary. If the review is conducted on a case-by-case basis, it would be difficult to examine an individual's subjective intentions and character, as well as his or her level of identification with the preservation of the constitutional structure of a free democracy. Besides, it would also needlessly increase the administrative costs to a prohibitive level with hardly any hope of accuracy or fairness. Therefore, the ten-year period as specified by the provision at issue is nonetheless a necessary and reasonable means. In respect of such matters as the types of public functionaries and public offices that may affect the security of the Taiwan Area, the welfare of the people of Taiwan, as well as the constitutional structure of a free democracy, the constitutional interpreters should give due respect to the decisions made by the legislative body in that regard. Despite the failure of the law at issue to make any differential treatment and thus impose different restrictions,

no noticeable or significant oversights have been made. Hence, there is no violation of the principle of proportionality under Article 23 of the Constitution.

Where a petition is made by a judge of any of the various levels of courts with this Court on the constitutionality of a law, J.Y. Interpretation No. 371 should govern. As for the formality of a petition, the said Interpretation has made it clear that Article 8-I of the Constitutional Interpretation Procedure Act should apply. This petition for constitutional interpretation has been filed pursuant to the intent of J.Y. Interpretation No. 371 (*see* II (iv) on p. 3 of the Petition). As such, Article 252 of the Administrative Litigation Act is not the law which is applicable to the original case for which the petitioning court rendered its judgment, nor is it the law to be applied by this Court in rendering an interpretation. Therefore, as far as the said provision is concerned, the petition for the constitutionality thereof should be dismissed based on the intent of J.Y. Interpretations Nos. 371, 572 and 590.

關於各級法院法官聲請本院解釋法律違憲事項應以本院釋字第三七一號解釋為準，其聲請程式準用司法院大法官審理案件法第八條第一項之規定，業經本院釋字第三七一號解釋在案。本件聲請法院係依本院釋字第三七一號解釋意旨聲請解釋憲法（釋憲聲請書第三頁貳、四參照）。是行政訴訟法第二百五十二條規定，並非聲請法院於原因案件之裁判上或本件聲請解釋程序上所應適用之法律，故此一部分違憲審查之聲請，依本院釋字第三七一號、第五七二號及第五九〇號解釋意旨，應不予受理。

J. Y. Interpretation No.619（November 10, 2006）*

ISSUE: Are the provisions of Article 15 of the Enforcement Rules of the Land Tax Act unconstitutional?

RELEVANT LAWS:

Article 23 of the Constitution（憲法第二十三條）; J. Y. Interpretations Nos. 394 and 402（司法院釋字第三九四號、第四〇二號解釋）; Articles 6, 18, 41, 54 and 58 of the Land Tax Act（土地稅法第六條、第十八條、第四十一條、第五十四條、第五十八條）; Article 15 of the Enforcement Rules of the Land Tax Act（土地稅法施行細則第十五條）; Articles 24 and 29 of the Regulation Governing the Reduction or Exemption of Land Tax（土地稅減免規則第二十四條、第二十九條）.

KEYWORDS:

principle of legal reservation（法律保留原則）, punitive administrative action（裁罰性行政處分）, land value tax（地價稅）, reduction or exemption（減免）, special tax rate（特別稅率）.**

HOLDING: A punitive administrative action taken against a person for an act in breach of his or her duty under ad-

解釋文：對於人民違反行政法上義務之行為處以裁罰性之行政處分，涉及人民權利之限制，其處罰之構成要

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

ministrative law involves a restraint on his or her right, and the constituent elements required for and the legal consequence of such punishment must be prescribed by law. Where the law authorizes the establishment of supplementary rules in the form of administrative ordinances with respect to such constituent elements, such authorization must be made in a clear and specific manner insofar as the substance and scope of such authorization is concerned, before an administrative ordinance may be issued on the basis of such authorization, so as to be in line with the principle of legal reservation under Article 23 of the Constitution (*See* J.Y. Interpretations Nos. 394 and 402). The phrase "reduction or exemption of land value tax" referred to in Article 54-I (i) of the Land Tax Act shall be so interpreted as to be limited to the reduction or exemption of land value tax that follows the criteria and procedure set forth in the Regulation Governing the Reduction or Exemption of Land Tax as prescribed by the Executive Yuan under the authorization of Article 6 of the Land Tax Act in that it involves the constituent elements of a punitive law

件及法律效果，應由法律定之，以命令為之者，應有法律明確授權，始符合憲法第二十三條法律保留原則之意旨（本院釋字第三九四號、第四〇二號解釋參照）。土地稅法第五十四條第一項第一款所稱「減免地價稅」之意義，因涉及裁罰性法律構成要件，依其文義及土地稅法第六條、第十八條第一項與第三項等相關規定之體系解釋，自應限於依土地稅法第六條授權行政院訂定之土地稅減免規則所定標準及程序所為之地價稅減免而言。土地稅法施行細則第十五條規定：「適用特別稅率之原因、事實消滅時，土地所有權人應於三十日內向主管稽徵機關申報，未於期限內申報者，依本法第五十四條第一項第一款之規定辦理」，將非依土地稅法第六條及土地稅減免規則規定之標準及程序所為之地價稅減免情形，於未依三十日期限內申報適用特別稅率之原因、事實消滅者，亦得依土地稅法第五十四條第一項第一款之規定，處以短匿稅額三倍之罰鍰，顯以法規命令增加裁罰性法律所未規定之處罰對象，復無法律明確之授權，核與首開法律保留原則之意旨不符，牴觸憲法第二十三條規定，應於本解釋公布之日起至遲於屆滿一年時失其效力。

and the literal meaning of said provision and the systemic construction of Articles 6 and 18-I and -III of the Land Tax Act require such interpretation. Article 15 of the Enforcement Rules of the Land Tax Act provides, "Where the reason for and facts concerning the applicability of a special tax rate cease to exist, the land owner shall report such to the competent tax authority within thirty (30) days; failure to so report within the specified time limit shall invoke Article 54-I (i) of the Act." The said provisions, by subjecting the land owner who fails to report the cessation of the reason for and facts concerning the applicability of a special tax rate within thirty (30) days to a fine of triple the underdeclared or undeclared taxable amount where it involves the kind of reduction or exemption of land value tax that fails to follow the criteria and procedure set forth in Article 6 of the Land Tax Act and the Regulation Governing the Reduction or Exemption of Land Tax, have clearly extended the imposition of penalties by means of regulations to those who are not specified by a punitive law. Furthermore, short of clear and definite

authorization by law, the provisions are not consistent with the aforesaid principle of legal reservation and thus are in conflict with Article 23 of the Constitution. Therefore, the foregoing provisions shall become void no later than one year from the date of this interpretation.

REASONING: A punitive administrative action taken against a person for an act in breach of his or her duty under administrative law involves a restraint on his or her right, and the constituent elements required for and the legal consequence of such punishment must be prescribed by law. Where the law authorizes the establishment of supplementary rules in the form of administrative ordinances with respect to such constituent elements, such authorization must be made in a clear and specific manner insofar as the substance and scope of such authorization is concerned, before an administrative ordinance may be issued on the basis of such authorization, so as to be in line with the principle of legal reservation under Article 23 of the Constitution (*See* J.Y. Interpretations Nos. 394 and 402).

解釋理由書：對於人民違反行政法上義務之行為處以裁罰性之行政處分，涉及人民權利之限制，其處罰之構成要件及法律效果，應由法律定之，以命令為之者，應有法律明確授權，始符合憲法第二十三條法律保留原則之意旨（本院釋字第三九四號、第四〇二號解釋參照）。

The 1st half of Article 6 of the Land Tax Act provides that, in order to develop the economy, promote land utilization and improve social welfare, proper land tax reduction or exemption may be provided in respect of the land used for national defense; governmental infrastructures; public facilities, passageways and corridors; research, educational, and religious institutions; roadways; water utility; waterworks; saltworks; medical, health, and sanitation facilities; public and private cemeteries; charitable organizations or public interest enterprises; and reasonable self-use residences, as well as for land rezoning, wasteland reclamation and land improvement [Facilities, institutions, etc., have been grouped together, though of course they do not have to be grouped in this way.—Ed.]. The 2nd half of said article further authorizes the Executive Yuan to prescribe the Regulation Governing the Reduction or Exemption of Land Tax whereby the criteria and procedure for the said reductions and exemptions are clearly formulated. In respect of the land that satisfies the criteria for the reduction or exemption of land value tax as set forth in

土地稅法第六條前段規定，為發展經濟，促進土地利用，增進社會福利，對於國防、政府機關、公共設施、騎樓走廊、研究機構、教育、交通、水利、給水、鹽業、宗教、醫療、衛生、公私墓、慈善或公益事業及合理之自用住宅等所使用之土地，及重劃、墾荒、改良土地者，得予適當之土地稅減免；同條後段並授權行政院訂定土地稅減免規則，明定減免之標準與程序。合於土地稅減免規則所定地價稅減免標準之土地，依同規則第二十四條第一項規定，須於每年（期）開徵四十日前提出申請，始能獲得減免，減免原因消滅者，自次年（期）恢復徵收。同規則第二十九條並規定，減免之原因、事實消滅時，土地權利人或管理人並負有於三十日內向主管稽徵機關申報恢復徵稅之義務。未於減免之原因、事實消滅三十日內向主管稽徵機關申報，又有逃漏稅之情事者，依土地稅法第五十四條第一項第一款規定，除補繳短匿稅額之外，應處以短匿稅額三倍之罰鍰。

the Regulation Governing the Reduction or Exemption of Land Tax, Article 24-I of said Regulation requires that the application for such reduction or exemption be submitted at least forty days before the collection starting date each year (period), and that, if and when the reason for such reduction or exemption ceases to exist, taxation be resumed starting from the following year (period). Article 29 thereof further provides that, when the reason for such reduction or exemption ceases to exist, the land title owner or administrator shall, within thirty days, file with the competent tax authority for the resumption of taxation. If the land title owner or administrator fails to file with the competent tax authority within thirty days and is found to have evaded tax, he or she shall be subject to a fine of triple the underdeclared or undeclared taxable amount as provided in Article 54-I of the Land Tax Act in addition to having to pay back the underdeclared or undeclared tax.

Instead of the progressive tax rates as specified in Article 16 of the Land Tax Act, Article 18-I of the Land Tax Act pro-

土地稅法第十八條第一項為促進國家經濟發展，鼓勵增設大眾娛樂設施，獎勵興辦公用事業及保護名勝古

vides for a special tax rate for industrial land, mining land, private parks, zoos, land for sporting facilities, temples, land for churches or temples, government-designated land for historical sites, land for gas stations approved by the competent authorities and for public parking lots established pursuant to the Urban Planning Act, or other large areas of land approved for use by the Executive Yuan so as to advance the development of the national economy, encourage the establishment of public amusement facilities, award the establishment of new public utilities and protect historical sites. In respect of the land to which the special tax rate specified in said Article 18 is applicable, Article 41-I of said Act requires that the application for such special tax rate be submitted at least forty days before the collection starting date each year (period). And, according to Paragraph II of said article, if and when the reason and facts for such special tax rate cease to exist, a report shall be filed with the competent authority. Furthermore, Paragraph III of said article provides that any land value tax that satisfies the criteria for the special

蹟，就工業用地、礦業用地、私立公園、動物園、體育場所用地、寺廟、教堂用地、政府指定之名勝古蹟用地、經主管機關核准設置之加油站及依都市計畫法規定設置之供公眾使用之停車場用地、其他經行政院核定之土地等等大規模用地，明定其特別稅率，不適用同法第十六條之累進稅率。有同法第十八條規定得適用特別稅率用地之情形者，依同法第四十一條第一項規定，須於每年（期）地價稅開徵四十日前提出申請，始得適用特別稅率。適用特別稅率之原因、事實消滅時，則應向主管稽徵機關申報，同條第二項並定有明文。又同法第十八條第三項復明定，符合同條第一項要件適用千分之十特別稅率而不適用累進稅率土地之地價稅，若有符合同法第六條規定得減免之情形，尚可再依同法第六條減免之。

tax rate, i.e., 0.1%, specified in Paragraph I thereof but is not subject to the progressive rates may be further reduced or exempted pursuant to Article 6 of said Act if the criteria for the reduction or exemption as set forth therein are met.

Despite the tax relief effects shared by both Article 6 of the Land Tax Act, which provides for the reduction or exemption of land value tax, and Article 18-I thereof, which specifies a special tax rate for land value tax, they do not necessarily share the same purposes, nor do they follow the same criteria and procedure in reducing the tax burdens. Besides, in respect of the land to which the special tax rate is applicable, additional tax reduction or exemption may also be granted where the law specifically provides for any reason for such reduction or exemption. As such, the provisions of said articles are not on a par with each other. Article 54-I (i) of the Land Tax Act provides, "Where a taxpayer fails to report to the competent tax authority by virtue of changing or concealing the category or class of land or when the reason for and facts concerning

依土地稅法第六條減免地價稅與依同法第十八條第一項適用特別稅率之地價稅，雖均有減輕稅負之效果，但二者之目的未盡相同，減輕稅負之標準與程序亦顯然有異，況適用特別稅率之用地，於法律有特別規定時，亦可再視其是否有減免事由，而獲得進一步之租稅減免，故二者尚難等同視之。是土地稅法第五十四條第一項第一款規定：「納稅義務人藉變更、隱匿地目等則或於減免地價稅或田賦之原因、事實消滅時，未向主管稽徵機關申報者，依左列規定辦理：一　逃稅或減輕稅賦者，除追補應納部分外，處短匿稅額或賦額三倍之罰鍰」，其中所稱「減免地價稅」之意義，因涉及裁罰性法律構成要件，依其文義及上開土地稅法第六條、第十八條第一項與第三項等相關規定之體系解釋，自應限於依第六條授權行政院訂定之土地稅減免規則所定標準及程序所為地價稅之減免而言。

the reduction or exemption of land value tax or agricultural land levy cease to exist, the following provisions shall apply: (i) If the taxpayer is found to have evaded tax or reduced tax burdens, he or she shall be subject to a fine of triple the underdeclared or undeclared amount of tax or levy in addition to having to pay the amount of tax or levy payable...” The phrase “reduction or exemption of land value tax” referred to in said article shall be so interpreted as to be limited to the reduction or exemption of land value tax that follows the criteria and procedure set forth in the Regulation Governing the Reduction or Exemption of Land Tax as prescribed by the Executive Yuan under the authorization of Article 6 of the Land Tax Act in that it involves the constituent elements of a punitive law and the literal meaning of said provision and the systemic construction of Articles 6 and 18-I and -III of the Land Tax Act require such interpretation.

Although Article 58 of the Land Tax Act enables the Executive Yuan to prescribe the enforcement rules of said Act, no clear and definite authorization is

土地稅法第五十八條雖授權行政院訂定該法之施行細則，但就適用特別稅率之用地，於適用特別稅率之原因、事實消滅時，未依土地稅法第四十一條

given in respect of the punishability or punishment where there is any failure to file a report as provided for in Article 41-II of said Act when the reason for and facts concerning the applicability of the special tax rate cease to exist. Article 15 of the Enforcement Rules of the Land Tax Act provides, "Where the reason for and facts concerning the applicability of a special tax rate cease to exist, the land owner shall report such to the competent tax authority within thirty (30) days; failure to so report within the specified time limit shall invoke Article 54-I (i) of the Act." The said provisions, by subjecting the land owner who fails to report the cessation of the reason for and facts concerning the applicability of a special tax rate within thirty (30) days to a fine of triple the underdeclared or undeclared taxable amount where it involves the kind of reduction or exemption of land value tax that fails to follow the criteria and procedure set forth in Article 6 of the Land Tax Act and the Regulation Governing the Reduction or Exemption of Land Tax, have clearly extended the imposition of penalties by means of regulations to those

第二項規定申報之情形，是否應予以處罰或如何處罰，則未作明確之授權。土地稅法施行細則第十五條規定：「適用特別稅率之原因、事實消滅時，土地所有權人應於三十日內向主管稽徵機關申報，未於期限內申報者，依本法第五十四條第一項第一款之規定辦理」，將非依土地稅法第六條及土地稅減免規則規定之標準及程序所為之地價稅減免情形，於未依三十日期限內申報適用特別稅率之原因、事實消滅者，亦得依土地稅法第五十四條第一項第一款之規定，處以短匿稅額三倍之罰鍰，顯以法規命令增加裁罰性法律所未規定之處罰對象，復無法律明確之授權，核與首開法律保留原則之意旨不符，牴觸憲法第二十三條規定，應於本解釋公布之日起至遲於屆滿一年時失其效力。

who are not specified by a punitive law. Furthermore, short of clear and definite authorization by law, the provisions are not consistent with the aforesaid principle of legal reservation and thus are in conflict with Article 23 of the Constitution. Therefore, the foregoing provisions shall become void no later than one year from the date of this interpretation.

J. Y. Interpretation No.620（December 6, 2006）*

ISSUE: Is the Resolution of the Joint Meeting of the Supreme Administrative Court (March 26, 2002) in violation of the Constitution?

RELEVANT LAWS：

Articles 7, 19 and 156 of the Constitution（憲法第七條, 第十九條, 第一百五十六條）; Article 10, Paragraph 6, of the Amendments to the Constitution（憲法增修條文第十條第六項）; Judicial Interpretations Nos. 374, 410, 554 and 577（司法院釋字第三七四號, 第四一〇號, 第五五四號, 第五七七號解釋）; Article 1030-1 of the Civil Code (added and promulgated on June 3, 1985)（民法第一千零三十條之一（中華民國七十四年六月三日增訂公布））; Article 1 (amended on June 3, 1985) and Article 6-1 (added on September 25, 1996) of the Enforcement Act of the Civil Code: Part IV: Family（民法親屬編施行法第一條（七十四年六月三日修正公布）, 第六條之一（八十五年九月二十五日增訂公布））; Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act（司法院大法官審理案件法第五條第一項第二款）; Article 30 of the Organic Act of the Administrative Court（行政法院組織法第三十條）; Article 84 of the Labor Standards Act (amended on December 27,

* Translated by Professor Dr. Amy H.L. SHEE.

** Contents within frame, not part of the original text, are added for reference purpose only.

1996)（勞動基準法第八十四條之二（八十五年十二月二十七日增訂公布））; Article 28 of the Regulation Governing the Disposition of Affairs of the Administrative Court（最高行政法院處務規程第二十八條）; The Resolution of the Joint Meeting of the Supreme Administrative Court on March 26, 2002（最高行政法院九十一年三月二十六日庭長法官聯席會議決議）; The Ministry of Finance Directive Ref. No. TTS-871925704, January 22, 1998; and Directive Ref. No. TTS-09404540280, June 29, 2005（財政部八十七年一月二十二日台財稅字第八七一九二五七〇四號函，九十四年六月二十九日台財稅字第〇九四〇四五四〇二八〇號函）.

KEYWORDS：

principle of taxation by law（租稅法律主義）, claim regarding the distribution of the remainder of marital property（剩餘財產差額分配請求權）, inheritance tax（遺產稅）, protection of trust principle（信賴保護原則）, transition clause（過渡條款）, remediable measures（補救措施）, principle of proportionality（比例原則）, principle of equality（平等原則）, retroactive application of law（溯及適用）, supplement of legal loopholes（法律漏洞之補充）, sexual/gender equality（男女平等）, preservation of the institution of marriage and the family（婚姻與家庭之保障）.**

HOLDING： People have the obligation to pay tax by law under Article 19 of the Constitution, and the state, when

解釋文： 憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免

imposing or reducing such obligation, must govern the taxation subject, object, basis and rate by law or authorized orders as held by this Yuan in previous Interpretations.

稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率等租稅構成要件，以法律或法律明確授權之命令定之，迭經本院闡釋在案。

Article 1030-1 of the Civil Code, which was promulgated on June 3, 1985 (hereinafter referred to as Article 1030-1 or the new law), provides that, "Upon termination of the shared property regime, the remainder of the property acquired by the husband or wife within marriage, after deduction of the debts incurred during the marital relationship, if any, should be equally distributed between the two, except those acquired from succession or other endowment". The legislative intent was to recognize the spousal contributions, such as doing household chores, raising children and others, made to maintain marital life. Consequently, apart from those obtained from succession or other endowment, the remainder of the shared property acquired by joint efforts during the marital relationship, upon death of a spouse which terminates the relation of such shared property, should not been

中華民國七十四年六月三日增訂公布之民法第一千零三十條之一（以下簡稱增訂民法第一千零三十條之一）第一項規定：「聯合財產關係消滅時，夫或妻於婚姻關係存續中所取得而現存之原有財產，扣除婚姻關係存續中所負債務後，如有剩餘，其雙方剩餘財產之差額，應平均分配。但因繼承或其他無償取得之財產，不在此限」。該項明定聯合財產關係消滅時，夫或妻之剩餘財產差額分配請求權，乃立法者就夫或妻對家務、教養子女及婚姻共同生活貢獻所為之法律上評價。因此夫妻於婚姻關係存續中共同協力所形成之聯合財產中，除因繼承或其他無償取得者外，於配偶一方死亡而聯合財產關係消滅時，其尚存之原有財產，即不能認全係死亡一方之遺產，而皆屬遺產稅課徵之範圍。

deemed as belonging to the deceased's property, and thus be included in the levying of inheritance tax.

If a marriage was constituted previous to the enactment of Article 1030-1 but the shared property regime was terminated by death after June 5 on which the provision became effective, the new law should apply. As a result, the remainder of the property acquired by the husband or wife within marriage, except those items acquired from succession or other endowment, should be subject to the right to surplus distribution, and there should be no differentiation regarding whether the property was acquired before or after the date of enactment of the law. The surviving spouse who exercises this legal right to surplus distribution should be protected under the legislative purposes of the inheritance and endowment taxation law and the substantial taxation principle. As a result, the claimed amount of surplus distribution should be excluded and deducted from the property on which inheritance tax is to be levied.

夫妻於上開民法第一千零三十條之一增訂前結婚，並適用聯合財產制，其聯合財產關係因配偶一方死亡而消滅者，如該聯合財產關係消滅之事實，發生於七十四年六月三日增訂民法第一千零三十條之一於同年月五日生效之後時，則適用消滅時有效之增訂民法第一千零三十條之一規定之結果，除因繼承或其他無償取得者外，凡夫妻於婚姻關係存續中取得，而於聯合財產關係消滅時現存之原有財產，並不區分此類財產取得於七十四年六月四日之前或同年月五日之後，均屬剩餘財產差額分配請求權之計算範圍。生存配偶依法行使剩餘財產差額分配請求權者，依遺產及贈與稅法之立法目的，以及實質課稅原則，該被請求之部分即非屬遺產稅之課徵範圍，故得自遺產總額中扣除，免徵遺產稅。

The Resolution made in the Joint Meeting of the Supreme Administrative Court on March 26, 2002, reduces the amount of deduction from the deceased's property and thus increases the people's obligation to pay tax without the authorization of law. It is thus considered null and void for violating the above principles and the "rule of taxation law" principle administered under Article 19 of the Constitution.

最高行政法院九十一年三月二十六日庭長法官聯席會議決議，乃以決議縮減法律所定得為遺產總額之扣除額，增加法律所未規定之租稅義務，核與上開解釋意旨及憲法第十九條規定之租稅法律主義尚有未符，應不再援用。

REASONING: Resolutions of the Supreme Administrative Court, which render specific opinions on law application, are specifically intended to provide reference for judges when deciding cases and may not be taken as the equivalent of judicial precedents. However, such resolutions are made under law (Article 30 of the Organic Act of the Administrative Court and Article 28 of the Regulation Governing the Disposition of Affairs of the Administrative Court) and articulate opinions of the Court on specific issues, and thus they shall be taken as being equivalent to ordinances when cited by court decisions. As held in Judicial Inter-

解釋理由書：最高行政法院在具體個案之外，表示其適用法律見解之決議，原僅供院內法官辦案之參考，並無必然之拘束力，雖不能與判例等量齊觀，惟決議之製作既有法令依據（行政法院組織法第三十條及最高行政法院處務規程第二十八條），又為代表最高行政法院之法律見解，如經法官於裁判上援用時，自亦應認與命令相當，許人民依司法院大法官審理案件法第五條第一項第二款之規定，聲請本院解釋，業經本院釋字第三七四號解釋闡釋有案，合先說明。

pretation No.374 of this Yuan, people may apply for judicial review of such resolutions according to Article 5, Section 1, Paragraph 2, of the Constitutional Interpretation Procedure Act.

Under Article 19 of the Constitution, people have the obligation to pay tax by law, and the state, when imposing or reducing such obligation, must regulate the taxation subject, object, basis and rate by law or authorized orders as held by this Yuan in previous Interpretations. The Supreme Administrative Court, when rendering specific legal opinions with a Resolution, should abide by general rules governing legal interpretation, and should especially adhere to legislative purposes and constitutional principles. Proceeding otherwise exceeds the authority of legal interpretation and increases people's obligation to pay tax, thus constituting a violation of the "principle of taxation by law" under Article 19 of the Constitution.

憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率等租稅構成要件，以法律或法律明確授權之命令定之，迭經本院闡釋在案。最高行政法院以上開決議方式表示法律見解者，須遵守一般法律解釋方法，秉持立法意旨暨相關憲法原則為之；逾越法律解釋之範圍，而增減法律所定租稅義務者，自非憲法第十九條規定之租稅法律主義所許。

Article 1030-1 of the Civil Code, which was promulgated on June 3, 1985, provides that, "Upon termination of the

增訂民法第一千零三十條之一第一項規定：「聯合財產關係消滅時，夫或妻於婚姻關係存續中所取得而現存之

shared property regime, the remainder of the property acquired by the husband or wife within marriage, after deduction of the debts incurred during the marital relationship, if any, should be equally distributed between the two, except those acquired from succession or other endowment". The legislative reason for this provision is: "When the relation of shared property terminates, the remainder of the marital property should be shared equally between the spouses to achieve fairness and thus to uphold the principle of sexual\gender equality. For example, in a family where the husband is the breadwinner while the wife is the homemaker, who does family chores and takes care of dependent children so as to excuse the husband from household maintenance so he can concentrate on developing his career, the marital property thus accumulated should be equally attributed to the wife's efforts. Therefore, the wife has the right to claim an even share of the remainder of marital property, excluding those of inheritance and endowment. This also applies in the case of a househusband." (*See* Record of the 38th Meeting of

原有財產，扣除婚姻關係存續中所負債務後，如有剩餘，其雙方剩餘財產之差額，應平均分配。但因繼承或其他無償取得之財產，不在此限」。其立法理由為：「聯合財產關係消滅時，以夫妻雙方剩餘財產之差額，平均分配，方為公平，亦所以貫徹男女平等之原則。例如夫在外工作，或經營企業，妻在家操持家務，教養子女，備極辛勞，使夫得無內顧之憂，專心發展事業，其因此所增加之財產，不能不歸功於妻子之協力，則其剩餘財產，除因繼承或其他無償取得者外，妻自應有平均分配之權利，反之夫妻易地而處，亦然」（見立法院公報第七十四卷第三十八期院會紀錄第五十八頁及第五十九頁）。由此可知，聯合財產關係消滅時，夫或妻之剩餘財產差額分配請求權，乃立法者就夫或妻對家務、教養子女及婚姻共同生活貢獻所為之法律上評價，性質上為債權請求權。因此聯合財產關係因配偶一方死亡而消滅，生存配偶依法行使其剩餘財產差額分配請求權時，依遺產及贈與稅法之立法目的，以及實質課稅原則，該被請求之部分即非遺產稅之課徵範圍。

the Legislature, pp. 58-59, Vol. 74, of the Legislative Yuan Gazette). Therewith, the legislative intent regarding the right to fair distribution of marital property was to recognize the spousal contributions, such as doing household chores, raising children and others, made to maintain marital life. Upon spousal death terminating the marital property relationship, the living spouse's claim for the even distribution of the remaining property should be protected under the legislative purposes of the inheritance taxation and endowment taxation laws and the claimed amount of surplus distribution should be excluded and deducted from the deceased's property on which inheritance tax is to be levied.

In order to keep pace with changes in society and changing needs, new laws need to be designed, and current laws revised or abolished, to protect people's acquired rights from being infringed. To protect these rights, the legislators may allow discrepancies in maintaining current legal orders so as to meet legislative purposes. However, in case of a special need

任何法規皆非永久不能改變，立法者為因應時代變遷與當前社會環境之需求，而為法律之制定、修正或廢止，難免影響人民既存之有利法律地位。對於人民既存之有利法律地位，立法者審酌法律制定、修正或廢止之目的，原則上固有決定是否予以維持以及如何維持之形成空間。惟如根據信賴保護原則有特別保護之必要者，立法者即有義務另

to protect people's interests of trust, the legislature is obliged to make a specific proviso to limit the application of a new law, for example, to make a transition clause to exclude or postpone the application of a new law in specified cases (*See* Judicial Interpretation No.577), or to adopt other remediable measures with reason, for example, to limit application of the new law only to some of the constituent facts that occurred after the enactment of the new law (*See* Article 84 of the Labor Law added on December 27, 1996), though in such cases, the limit has to coincide with the constitutional principles of proportionality and equality.

定特別規定，以限制新法於生效後之適用範圍，例如明定過渡條款，於新法生效施行後，適度排除或延緩新法對之適用（本院釋字第五七七號解釋理由書參照），或採取其他合理之補救措施，如以法律明定新、舊法律應分段適用於同一構成要件事實等（八十五年十二月二十七日修正公布之勞動基準法增訂第八十四條之二規定參照），惟其內容仍應符合比例原則與平等原則。

When the continuance of a legal relation governed by a new law covers both the periods of the new and the former laws, but the constituent fact occurs only after the enforcement of the new law, the new law shall be applied unless otherwise specified by law to make retroactive application or otherwise. The judicial organs should abide by such principle. Without proper legal authorization, a judicial organ cannot make retroactive application of a

新法規範之法律關係如跨越新、舊法施行時期，當特定法條之所有構成要件事實於新法生效施行後始完全實現時，則無待法律另為明文規定，本即應適用法條構成要件與生活事實合致時有效之新法，根據新法定其法律效果。是除非立法者另設「法律有溯及適用之特別規定」，使新法自公布生效日起向公布生效前擴張其效力；或設「限制新法於生效後適用範圍之特別規定」，使新法自公布生效日起向公布生效後限制其

law, nor limit the application of a certain law to a specified period of time or make a transition clause to such effect. On the other hand, if the legislature has failed to make a transition clause or to take other remediable measures so as to specify the application of the new law, thus constituting a loophole in the law, the judicial organ shall, based on the constitutional principles of trust, proportionality and equality, consider the possibility of closing the loophole with a reasonable transition clause within legal authority and in accordance with concerned jurisprudential rules.

效力，否則適用法律之司法機關，有遵守立法者所定法律之時間效力範圍之義務，尚不得逕行將法律溯及適用或以分段適用或自訂過渡條款等方式，限制現行有效法律之適用範圍。至立法者如應設而未設「限制新法於生效後適用範圍之特別規定」，即過渡條款，以適度排除新法於生效後之適用，或採取其他合理之補救措施，而顯然構成法律之漏洞者，基於憲法上信賴保護、比例原則或平等原則之要求，司法機關於法律容許漏洞補充之範圍內，即應考量如何補充合理之過渡條款，惟亦須符合以漏洞補充合理過渡條款之法理。

It is understood as a historical fact (*See* pp. 7-10, Vol. 74, of the Legislative Yuan Gazette) that Article 1030-1 was created only to include the phrase “the remaining marital property acquired after June 5, 1985”; nevertheless, a proper comprehension of legislative intention and legal wording involves a review of the objective purpose of the legislature and shall not be restricted to the subjective viewpoints of legislators at the time of legislation. Under Article 1030-1, the dis-

增訂民法第一千零三十條之一第一項規定之歷史事實（見立法院公報第七十四卷第三十九期第七至十頁），縱有解釋為「夫或妻於七十四年六月五日後所取得而現存之原有財產」，始得列入剩餘財產差額分配請求權計算範圍之可能，惟探求立法意旨，主要仍應取決於表現於法條文字之客觀化之立法者意思，而非立法者參與立法程序當時之主觀見解。增訂民法第一千零三十條之一就夫妻剩餘財產差額分配請求權之計算，既明確規定以「婚姻關係存續中」

tribution right is based on the marital property obtained during the "continuation of the marriage" and as such, it is not possible to exclude the property acquired before a certain time. The judicial organ should elucidate the legislative intention or that of the law itself and not be constrained by the subjective perspective of legislators. Further, this Yuan should also evaluate whether the "legislative intention" as quoted above is in accordance with the constitutional protection of sexual/gender equality and the institution of marriage and family.

界定取得原有財產之時間範圍，客觀文義上顯然已無就財產之取得時點再予分段或部分排除之可能，則司法機關適用上開規定，探究立法意旨，自無捨法條明文，而就立法者個人主觀見解之理。況本院尚應評價將立法者之決定作上開解釋，是否符合憲法保障男女平等及婚姻與家庭之意旨。

Relevant questions as to whether the shared property regime should be applied to marriages constituted before the promulgation of Part IV: Family of the Civil Code or whether a living spouse may claim the right to property distribution in cases where the marriage was constituted after June 4, 1985, while the shared property regime was not instituted from the beginning of the marriage, and if so, how to calculate the amount of remaining marital property or whether inheritance tax may thus be deducted do not share the

至於夫妻於民法親屬編公布施行前結婚，可否適用聯合財產制？或夫妻雖於七十四年六月四日民法親屬編修正施行前結婚，但並非自結婚時起持續適用聯合財產制者，如聯合財產關係因配偶一方死亡而消滅時，其生存配偶是否取得剩餘財產差額分配請求權？如何計算？是否免徵遺產稅？均與本件乃針對七十四年六月四日民法親屬編修正施行前結婚，並持續適用聯合財產制夫妻之剩餘財產差額分配請求權問題所為解釋之法律基礎不同，故不在本件解釋範圍內，自不待言。

same legal base of this Interpretation, in which the main concern is for those whose marriages were constituted prior to June 4, 1985, and have continuously maintained the shared property regime.

The Resolution made in the Joint Meeting of the Supreme Administrative Court on March 26, 2002 states, "Article 1030-1 of the amended Civil Code: Part IV: Family, which was promulgated on June 3, 1985, provides for the spousal right to claim equal distribution of the remainder of marital property. Article 1 of the Enforcement Act of the Part of Family amended on the same day stipulates, "Unless otherwise regulated by the present Enforcement Act, the provision of the Part of Family does not apply to the family (relative) affairs that occurred before its coming into force; and unless otherwise regulated by the present Enforcement Act, the revised provisions shall not apply to that which occurred before the revision". Accordingly, the new law may not be applied retroactively. If there is any need for retroactive application of the new law, it has to be specified in the Enforce-

最高行政法院於九十一年三月二十六日庭長法官聯席會議作成決議：「民法親屬編於七十四年六月三日修正時，增訂第一千零三十條之一關於夫妻剩餘財產差額分配請求權之規定。同日修正公布之民法親屬編施行法第一條規定：『關於親屬之事件，在民法親屬編施行前發生者，除本施行法有特別規定外，不適用民法親屬編之規定；其在修正前發生者，除本施行法有特別規定外，亦不適用修正後之規定。』明揭親屬編修正後之法律，仍適用不溯既往之原則，如認其事項有溯及適用之必要者，即應於施行法中定為明文，方能有所依據，乃基於法治國家法安定性及既得權益信賴保護之要求，而民法親屬編施行法就民法第一千零三十條之一並未另定得溯及適用之明文，自應適用施行法第一條之規定。又親屬編施行法於八十五年九月二十五日增訂第六條之一有關聯合財產溯及既往特別規定時，並未包括第一千零三十條之一之情形。準

ment Act so as to maintain stability of the legal order and protection of acquired rights under the rule of law principle. The Enforcement Act does not contain any retroactive provision to be applied to Article 1030-1 and thus Article 1 of the said Act shall apply. On the other hand, Article 6 of the Enforcement Act, which was added on September 25, 1996, does not include the circumstances detailed in Article 1030-1. Accordingly, for those who were married prior to June 4, 1985, and have continuously abided by the shared property regime agreement, upon the death of a spouse after June 5, 1985, when the surviving spouse claims the right to distribution, Article 1030-1 does not apply to the property acquired before June 4, 1985. Hence, on the calculation of the deceased's property, only the property acquired after June 5, 1985, may be counted as belonging to the remainder of the marital property and deducted from the deceased's property for the purpose of taxation.

此，七十四年六月四日民法親屬編修正施行前結婚，並適用聯合財產制之夫妻，於七十四年六月五日後其中一方死亡，他方配偶依第一千零三十條之一規定行使夫妻剩餘財產差額分配請求權時，夫妻各於七十四年六月四日前所取得之原有財產，不適用第一千零三十條之一規定，不列入剩餘財產差額分配請求權計算之範圍。是核定死亡配偶之遺產總額時，僅得就七十四年六月五日以後夫妻所取得之原有財產計算剩餘財產差額分配額，自遺產總額中扣除」。第查：

The calculation basis and conditions of application for the right to distribution

增訂民法第一千零三十條之一所規定剩餘財產差額分配請求權之適用條

under Article 1030-1 are: “upon the termination of the relation of shared property, the remainder of the property acquired by the husband or wife within marriage”. The meaning of “within marriage” denotes by its wording the period of time starting from the inception of the marriage to its dissolution disregarding whether the marriage was constituted before June 4, or after June 5, 1985. Thus it is not logical to assume from the provision that “the claim to distribute the remaining marital property only concerns the marital property acquired after June 5, 1985”. As to Article 6 of the Enforcement Act, which was added on September 25, 1996, it is intended to clarify the ownership of marital property between spouses and is not concerned with the claim to distribute the remaining marital property. Further, the legislative intention of Article 1030-1 is to realize the constitutional purpose of protecting sexual\gender equality and the institution of marriage and family. The legislative intent was to recognize the spousal contributions, such as doing household chores, raising children and others, made to maintain marital life,

件與計算基礎，為「聯合財產關係消滅時，夫或妻於婚姻關係存續中所取得而現存之原有財產」。所謂婚姻關係存續中，從文義上理解，乃自結婚後至婚姻關係消滅時止，至於婚姻關係究係於七十四年六月四日以前或同年月五日以後發生，並非所問，本無從得出「第一千零三十條之一所規定剩餘財產差額分配請求權，僅得計入七十四年六月五日後婚姻關係存續中所取得而現存之原有財產」之結論；至於民法親屬編施行法於八十五年九月二十五日增訂公布第六條之一規定，係為釐清聯合財產中夫妻財產之歸屬關係，與剩餘財產差額分配請求權並無直接關聯；更就立法目的而言，增訂民法第一千零三十條之一規定既為實現憲法保障男女平等、維護婚姻及家庭之目的，旨在給予婚姻關係存續中夫或妻對家務、教養子女及婚姻共同生活之貢獻，在夫妻聯合財產制度之下，前所未獲得之公平評價。如果將聯合財產關係中之原有財產，區分為七十四年六月四日以前或同年月五日以後取得者，與實現憲法目的之修法意旨實有未符。上開最高行政法院之決議，既未就立法明定夫妻剩餘財產差額分配請求權所欲實現之憲法目的，審酌增訂民法第一千零三十條之一之適用效果；亦未

which had not been included for consideration before. Therefore, it would be contrary to the legislative purpose of upholding the constitutional principles if the marital property were divided into those items acquired before June 4, or after June 5, 1985. In making the abovementioned Resolution, the Supreme Administrative Court not only failed to investigate the effect of the application of Article 1030-1 on the said constitutional purpose, but also did not elucidate why the marital property acquired before June 4, 1985, should be excluded from the legal claim. It also failed to clarify why the spousal contribution to the management of household chores, raising of children and maintenance of marital life should be evaluated as lower than the acquired property right of the other spouse, and whether such evaluation is in accordance with the constitutional principles of proportionality and sexual\gender equality. The legislature does not by law restrict the application of the new law and thus it should be applied to cases pertaining to general principles of law application. In view of this, the Resolution not only violates the

就該規定法律效果涵蓋之範圍，說明何以應將七十四年六月四日前所取得而現存之原有財產切割於婚姻關係存續中之聯合財產之外；更未說明七十四年六月四日之前，婚姻關係存續中夫或妻對家務、教養子女及婚姻共同生活之貢獻，與配偶之一方對於在上開日期前之原有財產不應列入剩餘財產差額分配請求權計算基礎之信賴相較，為何前者應受法律較低之評價，以及此種評價，是否符合憲法上之比例原則與平等原則；乃逕將立法者未設「限制新法於生效後適用範圍之特別規定」，新法應依一般法律適用原則適用，且已經依法適用於個案之增訂民法第一千零三十條之一所明定剩餘財產差額分配請求權之計算基礎，一律限制解釋為七十四年六月五日後婚姻關係存續中所取得而現存之原有財產，違反一般法律解釋方法，與該條規定之立法目的亦有未符。又縱使將七十四年六月四日前所取得而現存之原有財產亦計入此項剩餘財產差額分配請求權之範圍，而對於原居於較有利法律地位一方配偶有所影響，然依增訂民法第一千零三十條之一第一項規定，平均分配顯失公平者，同條第二項已設有酌減分配額之機制，且於核課遺產稅時，若有行使上開規定之剩餘財產差額分配請求

general principles of law application but also fails to comply with the legislative intention. Even if including the marital property acquired before June 4, 1985, deprives the other spouse of a better economic position, Paragraph II of Article 1030-1 may reduce the amount of claim if even distribution is obviously unfair. If this should happen, the successors of the deceased spouse will be informed upon taxation (The Ministry of Finance Directive Ref. No. TTS-871925704, January 22, 1998; and Directive Ref. No. TTS-09404540280, June 29, 2005). The aggrieved party may then apply for relief accordingly and the property right of the spouse with better economic position will thus be equally protected under the Constitution balanced against the protection of sexual/gender quality and the institution of marriage and family, thus not violating the constitutional principles of trust, proportionality and equality. It should especially be emphasized that in Judicial Interpretation No.410, this Yuan has declared that preferential treatment should be given to sexual\gender equality rather than people's interests in the protection of

權者，繼承人均有知悉之機會（財政部八十七年一月二十二日台財稅字第八七一九二五七〇四號函、九十四年六月二十九日台財稅字第〇九四〇四五四〇二八〇號函參照），得有上述請求救濟之途徑，以期平衡，則其影響亦僅使該較有利之一方配偶喪失可能不符合憲法保障男女平等、婚姻與家庭之目的之財產利益，並未使其符合憲法目的之財產利益遭受剝奪，與憲法上之信賴保護原則、比例原則與平等原則並無不符。尤其本院釋字第四一〇號解釋已宣示男女平等原則，優先於財產權人之「信賴」後，增訂民法第一千零三十條之一規定不具有溯及效力，已屬立法者對民法親屬編修正前原已存在之法律秩序之最大尊重，司法機關實欠缺超越法律文義，以漏洞補充之方式作成限制新法適用範圍之過渡條款之憲法基礎，否則即難免違反男女平等原則以及婚姻與家庭為社會形成與發展之基礎，應受憲法保障之意旨（憲法第七條、第一百五十六條、憲法增修條文第十條第六項及本院釋字第五五四號解釋參照）。

personal property right. Article 1030-1 is thus not made retroactive and the legislature has done its best to maintain the existing legal order. The judicial organ confined itself to the formal wording of the law and failed to close the legal loopholes by making a transition clause to comply with the constitutional principles of sexual/gender equality and the preservation of the institution of marriage and family as the foundation of social formation and development (*See* Articles 7 and 156 of the Constitution; Article 10, Section 6, of the Amendments to the Constitution; and Interpretation No.554 of the Judicial Yuan).

By reducing the amount of deduction from the deceased's property and thus increasing people's obligation to pay tax without the authorization of law, the Resolution made in the Joint Meeting of the Supreme Administrative Court on March 26, 2002, exceeds the authority of legal interpretation and thus violates the constitutional principles of sexual/gender equality and the preservation of the institution of marriage and family as the foun-

最高行政法院九十一年三月二十六日庭長法官聯席會議決議，逾越法律解釋之範圍，有違增訂民法第一千零三十條之一之立法目的及婚姻與家庭應受憲法制度性保障之意旨，乃以決議縮減法律所定得為遺產總額之扣除額，增加法律所未規定之租稅義務，核與憲法第十九條規定之租稅法律主義尚有未符，應不再援用。

dation of social formation and development. It is thus rendered null and void for violating the above principles and the "principle of taxation by law" embodied under Article 19 of the Constitution.

It should also be pointed out that the Ministry of Finance Directive Ref. No. TTS-871925704, January 22, 1998, was not the ordinance applied in the questioned final judgment and is thus not considered in this Interpretation.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Yih-Nan Liaw filed concurring opinion.

另財政部八十七年一月二十二日台財稅字第八七一九二五七〇四號函並非本件確定終局判決所適用之法令，故不在本件解釋範圍內，併予指明。

本號解釋許大法官玉秀提出部分協同意見書；廖大法官義男提出協同意見書。

J. Y. Interpretation No.621（December 22, 2006）*

ISSUE: May an administrative fine be subject to compulsory enforcement upon the death of an obligor after such fine becomes enforceable?

RELEVANT LAWS:

Articles 2, 15 and 43 of the Administrative Execution Act（行政執行法第二條、第十五條、第四十三條）; Article 2 of the Enforcement Rules of the Administrative Execution Act（行政執行法施行細則第二條）; J.Y. Interpretation Y.T. No. 1924（司法院院字第一九二四號解釋）; J.Y. Interpretation Y.J.T. No. 2911（司法院院解字第二九一一號解釋）; Article 1148 of the Civil Code（民法第一千一百四十八條）; Article 14-II and Article 18 of the Administrative Appeal Act（訴願法第十四條第二項、第十八條）; Article 4-III and Article 186 of the Administrative Litigation Act（行政訴訟法第四條第三項、第一百八十六條）; Articles 168 and 176 of the Code of Civil Procedure（民事訴訟法第一百六十八條、第一百七十六條）.

KEYWORDS:

administrative fine（行政罰鍰）, duty to make monetary payment under public law（公法上金錢給付義務）, compulsory enforcement（強制執行）, administrative enforcement

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* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

（行政執行）, enforceability（執行力）, subject matter of enforcement（執行標的）, decedent's estate（遺產）, original property（固有財產）, personal exclusivity（一身專屬性）.**

HOLDING: Article 15 of the Administrative Execution Act provides, "If an obligor dies leaving an estate, the administrative enforcement office may forthwith enforce against such estate." The said provision is intended to direct the administrative enforcement office as to how compulsory enforcement should be conducted upon the death of an obligor who has the duty to make monetary payment under public law. An administrative fine is a duty to make monetary payment under public law. Where an administrative fine is duly imposed and thus becomes enforceable, if an obligor dies leaving an estate, such duty to make monetary payment under public law which arises from the imposition of said administrative fine may be subject to compulsory enforcement pursuant to the aforesaid Article 15 of the Administrative Execution Act, and the subject matter of the enforcement

解釋文：行政執行法第十五條規定：「義務人死亡遺有財產者，行政執行處得逕對其遺產強制執行」，係就負有公法上金錢給付義務之人死亡後，行政執行處應如何強制執行，所為之特別規定。罰鍰乃公法上金錢給付義務之一種，罰鍰之處分作成而具執行力後，義務人死亡並遺有財產者，依上開行政執行法第十五條規定意旨，該基於罰鍰處分所發生之公法上金錢給付義務，得為強制執行，其執行標的限於義務人之遺產。

should be limited to the estate of the deceased obligor.

REASONING: An administrative fine is an act of an administrative agency whereby the duty to make payment of a certain sum of money is imposed by such agency upon a person who violates his or her obligation under administrative law. The imposition of an administrative fine is intended to punish the person liable to penalty for his or her violating act. If the violator dies before the administrative act is duly effected, the subject of the penalty no longer exists and is thus incapacitated from assuming the liability to pay the fine. Besides, since there would be no substantial reason for imposing a punitive disposition upon a deceased person, no such disposition should be made. The intent of J.Y. Interpretation Y.T. No. 1924 was to clarify this point by stating, "no punishment should be imposed on A, who is deceased, for his or her having falsely declared the contract value except that his or her successor(s) should nonetheless pay the overdue taxes according to applicable regulations."

解釋理由書：行政罰鍰係人民違反行政法上義務，經行政機關課予給付一定金錢之行政處分。行政罰鍰之科處，係對受處分人之違規行為加以處罰，若處分作成前，違規行為人死亡者，受處分之主體已不存在，喪失其負擔罰鍰義務之能力，且對已死亡者再作懲罰性處分，已無實質意義，自不應再行科處。本院院字第一九二四號解釋「匿報契價之責任，既屬於死亡之甲，除甲之繼承人仍應照章補稅外，自不應再行處罰」，即係闡明此旨。

Where an obligor dies after an administrative fine is imposed but before he or she makes the payment for such fine, the obligation to pay the fine is exclusively his or hers. As for the issue of whether the decedent's estate is subject to compulsory enforcement, the special provision of the law, if any, should be followed in dealing with the matter. Where the State exercises its public authority by imposing an administrative fine upon a person who violates his or her duty under the administrative law, the cause of such penalty must be related to public affairs. And, the very "public" nature of such penalty has rendered the administrative fine no longer a mere retributive or corrective act aimed at the violating individual, but at the same time produced the effect of punishing such individual for the detriment caused to the State's functions, administrative effectiveness, as well as the general public, by such violating act, so that a rule-of-law order can be established and public interests can be promoted. Where an actor dies after an administrative fine is imposed but before such fine is enforced against him or her, the legisla-

罰鍰處分後，義務人未繳納前死亡者，其罰鍰繳納義務具有一身專屬性，至是否得對遺產執行，於法律有特別規定者，從其規定。蓋國家以公權力對於人民違反行政法規範義務者科處罰鍰，其處罰事由必然與公共事務有關。而處罰事由之公共事務性，使罰鍰本質上不再僅限於報應或矯正違規人民個人之行為，而同時兼具制裁違規行為對國家機能、行政效益及社會大眾所造成不利益之結果，以建立法治秩序與促進公共利益。行為人受行政罰鍰之處分後，於執行前死亡者，究應優先考量罰鍰報應或矯正違規人民個人行為之本質，而認罰鍰之警惕作用已喪失，故不應執行；或應優先考量罰鍰制裁違規行為外部結果之本質，而認罰鍰用以建立法治秩序與促進公共利益之作用，不因義務人死亡而喪失，故應繼續執行，立法者就以上二種考量，有其形成之空間。

tors may have such discretion as to decide whether to proceed with enforcement because the administrative fine was designed to be effective when the main consideration is the retributive function of such fine or the correction of the individual's behavior; or to proceed with enforcement because the fine was designed to establish a rule-of-law order and promote public interests regardless of the death of the obligor when the main consideration is the nature of the fine to punish the violating act.

Article 2 of the Administrative Execution Act provides, "The 'administrative execution' referred to in this Act shall mean the compulsory and immediate enforcement of the duty to make monetary payment under public law, or the duty to act or forbearance to act." Article 15 thereof provides, "If an obligor dies leaving an estate, the administrative enforcement office may forthwith enforce against such estate." Under the authorization of Article 43 of the Administrative Execution Act, Article 2 of the Enforcement Rules of the Administrative Execution

行政執行法第二條規定：「本法所稱行政執行，指公法上金錢給付義務、行為或不行為義務之強制執行及即時強制」，第十五條規定：「義務人死亡遺有財產者，行政執行處得逕對其遺產強制執行」，行政執行法施行細則基於該法第四十三條之授權，於第二條規定：「本法第二條所稱公法上金錢給付義務如下：一、稅款、滯納金、滯報費、利息、滯報金、怠報金及短估金。二、罰鍰及怠金。三、代履行費用。四、其他公法上應給付金錢之義務」，明定罰鍰為公法上金錢給付義務之一種，並未違背法律授權之意旨。揆諸公法上金錢給

Act provides, “The ‘duty to make monetary payment under public law’ referred to in Article 2 of the Act shall mean any of the following: (i) any and all taxes, overdue charges, late filing fees, interests, late filing surcharges, late filing penalties and underestimation surcharges; (ii) administrative fines and default surcharges; (iii) substitute performance fees; and (iv) other duties to make monetary payments under public law.” The foregoing provision specifically names administrative fines as one of the duties to make monetary payments under public law and is not contrary to the intent of the legal authorization. The overall implementation and speedy execution of the administrative objectives hinge on the actualization of the monetary payments under public law. Therefore, it is both reasonable and necessary for the administrative enforcement office to directly enforce such payment against the deceased obligor’s estate. Under the existing law, where an administrative fine is duly imposed and thus becomes enforceable, if an obligor dies leaving an estate, such duty to make monetary payment under public law which arises from the imposi-

付之能否實現，攸關行政目的之貫徹與迅速執行。是義務人死亡遺有財產者，行政執行處得逕對其遺產強制執行，尚屬合理必要。故依現行法規定，罰鍰之處分作成而具執行力後義務人死亡並遺有財產者，依上開行政執行法第十五條規定意旨，該基於罰鍰處分所發生之公法上金錢給付義務，得為強制執行，並無不予強制執行之法律依據。惟上開行政執行法第十五條規定，係針對行政執行處所為強制執行之特別規定，其執行標的僅以義務人死亡時所留遺產為限。至本院院解字第二九一一號解釋前段所謂「法院依財務法規科處罰鍰之裁定確定後，未執行前，被罰人死亡者，除法令有特別規定外，自不能向其繼承人執行」，係指如無法令特別規定，不能向其繼承人之固有財產執行而言；罰鍰處分生效後、繳納前，受處分人死亡而遺有財產者，依行政執行法第十五條規定，該遺產既得由行政執行處強制執行，致對其繼承人依民法第一千一百四十八條規定所得繼承之遺產，有所限制，自應許繼承人以利害關係人身分提起或續行行政救濟（訴願法第十四條第二項、第十八條，行政訴訟法第四條第三項、第一百八十六條，民事訴訟法第一百六十八條及第一百七十六條等參

tion of said administrative fine may be subject to compulsory enforcement pursuant to the aforesaid Article 15 of the Administrative Execution Act, and there is no legal basis upon which such duty is not enforceable. Nevertheless, the provisions of the aforesaid Article 15 of the Administrative Execution Act are specifically designed to target the compulsory enforcement conducted by the administrative enforcement office, and the subject matter of the enforcement should be limited to the estate of the deceased obligor. It was held in J.Y. Interpretation Y.J.T. No. 2911 that where a ruling to impose an administrative fine pursuant to financial regulations becomes conclusive, if the person subject to the fine dies before it is enforced, no enforcement may be made against his or her heir(s), if any, unless the law or regulation provides otherwise. The said interpretation should be so construed as to mean that no enforcement may be made against the original property of such heir(s) except as otherwise provided by law or regulation. Since, where an obligor dies leaving an estate after an administrative fine becomes enforceable and before

照）；又本件解釋範圍，不及於罰鍰以外之公法上金錢給付義務，均併予指明。

he or she pays such fine, the estate is subject to compulsory enforcement by the administrative enforcement office pursuant to Article 15 of the Administrative Execution Act and thus the estate inheritable by his or her heir(s) under Article 1148 of the Civil Code is subject to restrictions, such heir(s) should be permitted to initiate or continue any and all procedures for administrative relief as an interested party (or interested parties) (*see* Article 14-II and Article 18 of the Administrative Appeal Act; Article 4-III and Article 186 of the Administrative Litigation Act; and Articles 168 and 176 of the Code of Civil Procedure). In addition, it should be noted that the scope of this interpretation does not extend to any duty to make monetary payment under public law other than an administrative fine.

Justice Feng-Zhi Peng filed concurring opinion, in which Justice Pi-Hu Hsu, Justice Tzong-Li Hsu and Justice Tzu-Yi Lin joined.

Justice Yih-Nan Liaw filed dissenting opinion.

本號解釋彭大法官鳳至、徐大法官璧湖、許大法官宗力、林大法官子儀共同提出協同意見書；廖大法官義男提出不同意見書。

J. Y. Interpretation No.622（December 29, 2006）*

ISSUE: Is the Resolution of the Joint Meeting of the Supreme Administrative Court dated September 18, 2003, in violation of the Constitution?

RELEVANT LAWS:

Articles 15 and 19 of the Constitution（憲法第十五條、第十九條）; Articles 7, 11-II and 15 of the Estate and Gift Taxes Act (as promulgated and implemented on February 6, 1973)（遺產及贈與稅法第七條、第十一條第二項、第十五條（中華民國六十二年二月六日公布施行））; Articles 14 and 39 of the Tax Levy Act（稅捐稽徵法第十四條、第三十九條）; Article 15 of the Administrative Execution Act（行政執行法第十五條）; J. Y. Interpretations Nos. 347, 399, 516, 582 and 620（司法院釋字第三四七號、第三九九號、第五一六號、第五八二號、第六二〇號解釋）.

KEYWORDS:

Principle of taxation by law（租稅法律主義）, duty of tax payment（租稅義務）, gift tax（贈與稅）, taxpayer（納稅義務人）, decedent's estate（遺產）, inheritance（繼承）.**

HOLDING: The principle of taxation by law as embodied in Article 19

解釋文：憲法第十九條規定所揭示之租稅法律主義，係指人民應依法

* Translated by Vincent C. Kuan.

** Contents within frame, not part of the original text, are added for reference purpose only.

of the Constitution is intended to point out that the people have the duty to pay tax pursuant to the prescriptions in respect of taxpaying bodies, tax denominations, tax rates, methods of tax payment, and time of tax payment as set forth by law. The foregoing has been made clear by this Court in its previous interpretations. Article 15-I of the Estate and Gift Taxes Act (as promulgated and implemented on February 6, 1973) provided that any property transferred by gift to the individuals described in said paragraph by the decedent three years before his/her death is regarded as the decedent's estate, which shall be included in the gross estate and subject to estate tax under said Act. The said article did not provide that the decedent's heir, if any, should be the taxpayer who is subject to gift tax under the law. In addressing the issue regarding the gifts made by the decedent prior to his or her death, the Resolution of the Joint Meeting of the Supreme Administrative Court dated September 18, 2003, stated that where the taxing authority did not issue a notice of gift taxation as of the date when the inheritance took place, the decedent's

律所定之納稅主體、稅目、稅率、納稅方法及納稅期間等項而負納稅之義務，迭經本院解釋在案。中華民國六十二年二月六日公布施行之遺產及贈與稅法第十五條第一項規定，被繼承人死亡前三年內贈與具有該項規定身分者之財產，應視為被繼承人之遺產而併入其遺產總額課徵遺產稅，並未規定以繼承人為納稅義務人，對其課徵贈與稅。最高行政法院九十二年九月十八日庭長法官聯席會議決議關於被繼承人死亡前所為贈與，如至繼承發生日止，稽徵機關尚未發單課徵贈與稅者，應以繼承人為納稅義務人，發單課徵贈與稅部分，逾越上開遺產及贈與稅法第十五條之規定，增加繼承人法律上所未規定之租稅義務，與憲法第十九條及第十五條規定之意旨不符，自本解釋公布之日起，應不予援用。

heir should then be the taxpayer who is subject to gift tax. In respect of the paragraph dealing with the imposition of gift tax, the said resolution has gone beyond the scope set forth by the said Article 15 of the Estate and Gift Taxes Act and imposed a duty of tax payment on the heir(s) that is not provided for by the law. As such, it is inconsistent with the intent of Articles 15 and 19 of the Constitution and thus should no longer be cited from the date of this Interpretation.

REASONING: A resolution of the Supreme Administrative Court, if and when cited by a judge in rendering a judgment, should be regarded as equivalent to an order, thus becoming the subject of constitutional interpretation (*see* J.Y. Interpretations Nos. 374, 516 and 620). In the final judgment based on which the petition for interpretation at issue has been filed, Ruling T.T. No. 1589 (Sup. Ad. Ct. 2003) cited the Resolution of the Joint Meeting of the Supreme Administrative Court dated September 18, 2003, as the ground for overruling the petitioner's case. Moreover, although Judgment P.T.

解釋理由書：最高行政法院決議如經法官於裁判上援用，應認其與命令相當，得為憲法解釋之對象（本院釋字第三七四號、第五一六號、第六二〇號解釋參照）。本件據以聲請解釋之確定終局裁判中，最高行政法院九十二年度裁字第一五八九號裁定援用聲請人所指摘之同院九十二年九月十八日庭長法官聯席會議決議，為其裁定駁回之理由。又最高行政法院九十二年度判字第一五四四號判決，形式上雖未載明援用上開決議，然其判決理由關於應以繼承人為納稅義務人，發單課徵贈與稅之論述及其所使用之文字，俱與該決議之內容相同，是該判決實質上係以該決議為

No. 1544 (Sup. Ad. Ct. 2003) did not formally cite the aforesaid resolution, the rationale and wording employed in the reasoning of said judgment are identical with the contents of the resolution in referring to the decedent's heir as the taxpayer who is subject to gift tax, as well as the notice of gift taxation. Therefore, the judgment, in substance, was reached on the basis of the resolution. And, since the petitioner has specifically contested the constitutionality of the aforesaid resolution and given reasons for such contestation, it may well be considered as the subject of the interpretation. Therefore, pursuant to Article 5-I (ii) of the Constitutional Interpretation Procedure Act, the petition at issue should be heard (*see* J.Y. Interpretations Nos. 399 and 582).

判斷之基礎。而上開決議既經聲請人具體指摘其違憲之疑義及理由，自得為解釋之客體。依司法院大法官審理案件法第五條第一項第二款規定，本件聲請應予以受理（本院釋字第三九九號、第五八二號解釋參照），合先敘明。

Article 19 of the Constitution provides that the people shall have the duty to pay tax in accordance with law, which should be so construed as to mean that the State shall, in imposing duty on the people to pay tax or granting tax abatements or exemptions to the people, prescribe by law such requisite elements of taxation as

憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率、納稅方法及納稅期間等租稅構成要件，以法律明文規定。是應以法律明定之租稅構成要件，自不得以命令為不同規定，或逾越法律，增加法律所無之

taxpaying bodies, taxable objects, tax bases, tax rates, methods of tax payment, time of tax payment and so forth. Therefore, in respect of the requisite elements of taxation that should be prescribed by law, no different provisions can be made and no additional elements or restrictions can be imposed by means of any order, thus imposing any duty of tax payment on the people where the law does not so require. Otherwise, the principle of taxation by law will be violated. While delivering its opinions by way of resolutions, the Supreme Administrative Court must also follow the generally accepted methods of legal interpretation and interpret the laws in line with the legislative intent and applicable constitutional principles. The principle of taxation by law as embodied by Article 19 of the Constitution certainly does not allow any such resolution that exceeds the authority of legal interpretation and increases or reduces any duty of tax payment as provided by law (*see* J.Y. Interpretation No. 620).

要件或限制，而課人民以法律所未規定之租稅義務，否則即有違租稅法律主義。最高行政法院以決議之方式表示法律見解者，亦須遵守一般法律解釋方法，秉持立法意旨暨相關憲法原則為之；逾越法律解釋之範圍，而增減法律所定租稅義務者，自非憲法第十九條規定之租稅法律主義所許（本院釋字第六二〇號解釋參照）。

Article 15-I of the Estate and Gift Taxes Act (as promulgated and imple-

六十二年二月六日公布施行之遺產及贈與稅法第十五條第一項規定：

mented on February 6, 1973) provides, "Any property transferred by gift to the following individuals by the decedent three years (amended as two years on July 15, 1999) before his/her death is regarded as the decedent's estate, which shall be included in the gross estate and subject to estate tax under this Act: (1) the surviving spouse of the decedent; (2) the heirs of the decedent prescribed under Articles 1138 and 1140 of the Civil Code; and (3) the spouses of the heirs named in the preceding item." The foregoing provision has regarded the property transferred by gift to the heirs specified therein as the decedent's estate and included it in the gross estate. The legislative intent thereof should be to prevent the decedent from dividing his or her property prior to his or her death for the purpose of evading estate tax. Therefore, the law requires that the property transferred by gift to specific individuals by the decedent within a certain period prior to his or her death be regarded as the decedent's estate and subject to estate tax. The said article, however, does not require that the heir be regarded as the taxpayer who is subject to

「被繼承人死亡前三年（八十八年七月十五日修正為二年）內贈與下列個人之財產，應於被繼承人死亡時，視為被繼承人之遺產，併入其遺產總額，依本法規定徵稅：一、被繼承人之配偶。二、被繼承人依民法第一千一百三十八條及第一千一百四十條規定之各順序繼承人。三、前款各順序繼承人之配偶。」將符合該項規定之贈與財產視為被繼承人之遺產，併計入遺產總額。究其立法意旨，係在防止被繼承人生前分析財產，規避遺產稅之課徵，故以法律規定被繼承人於死亡前一定期間內贈與特定身分者之財產，於被繼承人死亡時，應視為遺產，課徵遺產稅。該條並未規定被繼承人死亡前所為贈與，尚未經稽徵機關發單課徵贈與稅者，須以繼承人為納稅義務人，使其負繳納贈與稅之義務。

gift tax where the taxing authority did not issue a notice of gift taxation in respect of the gift made by the decedent prior to his or her death.

The Tax Levy Act contains the general provisions regarding tax collection. Article 14 thereof provides, "Where a taxpayer dies leaving an estate, the taxes payable by him or her according to law shall be paid off by the executor, heir, legatee or administrator, as the case may be, based on the order of discharge of the duty of tax payment set forth by law before the decedent's estate or legacy may be divided or delivered (Paragraph I)." "If the executor, heir, legatee or administrator, as the case may be, is in violation of the provisions of the preceding paragraph, he or she shall be obligated to pay off any unpaid taxes (Paragraph II)." Pursuant to Paragraph I of said article, the decedent's duty of tax payment already in existence prior to his or her death will not be discharged by his or her death, but the decedent's executor, heir, legatee or administrator will have to pay off such taxes in his or her stead to the extent that the decedent

稅捐稽徵法為稅捐稽徵之通則規定，該法第十四條規定：「納稅義務人死亡，遺有財產者，其依法應繳納之稅捐，應由遺囑執行人、繼承人、受遺贈人或遺產管理人，依法按稅捐受清償之順序，繳清稅捐後，始得分割遺產或交付遺贈（第一項）。遺囑執行人、繼承人、受遺贈人或遺產管理人，違反前項規定者，應就未清繳之稅捐，負繳納義務（第二項）。」依該條第一項之規定，被繼承人生前尚未繳納之稅捐義務，並未因其死亡而消滅，而由其遺囑執行人、繼承人、受遺贈人或遺產管理人，於被繼承人遺有財產之範圍內，代為繳納。遺囑執行人、繼承人、受遺贈人或遺產管理人係居於代繳義務人之地位，代被繼承人履行生前已成立稅捐義務，而非繼承被繼承人之納稅義務人之地位。惟如繼承人違反上開義務時，依同條第二項規定，稽徵機關始得以繼承人為納稅義務人，課徵其未代為繳納之稅捐。是被繼承人死亡前業已成立，但稽徵機關尚未發單課徵之贈與稅，遺產

left any estate. Rather than succeeding the decedent as the taxpayer, the executor, heir, legatee or administrator, as the case may be, is merely obligated to pay off the taxes in the decedent's place and perform the decedent's duty of tax payment already in existence prior to his or her death. Nevertheless, if the heir is in breach of his or her obligation mentioned above, the taxing authority may then regard the heir as the taxpayer and impose on him or her the duty to pay off the unpaid taxes that he or she should have paid in the decedent's place according to Paragraph II of said article. Therefore, in respect of the gift tax that was already payable by the decedent prior to his or her death but for which no notice of gift taxation was issued by the taxing authority, the general provisions of Article 14 of the Tax Levy Act should apply since the Estate and Gift Taxes Act does not provide that the heir shall be the taxpayer. In other words, in respect of the decedent's estate, the taxes payable by him or her according to law shall be paid off by the executor, heir, legatee or administrator, as the case may be, based on the order of discharge of the

及贈與稅法既未規定應以繼承人為納稅義務人，則應適用稅捐稽徵法第十四條之通則性規定，即於分割遺產或交付遺贈前，由遺囑執行人、繼承人、受遺贈人或遺產管理人，就被繼承人之遺產，依法按贈與稅受清償之順序，繳清稅捐。違反此一規定者，遺囑執行人、繼承人、受遺贈人或遺產管理人始應就未繳清之贈與稅，負繳納義務。又稅捐債務亦為公法上之金錢給付義務，稽徵機關作成課稅處分後，除依法暫緩移送執行及稅捐稽徵法第三十九條第二項所規定之情形外，於繳納期間屆滿三十日後仍未繳納，經稽徵機關移送強制執行者，則應依行政執行法第十五條規定，以被繼承人之遺產為強制執行之標的。另遺產及贈與稅法第七條第一項規定，贈與稅之納稅義務人為贈與人，但贈與人行蹤不明，或逾法定繳納期限尚未繳納，且在中華民國境內無財產可供執行者，以受贈人為納稅義務人。故若被繼承人（贈與人）無遺產可供執行者，稽徵機關尚得依前開規定，以受贈人為納稅義務人課徵贈與稅。至依上開規定已納之贈與稅，其與繼承人依遺產及贈與稅法第十五條應繳納之遺產稅，仍有同法第十一條第二項規定之適用。

duty of paying gift taxes as set forth by law before the decedent's estate or legacy may be divided or delivered. Only in case of any violation of the foregoing obligation shall the executor, heir, legatee or administrator be obligated to pay off the gift tax that has not yet been paid. In addition, a duty of tax payment is a duty to make monetary payment under public law. Upon the issuance of a taxpaying disposition by the taxing authority, other than the circumstances described in Article 39-II of the Tax Levy Act under which the compulsory execution may be suspended according to law, the decedent's estate may still be subject to compulsory execution under Article 15 of the Administrative Execution Act if the taxing authority removes the case for purpose of compulsory execution when the tax remains unpaid thirty (30) days after the expiry of the taxpaying period. Furthermore, according to Article 7-I of the Estate and Gift Taxes Act, the taxpayer of gift tax shall be the donor of gift. However, the donee shall be liable for payment of such tax if the donor's whereabouts is unknown, or if the donor fails to pay gift

tax within the time limit prescribed herein and does not have any property in the ROC for enforcement. Therefore, if the decedent (donor) does not have any property for enforcement, the taxing authority may still regard the donee as the taxpayer and impose gift tax on him or her pursuant to the foregoing provisions. As for the gift tax already paid pursuant to the foregoing provisions, as well as the estate tax payable by the heir according to Article 15 of the Estate and Gift Taxes Act, Article 11-II of said Act shall still apply.

In respect of the issue as to how the gift tax should be imposed and paid for any property transferred by gift to specific individuals by the decedent three years before his/her death where the taxing authority did not issue a notice of gift taxation in respect of the gift made by the decedent prior to his or her death, the Resolution of the Joint Meeting of the Supreme Administrative Court dated September 18, 2003, stated, in part, that the decedent had the duty to pay the gift tax at the time when the gift was made three years before his/her death and thus the debt of gift tax

被繼承人死亡前三年內贈與特定人財產，稅捐稽徵機關於其生前尚未發單課徵贈與稅者，被繼承人死亡後，其贈與稅應如何課徵繳納之問題，最高行政法院九十二年九月十八日庭長法官聯席會議決議略謂：「被繼承人於死亡前三年內為贈與，於贈與時即負有繳納贈與稅之義務，贈與稅捐債務成立。被繼承人死亡時，稅捐稽徵機關縱尚未對其核發課稅處分，亦不影響該稅捐債務之效力。此公法上之財產債務，不具一身專屬性，依民法第一千一百四十八條規定，由其繼承人繼承，稅捐稽徵機關於被繼承人死亡後，自應以其繼承人為納

came into existence; that such debt under the public law does not have any nature of personal exclusivity and hence is inheritable by the heir(s) of the decedent pursuant to Article 1148 of the Civil Code; and that the taxing authority should regard the heir(s) as the taxpayer(s) upon his/her death and assess the gift tax inherited by such heir(s) during the taxpaying period. The aforesaid resolution also stated that Articles 11-II and 15 of the Estate and Gift Taxes Act had merely provided that the aforesaid property transferred by gift should be included in the decedent's estate for the purpose of calculating the estate tax and specified the method as to how the gift tax may be deducted, but did not exempt the heir(s) from their debts of gift tax inherited from the decedent; and that the Directive No. TTST-811669393 issued by the Ministry of Finance on June 30, 1992, was not inconsistent with the foregoing provisions by stating that, where any gift made by the decedent three years before his/her death is included in the gross estate and subject to estate tax, if the taxing authority did not issue a notice of gift taxation as of the date when the

稅義務人，於核課期間內，核課其繼承之贈與稅。至遺產及贈與稅法第十五條及第十一條第二項僅規定上開贈與財產應併入計算遺產稅及如何扣抵贈與稅，並未免除繼承人繼承被繼承人之贈與稅債務，財政部八十一年六月三十日台財稅第八一一六六九三九三號函釋關於：『被繼承人死亡前三年內之贈與應併課遺產稅者，如該項贈與至繼承發生日止，稽徵機關尚未發單課徵時，應先以繼承人為納稅義務人開徵贈與稅，再依遺產及贈與稅法第十五條及第十一條第二項規定辦理』部分，與前開規定尚無牴觸。」此決議關於被繼承人死亡前所為贈與，如至繼承發生日止，稽徵機關尚未發單課徵贈與稅者，應以繼承人為納稅義務人，發單課徵贈與稅之部分，逾越遺產及贈與稅法第十五條之規定，增加繼承人法律上所未規定之租稅義務，與憲法第十九條及第十五條規定之意旨不符，自本解釋公布之日起，應不予援用。至上開決議所採之見解是否導致贈與稅與遺產稅之課徵違反平等原則，已無庸審究。又上開贈與稅之課徵及執行，應分別情形適用稅捐稽徵法第十四條、遺產及贈與稅法第七條及行政執行法第十五條規定，併予指明。

inheritance took place, the decedent's heir should be the taxpayer who is subject to gift tax before resorting to Articles 15 and 11-II of the Estate and Gift Taxes Act. In addressing the issue regarding the gifts made by the decedent prior to his or her death, the said resolution stated that where the taxing authority did not issue a notice of gift taxation as of the date when the inheritance took place, the decedent's heir should then be the taxpayer who is subject to gift tax. In respect of the paragraph dealing with the imposition of gift tax, the said resolution has gone beyond the scope set forth by the said Article 15 of the Estate and Gift Taxes Act and imposed a duty of tax payment on the heir(s) that is not provided for by the law. As such, it is inconsistent with the intent of Articles 15 and 19 of the Constitution and thus should no longer be cited from the date of this Interpretation. The issue of whether the opinions adopted by the said resolution have caused the imposition of gift and estate taxes to be in violation of the principle of equality is now only moot. Additionally, it should be noted that, depending on the circumstances, Article 14 of the

Tax Levy Act, Article 7 of the Estate and Gift Taxes Act and Article 15 of the Administrative Execution Act, respectively, should apply to the imposition and implementation of the aforesaid gift tax.

RELATIVE LAWS or REGULATIONS INDEX

Ⅰ：Interpretations Nos. 1~233
Ⅱ：Interpretations Nos. 234~392
Ⅲ：Interpretations Nos. 393~498
Ⅳ：Interpretations Nos. 499~570
Ⅴ：Interpretations Nos. 571~622

Laws or Regulations **Page No.**

A

B

C

D

E

F

G

H

I

J

L

M

N

O

P

R

S

T

U

V

W

Z

KEYWORDS INDEX

Ⅰ：Interpretations Nos. 1~233
Ⅱ：Interpretations Nos. 234~392
Ⅲ：Interpretations Nos. 393~498
Ⅳ：Interpretations Nos. 499~570
Ⅴ：Interpretations Nos. 571~622

A

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

W

Y

Translators	**Interpretation No.**
Wen-Chen Chang（張文貞）	528(Ⅳ)、530(Ⅳ)、535(Ⅳ)
Chun-Jen Chen（陳俊仁）	293(Ⅱ)、305(Ⅱ)、381(Ⅱ)、383(Ⅱ)、395(Ⅲ)、411(Ⅲ)、586(Ⅴ)、602(Ⅴ)、606(Ⅴ)
Jui-jen Chen（陳瑞仁）	271(Ⅱ)
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John C. Chen（陳傳岳）	100(Ⅰ)、275(Ⅱ)、302(Ⅱ)、304(Ⅱ)、308(Ⅱ)、317(Ⅱ)、339(Ⅱ)、355(Ⅱ)、362(Ⅱ)、366(Ⅱ)、416(Ⅲ)
Tsung-Fu Chen（陳聰富）	251(Ⅱ)、364(Ⅱ)、387(Ⅱ)
Chin-Chin Cheng（鄭津津）	285(Ⅱ)、360(Ⅱ)、390(Ⅱ)、514(Ⅳ)、549(Ⅳ)
Chun-yih Cheng（程春益）	327(Ⅱ)、356(Ⅱ)
Chung Jen Cheng（鄭中人）	213(Ⅰ)、492(Ⅲ)、507(Ⅳ)
Eleanor Y.Y. Chin（金玉瑩）	267(Ⅱ)、333(Ⅱ)
Raymond T. Chu（朱定初）	132(Ⅰ)、135(Ⅰ)、136(Ⅰ)、138(Ⅰ)、139(Ⅰ)、141(Ⅰ)、170(Ⅰ)、179(Ⅰ)、186(Ⅰ)、188(Ⅰ)、192(Ⅰ)、197(Ⅰ)、198(Ⅰ)、209(Ⅰ)、217(Ⅰ)、218(Ⅰ)、221(Ⅰ)、225(Ⅰ)、227(Ⅰ)、228(Ⅰ)、229(Ⅰ)、230(Ⅰ)、240(Ⅱ)、244(Ⅱ)、249(Ⅱ)、252(Ⅱ)、256(Ⅱ)、288(Ⅱ)、291(Ⅱ)、292(Ⅱ)、297(Ⅱ)、300(Ⅱ)、306(Ⅱ)、309(Ⅱ)、311(Ⅱ)、315(Ⅱ)、318(Ⅱ)、321(Ⅱ)、330(Ⅱ)、335(Ⅱ)、337(Ⅱ)、353(Ⅱ)、358(Ⅱ)、361(Ⅱ)、367(Ⅱ)、368(Ⅱ)、369(Ⅱ)、379(Ⅱ)、393(Ⅲ)、394(Ⅲ)、413(Ⅲ)、423(Ⅲ)、426(Ⅲ)、428(Ⅲ)、437(Ⅲ)、438(Ⅲ)、441(Ⅲ)、448(Ⅲ)、451(Ⅲ)、460(Ⅲ)、482(Ⅲ)、511(Ⅳ)、515(Ⅳ)、517(Ⅳ)、550(Ⅳ)、552(Ⅳ)、554(Ⅳ)、556(Ⅳ)、

LEE & LI, ATTORNEYS-AT-LAW （理律法律事務所）	16(Ⅰ)、35(Ⅰ)、37(Ⅰ)、52(Ⅰ)、54(Ⅰ)、112(Ⅰ)、130(Ⅰ)、140(Ⅰ)、224(Ⅰ)、313(Ⅱ)
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