J.Y. Interpretation No. 177 (November 5, 1982)*

Permissibility of Retrial When a Relevant Provision of Law Not Applied Affects the Judgment Case

Issue

Does Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure, permitting an action for retrial if a final judgment is based upon "an apparent error in the application of law," cover a situation in which the court fails to apply a relevant provision of law in its final judgment, and that failure affects the judgment?

Holding

[1] The meaning of "an apparent error in the application of law" described in Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure shall include a case of failure to apply a relevant provision of law in a final judgment if such failure obviously affects the outcome of the said judgment. In such an instance, the protection of the individual persons' rights and interests guaranteed by the Constitution should dictate that the party thus aggrieved be permitted to initiate an action for retrial. To the extent the Supreme Court Precedent 60-T'ai-Tsai-170 (1971) is inconsistent with the above view, it shall no longer be relied upon. On the other hand, when failure to apply a relevant provision of law has no prejudicial effect on the outcome of the judgment, no retrial should be permitted. In this respect, the said Supreme Court Precedent is not inconsistent with the Constitution.

* Translation by Chi CHUNG, based upon the previous translation by Wellington L. KOO

[2] An Interpretation given by this Court in response to a petition brought by individual persons shall also govern the original case for which the individual persons are making the petition.

Reasoning

[1] In its Precedent 60-T'ai Tsai-170 (1971), the Supreme Court held that "the phrase 'an apparent error in the application of law' provided in Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure refers to cases in which the application of a provision of law or regulation in a final judgment is manifestly contrary to a statute, any of the Interpretations by the Judicial Yuan or the Grand Justices Council that may be applicable, or the Precedents of the Supreme Court that may be applicable, but not to cases in which the court fails to apply a relevant provision of law. The foregoing is deduced from a textual interpretation of the said Article 496 and further supported by reference to Article 468 of the said Act, in which 'the failure to apply a legal provision' and 'the improper application of a legal provision' are listed as two different types of 'judgments contrary to law.' " According to Precedent 60-T'ai-Tsai-170 (1971), a litigating party could not pursue relief through a retrial with respect to a final judgment in which the court fails to apply a relevant provision of law.

[2] The phrase "an apparent error in the application of law" shall refer to both a situation in which certain legal provisions that should have been applied were not applied and a situation in which certain legal provisions that should not have been applied were nonetheless erroneously applied. To realize the protection of individual persons' rights and interests under the Constitution, Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure was amended with reference to the Grounds for Second Appeal prescribed in the Code of Civil Procedure and the Grounds for Extraordinary Appeal prescribed in the Code of Criminal Procedure. As the fact that a judgment, or a final judgment, is contrary

to law is one of the statutory grounds for permitting a Second Appeal in civil cases and for permitting an Extraordinary Appeal in criminal cases, such "judgment contrary to law" includes both the failure to apply a provision of law and the improper application of a provision of law. Therefore, the phrase "an apparent error in the application of law" in Article 496 shall also include in its meaning both "the failure to apply a provision of law" and "the improper application of a provision of law."

[3] However, for the aggrieved party to seek relief through retrial in accordance with the aforementioned clauses, the failure to apply a provision of law must have resulted in an apparent impact on the outcome of a judgment. If such a failure has not had an apparent prejudicial effect on the judgment, then no protection is necessary, and, accordingly, it cannot be grounds for a retrial.

[4] In conclusion, if a failure to apply a relevant provision of law in a final judgment has an apparent impact on the outcome of said judgment, it is within the scope of the phrase "an apparent error in the application of law" in Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure. In such an instance, to protect individuals' rights and interests guaranteed by the Constitution, the aggrieved party should be permitted to initiate an action for retrial. To the extent that the Supreme Court Precedent 60-T'ai Tsai-170 (1971) is inconsistent with the above view, it shall no longer be relied upon. On the other hand, when such failure to apply a relevant provision of law has no prejudicial effect on the outcome of the judgment, no retrial should be permitted. In this respect, the said Supreme Court Precedent is not inconsistent with the Constitution.

[5] Furthermore, as Article 4, Paragraph 1, Subparagraph 2 of the Council of Grand Justices Procedure Act allows individual persons to petition for constitutional interpretation, if the resulting Interpretation is in favor of the

petitioner, the resulting Interpretation shall govern the original case for which the individual persons made the petition. The petitioner may seek relief pursuant to the applicable legal procedure.

Background Note by Chi CHUNG

The petitioner bought a house in 1976 (hereafter referred to as the "first sale") and occupied and lived in the house. However, the ownership of the house was not registered in the name of the petitioner in accordance with law. In a foreclosure action against the registered owner of the house in 1978, the petitioner submitted a bid, paid the bid price (hereafter referred to as the "second sale") and became the registered owner thereafter. In 1977, when the house suffered damage, the petitioner, albeit himself not an owner, took the place of the registered owner of the house to sue the alleged tortfeasor. The court dismissed the suit on the basis of the second sale. The petitioner later initiated a proceeding for retrial but lost, as the judgment was considered "passively not applying the law that should have been applied", instead of "an apparent error in the application of law." The petitioner then petitioned to the Constitutional Court for Interpretation.

J.Y. Interpretation Nos. 193, 686 and 209 are related to this Interpretation No. 177, the first Interpretation that deals with the remedies available to petitioners. In J.Y. Interpretation No. 193, announced on February 8, 1985, it was held that "the statement in J.Y. Interpretation No. 177 that 'interpretations announced by the Constitutional Court upon individual persons' petitions shall also be applicable to the original case for which the individuals filed the petitions,' is applicable to the other cases that the petitioner has petitioned for an Interpretations for the same claim that a particular statute or regulation is inconsistent with the Constitution."

J.Y. Interpretation No. 686, announced on March 25, 2011, purports to supplement J.Y. Interpretation No. 193. In Interpretation No. 686, it was held that "when, prior to the date on which the Judicial Yuan makes an Interpretation ('the subject Interpretation') in response to a particular petition ('the subject case'), an individual other than the petitioner of the subject case has also filed a petition to challenge the constitutionality of the same statute or regulation, and the Council of Grand Justices has resolved that such petition satisfies the statutory requirements but has not been consolidated with the subject case as a single case, the holding of Judicial Yuan Interpretation No. 177 that 'an interpretation given by this Yuan in response to a petition shall also be applicable with respect to the original case for which the original petitioner seeks Interpretation' also applies to make the subject Interpretation applicable to the aforesaid individual's case."

J.Y. Interpretation No. 209, announced on September 12, 1986, pertains to the statutory period required for initiating a proceeding of retrial or for filing a motion for retrial. It held that when a court's application of a statute or regulation in a final judgment or court order is held by our interpretation to be inconsistent with the correct intent of a statute or regulation, if the aggrieved party initiated a retrial or filed a motion for retrial under Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure, the statutory period for initiating such proceeding of retrial or for filing a motion for retrial shall commence from the date on which the Interpretation was announced, which is similar to the rule set out by the proviso of Article 500, Paragraph 2 of the of Code of Civil Procedure, so that the individuals' rights may be adequately protected. If a civil judgment, however, has become final for more than five years, no action of retrial may be instituted and no motion for retrial may be filed under Article 500, Paragraph 3 of the Code of Civil Procedure on the grounds of an apparent error in the application of a statute or regulation.