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## **J.Y. Interpretation No. 371 (January 20, 1995)\***

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### **Judges' Petition for Constitutional Review of Statutes Case**

#### **Issue**

Do judges of lower courts have the authority to petition the Constitutional Court for constitutional review of statutes?

#### **Holding**

The Constitution is the final authority in this country. Any statute in violation of the Constitution shall be null and void. Whether a given statute contradicts the Constitution and therefore requires constitutional interpretation shall be decided by the Justices of the Judicial Yuan (the Constitutional Court). Articles 171, 173, and 78 and Article 79, Paragraph 2 of the Constitution have clearly manifested the authority of the Justices of the Judicial Yuan (the Constitutional Court). On the other hand, Article 80 of the Constitution provides that judges shall apply statutes to cases independently. Therefore, duly enacted statutes shall be the only basis of the judgments rendered by judges. Judges shall not refuse to apply a statute simply because they consider it unconstitutional. Nonetheless, the Constitution is superior to statutes in terms of validity. Judges are obliged to apply the Constitution in the first place. Therefore, judges of each instance shall be allowed to petition this Court for constitutional interpretation, if they have reasonable grounds to regard an applicable statute as unconstitutional. In this case, the court may issue a preliminary decision to halt the proceedings, since the constitutionality of the statute is at issue. Meanwhile, the court shall submit substantive reasons in an objective manner, elaborating why it holds the

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\* Translation and Note by Cheng-Yi HUANG

view that the statute is unconstitutional. Article 5, Paragraphs 2 and 3 of the Constitutional Court Procedure Act, to the extent that they are inconsistent with this Interpretation, shall no longer be applicable.

## **Reasoning**

[1] Modern constitutional states with a written constitution often adopt the system of judicial review based on the principle of separation of powers. Those that do not establish a special court for constitutional review bestow the power of judicial review to ordinary courts by way of *stare decisis* or explicit provisions in their constitutions. The United States follows the former model, whereas post-war Japan adopts the latter (as provided in Article 81 of its 1946 Constitution). In those countries that have special courts for constitutional review, the constitutionality of statutes is reviewed by the special courts. Examples include the Constitutional Court of Germany (as provided in Articles 93 and 100 of its 1949 Basic Law), Austria (as provided in Articles 140 and 141-1 of its 1929 Constitution), Italy (as provided in Articles 134 and 136 of its 1947 Constitution), and Spain (as provided in Articles 161 and 163 of its 1978 Constitution). Although each country has its own context and therefore the design and function of judicial review varies, the ultimate purposes are to enshrine the constitution as the supreme law in the legal system and to uphold the independence of judges so that judges follow nothing but the rule of law and the constitution without any external interference. The legal system of our country is modelled on the continental system. Hence, our judicial review system, dating back to the birth of the Constitution, has been established as very similar to the European countries mentioned above.

[2] Article 171 of the Constitution provides, “Statutes that are in conflict with the Constitution shall be null and void. When doubt arises as to whether or not a statute is in conflict with the Constitution, it is subject to interpretation by the

Judicial Yuan.” Article 173 of the Constitution provides, “The Constitution shall be interpreted by the Judicial Yuan.” Article 78 of the Constitution provides, “The Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretations of statutes and regulations.” Article 79, Paragraph 2 of the Constitution and Article 4, Paragraph 2 of the 1994 Additional Articles of the Constitution jointly establish the authority of the Justices of the Judicial Yuan (the Constitutional Court) to be in charge of the matters specified in Article 78 of the Constitution. Accordingly, the power to interpret a statute's constitutionality and to invalidate it rests exclusively with the Justices of the Judicial Yuan (the Constitutional Court). Pursuant to Article 80 of the Constitution, judges of each instance shall apply statutes to cases independently. Therefore, statutes enacted through the due process of legislation shall be the only basis of the judgments rendered by judges. Judges shall not refuse to apply a statute simply because they regard it as unconstitutional. Nonetheless, the Constitution is the final authority in this country, so judges are obliged to apply the Constitution in the first place. Regardless of appellate jurisdiction, judges of each instance shall be allowed to petition this Court for constitutional interpretation, if they have reasonable grounds to regard an applicable statute as unconstitutional. Allowing this petition may not only alleviate the dilemma judges face in applying the statute or obeying the constitution but also avoid unnecessary costs of judicial process. Therefore, while judges confront this problem, they may issue preliminary decisions to halt the proceedings, since the constitutionality of the statute is at issue. Meanwhile, the court shall submit substantive reasons in an objective manner, elaborating why it holds the view that the statute is unconstitutional. Article 5, Paragraphs 2 and 3 of the Constitutional Court Procedure Act, to the extent that they are inconsistent with this Interpretation, shall no longer be applicable. Petitions for constitutional review of statutes by judges shall be governed by this Interpretation. The format of petition shall follow the provisions of Article 8, Paragraph 1 of the said Act.

**Background Note** by the Translator

Legislator Tzu WU and ten other Members of the Legislative Yuan questioned the Judicial Yuan's decision approving the legal opinion reached by the Taiwan High Court and the Taiwan Tainan District Court during a recently convened discussion stating, "While trying a case, courts have the authority to review whether statutes pertaining to the case being heard are unconstitutional; courts may then refuse to apply any such statutes to their judgment, if they regard the statutes as unconstitutional." Legislator WU and the ten other Legislators argued that the aforementioned decision had granted judges the power of constitutional review outside the Constitutional Court and risked breaching Articles 80 and 170 of the Constitution. On such grounds, the petitioner, the Legislative Yuan, petitioned the Constitutional Court for constitutional interpretation on the matter in July 1992.