J. Y. Interpretation No.730（June 18, 2015）*

【Calculation of the Number of Years Working for Government for the Pension of Public School Teachers and Employees Who Retired But Were Later Hired by the Government Again】

ISSUE: Is Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees unconstitutional ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條、第二十三條）；J. Y. Interpretations Nos. 443 and 488（司法院釋字第四四三號、第四八八號解釋）；Articles 5, 8, 14, 21-1, Section 1 and 22 of the Act Governing the Retirement of Public School Teachers and Employees（學校教職員退休條例第五條、第八條、第十四條、第二十一條之一第一項、第二十二條）；Article 19, Section 1 and Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees（學校教職員退休條例施行細則第十九條第一項、第二項）

KEYWORDS:

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* Translated by Chi CHUNG

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public school teachers and employees（公立學校教職員）, being hired by the government after retiring from the government（再任或轉任）, retired from the government for the second time（重行退休）, combining the number of years working for government for two jobs as the basis for calculating pension (年資合併計算), limiting pensions due to the retirement of public school teachers and employees（退休金限制）, property rights（財產權）, the principle of statutory reservation（法律保留原則）**

HOLDING: Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees states that, for public school teachers and employees who retired but were later hired by the government again, the number of years working for government at their second retirement should include the number of years for their first government employment, but the total number of years working for government cannot exceed the ceiling set by Article 5 and Article 21-1, Section 1 of the Act Governing the Retirement of Public School Teachers

解釋文：學校教職員退休條例施行細則第十九條第二項有關已領退休（職、伍）給與或資遣給與者再任或轉任公立學校教職員重行退休時，其退休金基數或百分比連同以前退休（職、伍）基數或百分比或資遣給與合併計算，以不超過同條例第五條及第二十一條之一第一項所定最高標準為限之規定，欠缺法律具體明確之授權，對上開人員依同條例請領退休金之權利，增加法律所無之限制，侵害其受憲法第十五條保障之財產權，與憲法第二十三條法律保留原則有違，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

and Employees. Article 19, Section 2 of the Implementing Regulations is hereby declared unconstitutional, as it restricts the rights of teachers and employees but is not concretely and clearly authorized by a statute. The property rights of these teachers and employees, as protected by Article 15 of the Constitution, are infringed, and the principle of statutory reservation, as stipulated by Article 23 of the Constitution, is violated. Therefore, Article 19, Section 2 of the implementing regulations should lose its legal effect no later than one year from the date on which this interpretation is announced.

REASONING: Article 15 of the Constitution states that property rights of the people should be protected. Public school teachers' and employees' right to receive pension funds in accordance with the Act Governing the Retirement of Public School Teachers and Employees (hereinafter Disputed Statute) is a property right protected by the Constitution. Under the principle of statutory reservation stipulated in Article 23 of the Constitution, only statutes or regulations promulgated

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。公立學校教職員依學校教職員退休條例（下稱系爭條例）請領退休金之權利，乃屬憲法保障之財產權。對上開權利加以限制，須以法律定之或經立法機關具體明確授權行政機關以命令訂定，始無違於憲法第二十三條之法律保留原則（本院釋字第四四三號、第四八八號解釋參照）。系爭條例施行細則第十九條第二項規定：「前項人員重行退休時，其退休金基數或百分比連同以前退休

by administrative offices with concrete and clear authorization from the Legislative Yuan may restrict such property rights. (J. Y. Interpretation No. 443 and No. 488.) The legal provision disputed by the petitioners— Article 19, Section 2 of the Implementing Regulations of the Act Governing the Retirement of Public School Teachers and Employees—states that, for public school teachers and employees who had once retired but were later hired by the government again, the number of years working for government should include the number of years of their first government employment, but the total number of years working for government cannot exceed the ceiling set by Article 5 and Article 21-1, Section 1 of the Disputed Statute. (hereinafter Disputed Provision) As Article 19, Section 2 of the Implementing Regulations restricts teachers' and employees' right to apply for pension funds in accordance with the Disputed Statute, it requires concrete and clear authorization by a statute.

（職、伍）基數或百分比或資遣給與合併計算，以不超過本條例第五條及第二十一條之一第一項所定最高標準為限……。」（下稱系爭規定）係限制同條第一項所指已領退休（職、伍）給與或資遣給與者再任或轉任公立學校之教職員，依系爭條例請領退休金之權利，自應經法律具體明確授權始得定之。

The first half of Article 5, Section 2 of the Disputed Statute states that the

系爭條例第五條第二項前段規定：「一次退休金，以退休生效日在職同薪

lump-sum pension payment should be calculated in the following manner: The salary earned by a government employee at the same rank as the retiring government employee on the date of the retirement should be half of the base amount or unit. Each year that the retiring employee spent working for government would entitle him or her to receive one and a half times the base amount or unit. The maximum amount of the lump-sum pension payment is 53 units for 35 years of working for the government. The first half of Article 5, Section 3 states that the monthly pension payment should be calculated in the following manner: The salary earned by a government employee at the same rank as the retiring government employee on the date of the retirement should be half of the base amount or unit. Each year that the retiring employee spent working for government would entitle him or her to receive 2 percent of the base amount or unit every month. The maximum amount for the monthly pension payment is 70 percent of the salary earned by a government employee at the same rank on the retiring government employee's date of re-

級人員之本薪加一倍為基數，每任職一年給與一個半基數，最高三十五年給與五十三個基數。」同條第三項前段規定：「月退休金，以在職同薪級人員之本薪加一倍為基數，每任職一年，照基數百分之二給與，最高三十五年，給與百分之七十為限。」其立法意旨係為規定退休金計算之基數，並受三十五年最高退休金基數之限制，惟未明確規定對於何種任職年資應予採計、退休後再任公立學校教職員之再任年資是否併計等事項。另系爭條例第二十一條之一第一項規定：「教職員在本條例修正施行前後均有任職年資者，應前後合併計算。但本條例修正施行前之任職年資，仍依本條例原規定最高採計三十年。本條例修正施行後之任職年資，可連同累計，最高採計三十五年……有關前後年資之取捨，應採較有利於當事人之方式行之。」其立法意旨係為配合該條例第八條有關公立學校教職員退休金制度之變革，解決公立學校教職員於新制施行前後均有任職年資，其年資如何計算之新舊法適用問題，乃明定其修法前後年資應合併計算，惟亦未明確規定公立學校教職員重行退休年資應與前次退休年資合併計算最高採計三十五年。又系爭條例第十四條規定：「依本條例退休者，

tirement. Such maximum amount for the monthly pension payment is given for 35 years of working for the government. The legislative intent is to provide for the base amount, or the unit, for the calculation of pension funds, and cap such calculation at 35 years of working for the government. Sections 2 and 3 of Article 5, however, do not clearly specify what type of years working for government should be used in the calculation or how to calculate the number of years working for government for public school teachers and employees who retired from the government but were later hired by the government again. Article 21-1, Section 1 of the Disputed Statute states that for public school teachers and employees who had worked for government both before and after the Disputed Statute was amended, the number of years working for government before and after the first retirement should be combined for the purpose of calculating the amount of the pension funds due. Further, the maximum number of years working for government before the Disputed Statute was amended was thirty, and the maximum number of years working for

如再任公教人員時，無庸繳回已領之退休金；其退休前之任職年資，於重行退休時不予計算。」於公立學校教職員依法退休後再任公立學校教職員之情形，係採取分段方式計算任職年資，仍未明確規定公立學校教職員重行退休年資應與前次退休年資合併計算其年資之最高標準。

government after the amended Disputed Statute took effect was thirty-five (inclusive of the years working for government before the Disputed Statute was amended). Therefore, the Disputed Statute stipulates that the calculation should be made in a way that is most favorable for retiring public school teachers and employees. The legislative intent of Article 21-1, Section 1 of the Disputed Statute is to resolve the transition problem that arises from the reform of the pension system of public school teachers and employees stipulated by Article 8 of the Disputed Statute. Some teachers and employees worked for government both before and after Article 8 of the Disputed Statute was amended. Article 21-1, Section 1 states that the number of years working for government before and after the Disputed Statute was amended should be combined for the purpose of calculating the amount of pension funds. However, it does not clearly state that public school teachers and employees who had retired once and later hired by the government again should be subject to the maximum of 35 years working for government when the amount of pension

funds was calculated. Article 14 of the Disputed Statute states that public servants who had retired in accordance with the Disputed Statute may be hired by the government again; that such public servants do not have to pay the pension that they receive back to the government; and that the years at their first government job cannot be counted when calculating their pension funds at their retirement from the second government job. In other words, Article 14 of the Disputed Statute calculates the years working for government separately for each government job; it does not stipulate a ceiling on the number of years working for government when the years working for government for the two government jobs are combined.

Article 14 of the Disputed Statute separates the years working for government before first retirement and the years working for government during the second government job, but does not authorize Article 19, Section 2 of the Implementing Regulations. Neither can the statutory authorization be found in Article 5, Sections 2 and 3 or Article 21-1, Section 1 of the

系爭條例第十四條僅規定退休前之任職年資與再任年資應分別計算，且同條例第五條第二項前段、第三項前段及第二十一條之一第一項均不能作為系爭規定之授權依據，而系爭條例施行細則又僅係依據同條例第二十二條概括授權所訂定，是系爭規定欠缺法律具體明確授權；且無從依系爭條例整體解釋，推知立法者有意授權主管機關就再任或

Disputed Statute. The only statutory authorization for Article 19, Section 2 of the Implementing Regulations is the generic authorization in Article 22 of the Disputed Statute. Therefore, Article 19, Section 2 is not concretely and clearly authorized by a statute. In addition, it is impossible to derive from the statute as a whole the interpretation that the Legislative Yuan intended to stipulate a ceiling for the number of years working for government for retiring teachers and employees who had retired once from the government and were later hired by the government again. Article 19, Section 2 of the Implementing Regulations sets the ceiling for the number of years working for government at thirty-five when the retiring teacher or employee has already retired once from the government. It also adds a restriction on such a retiring teacher's or employee's right to a statutory pension, hurting the property rights protected by Article 15 of the Constitution, and is inconsistent with the principle of statutory reservation as provided by Article 23 of the Constitution.

轉任公立學校教職員重行退休年資是否合併計算其最高退休年資之事項，以命令為補充規定。系爭規定就再任或轉任公立學校教職員重行退休時，其退休金基數或百分比連同以前退休（職、伍）基數或百分比或資遣給與合併計算，以不超過系爭條例第五條及第二十一條之一第一項所定最高標準為限，對其退休金請求權增加法律所無之限制，侵害其受憲法第十五條保障之財產權，自與憲法第二十三條法律保留原則有違。

In order to take care of retired public school teachers and employees and to reasonably balance the treatment of current and retired public school teachers and employees, many factors must be considered in terms of establishing a system for the retirement of the public school teachers and employees who had already retired once from the government. Such factors include the number of years working for government that do or do not count toward the pension, whether the years on the first government job should be treated separately or combined with the years on the second government job, how to avoid imbalance between public school teachers and employees who had already retired once from the government and those who have the same number of years working for government but have not retired, and whether it is necessary to, on the basis of fairness, including all public school teachers' and employees' rights and interests in retirement, and public finance, stipulate a ceiling for the maximum number of years working for government. All of these factors should be adequately considered, and the system should consist of statutes or

為實踐照顧退休公立學校教職員之目的，平衡現職教職員與退休教職員間之合理待遇，有關退休後再任公立學校教職員之重行退休制度，其建構所須考量之因素甚多，諸如任職年資採計項目與範圍、再任公立學校教職員前之任職年資是否合併或分段採計、如何避免造成相同年資等條件之再任公立學校教職員與非再任公立學校教職員之退休給與有失衡之情形、是否基於整體公立學校教職員退休權益之公平與國家財政等因素之考量而有限制最高退休年資之必要等，均應妥為規畫，並以法律或法律具體明確授權之法規命令詳為規定。相關機關至遲應於本解釋公布之日起一年內，依本解釋意旨，檢討修正系爭條例及相關法規，訂定適當之規範。屆期未完成修法者，系爭規定失其效力。

implementing regulations concretely and clearly authorized by statutes. The relevant government offices should review the status quo and establish a new system no later than one year from the date on which this interpretation is announced. If no such a system is established by then, the current system loses its legal effects.

The following claims made by the petitioners are dismissed on procedural grounds. One petitioner claims that Tui San Zi Letter No. 2010757 issued by the Ministry of Civil Service, Examination Yuan on April 10, 2001 (hereinafter Disputed Letter), is inconsistent with Articles 18 and 23 of the Constitution. On the one hand, the petitioner sought redress through administrative litigation and received Su Zi Judgment No. 100, rendered by the Taipei High Administrative Court in 2010. The petitioner appealed, but the appeal was dismissed for failing to state concretely how the appealed judgment was inconsistent with the law. (Supreme Administrative Court Cai Zi Ruling No. 1817) Therefore, the petitioner should have chosen Su Zi Judgment No. 100,

聲請人之一認最高行政法院九十九年度裁字第一八一七號裁定及臺北高等行政法院九十九年度訴字第一００號判決，所適用之銓敘部九十年四月十日九０退三字第二０一０七五七號書函（下稱系爭書函），有牴觸憲法第十八條及第二十三條規定之疑義，聲請解釋。查該聲請人曾就上開臺北高等行政法院判決提起上訴，經上開最高行政法院裁定，以未具體指摘原判決違背法令，上訴不合法駁回確定，是應以上開臺北高等行政法院判決為確定終局判決，合先敘明。次查系爭書函係銓敘部就公務人員退休法所為函釋，確定終局判決則依學校教職員退休條例及其施行細則規定為裁判，並非援用系爭書函作為裁判依據，不得據以聲請解釋。另一聲請人認系爭條例施行細則第十九條第一項規定，有牴觸憲法第十五條、第

rendered by the Taipei High Administrative Court in 2010, as the object for constitutional interpretation by the Judicial Yuan. Whereas the Disputed Letter addressed the Act Government the Retirement of Public Servants, Su Zi Judgment No. 100 dealt with the Act Government the Retirement of Public School Teachers and Employees and the implementing regulations. Therefore, the Disputed Letter cannot be the basis for applying for a constitutional interpretation. The petitioner claimed that Article 19, Section 1 of the Implementing Regulations violates Articles 15, 23, and 172, and therefore sought a constitutional interpretation. This Court does not think the application states clearly why Article 19, Section 1 violates the Constitution. For these reasons, the applications do not meet the requirements set out in Article 5, Section 1, Paragraph 2 of the Constitutional Court Procedure Act and should be dismissed in accordance with Article 5, Section 3 of the same Act.

二十三條及第一百七十二條規定之疑義，聲請解釋部分，核其聲請意旨，尚難謂客觀上已具體敘明該規定究有何違反憲法之處。是聲請人等上開聲請，均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。

Justice Chen-Shan LI filed a concurring opinion.

Justice Mao-Zong HUANG filed a

本號解釋李大法官震山提出之協同意見書；黃大法官茂榮提出之協同意見書；羅大法官昌發提出之協同意見書；

concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Yeong-Chin SU filed an opinion concurring in part and dissenting in part.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

蘇大法官永欽提出之部分協同部分不同意見書；陳大法官新民提出之部分協同部分不同意見。

EDITOR'S NOTE:

Summary of facts: 1. One petitioner Lin Jing-zi was an employee of Tainan Normal Professional School until she retired in March 1985. Later she was hired by the National Tainan University and retired in January 2009. In accordance with Article 19, Paragraph 2 of the Implementing Regulations (hereinafter the Disputed Provision) for the Act Governing the Retirement of Public School Teachers and Employees (hereinafter the Disputed Statute), the calculation of seniority towards her second retirement shall not exceed the maximum allowed under Articles 5 and 21-1, Paragraph 1 of the Disputed Statute. The Petitioner sued and having exhausted judicial remedies, alleged that the Dis-

編者註：

事實摘要：一、聲請人林靜子曾任前臺灣省立臺南師範專科學校工友，其於中華民國（下同）74 年 3 月間辦理退職並領取退職金。嗣後，聲請人再任國立臺南大學組員，並於 98 年 1 月間退休；惟其重行退休之退休金年資採計，依學校教職員退休條例施行細則第 19 條第 2 項規定（下稱系爭規定），不得超過學校教職員退休條例（下稱系爭條例）第 5 條及第 21 條之 1 第 1 項所定之最高標準。對此，聲請人不服，經用盡審級救濟後，認確定終局裁判所適用之系爭規定，及銓敘部 90 年 4 月 10 日 90 退三字第 2010757 號書函，有違憲之虞，故聲請解釋。

puted Provision, as applied by the final judgment, and Memorandum Tui San Zi No. 2010757, issued by the Ministry of Civil Service, Examination Yuan on April 10, 2001, are inconsistent with the Constitution and petitioned for a constitutional interpretation.

2. The other Petitioner, Lu A-fu, was employed by Taiwan Power Company. After his retirement, he was appointed as a professor at the National Hsinchu Education University. The petitioner later retired in 2009 and the calculation of his years working for government for pension was subject to similar limitation by the Disputed Provision. The Petitioner litigated and exhausted judicial remedies. The Petitioner alleged that the Disputed Provision applied by the final judgment and Article 19, Paragraphs 1 and 2 of its Implementing Regulations are inconsistent with the Constitution and filed the petition for interpretation.

二、另一聲請人呂阿福曾先任職於臺電公司，退休後再任國立新竹教育大學教授。而後，聲請人申請於 98 年間退休，惟其重行退休之退休金年資採計，亦同受系爭規定所限制，對此聲請人不服而提起訴訟。經用盡審級救濟後，聲請人認確定終局裁判所適用之系爭規定，及系爭條例施行細則第 19 條第 1 項規定，有違憲之虞，故聲請解釋。