J. Y. Interpretation No.741（November 11, 2016）*

【Scope of original cases eligible for extraordinary remedies under Interpretations declaring laws unconstitutional but valid for a prescribed period of time】

ISSUE: When an individual applies to this Court for an Interpretation of the Constitution and this Court declares a statute or regulation that has been applied by the court of last instance in its final judgment or ruling to be unconstitutional but invalid only after expiry of a prescribed period of time, may the applicant rely on the Interpretation rendered by this Court to seek a retrial of the case or other redress? May the Prosecutor General rely on the Interpretation rendered by this Court to make an extraordinary appeal ?

RELEVANT LAWS:

J.Y. Interpretations Nos. 177, 185, 503, 709, and 725（司法院釋字第一七七號、第一八五號、第五0三號、第七0九號、第七二五號解釋）；Article 5, Paragraph 1, Subparagraph 2, and Article 5, Paragraph 3 of the Constitutional Court 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）

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* Translated by Chi CHUNG

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

KEYWORDS:

court of last instance in its final judgment or ruling（確定終局裁判）, application for retrial（請求再審）, extraordinary appeal（非常上訴）, Judicial Interpretation (Constitutional Interpretation) declaring a statute or regulation unconstitutional but invalid only after expiry of a prescribed period of time（定期失效解釋）, Judicial Interpretations that supplement previous Interpretations（補充解釋）, the case for which the applicant sought a Constitutional Interpretation（Judicial Interpretation）（原因案件）**

HOLDING: When this Court, upon a person's petition for an Interpretation of the Constitution, declares a statute or regulation that has been applied by a court of last instancein its final judgment or ruling unconstitutional but invalid only after expiry of a prescribed period of time, the applicant may rely on the Interpretation rendered by this Court to seek a retrial of the case or other redress. The Prosecutor General may rely on the Interpretation rendered by this Court to make an extraordinary appeal. The purpose is to protect the rights and interests of the applicant for a Constitutional Interpreta-

解釋文：凡本院曾就人民聲請解釋憲法，宣告聲請人據以聲請之確定終局裁判所適用之法令，於一定期限後失效者，各該解釋之聲請人均得就其原因案件據以請求再審或其他救濟，檢察總長亦得據以提起非常上訴，以保障釋憲聲請人之權益。本院釋字第七二五號解釋前所為定期失效解釋之原因案件亦有其適用。本院釋字第七二五號解釋應予補充。

tion.The same also applies to cases that have been the cause of Constitutional Interpretations that were made before Interpretation No. 725. Interpretation No. 725 should, therefore, be supplemented.

REASONING: When the litigating parties are uncertain about a Judicial Interpretation rendered by the Constitutional Court as applied by a court of last instance in its final judgment or ruling and petition for supplementary Interpretation, the Constitutional Court should consider whether there are legitimate grounds, and, if there are legitimate grounds, it should consider the case on its merits rather than dismiss the application as a mater of procedure (*see* Judicial Interpretation No. 503). The applicant in this case concerning urban renewal appealed to the Supreme Administrative Court, which as the court of last instance in its final ruling applied Judicial Interpretation No. 725 (hereinafter referred to as the disputed Interpretation). The disputed Interpretation does not explicitly define the phrase "applicant's case for which he or she requesting an Interpretation of the Constitu-

解釋理由書：按當事人對於確定終局裁判所適用之本院解釋，發生疑義，聲請補充解釋，經核確有正當理由者，應予受理（本院釋字第五〇三號解釋參照）。本件聲請人因都市更新事件，經最高行政法院確定終局裁定引用本院釋字第七二五號解釋（下稱系爭解釋）作為裁定之依據，惟系爭解釋未明定「聲請人就聲請釋憲之原因案件」之適用範圍，其聲請補充解釋，即有正當理由，合先敘明。

tion ". Therefore, this Court granted the applicant's petition for a supplementary Interpretation.

Judicial Interpretations No. 177 and No. 185 allow applicants for Judicial Interpretations to rely on the Judicial Interpretations that rule in their favor to seek retrial or extraordinary appeal. As Judicial Interpretations No. 177 and No. 185 did not clearly set out whether a Constitutional Interpretation declaring that a statute or regulation unconstitutional but invalid only after a prescribed time period affects the disposition of the case for which the applicant sought a Constitutional Interpretation, the disputed Interpretation supplements Judicial Interpretations No. 177 and No. 185 as follows: "When this Court upon a person's petition for a Constitutional Interpretation declares a statute or regulation that has been applied by a court of last instance in its final judgment or ruling unconstitutional but invalid only after expiry of a prescribed period of time, the applicant may rely on the interpretation rendered by this Court to seek a retrial of the case or other re-

本院釋字第一七七號及第一八五號解釋在使有利於聲請人之解釋，得作為據以聲請釋憲之原因案件（下稱原因案件）再審或非常上訴之理由。惟因該等解釋並未明示於本院宣告違憲之法令定期失效者，對聲請人之原因案件是否亦有效力，故系爭解釋補充謂：「本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令於一定期限後失效者，聲請人就聲請釋憲之原因案件即得據以請求再審或其他救濟，檢察總長亦得據以提起非常上訴；法院不得以該法令於該期限內仍屬有效為理由駁回。如本院解釋諭知原因案件具體之救濟方法者，依其諭知；如未諭知，則俟新法令公布、發布生效後依新法令裁判。本院釋字第一七七號及第一八五號解釋應予補充。……」

dresses. The Prosecutor General may rely on the Judicial Interpretation to make an extraordinary appeal. The relevant courts may not dismiss such a retrial or extraordinary appeal for reason that the disputed statute or regulation is still in effect. If a specific remedy is announced in the Judicial Interpretation for the case for which the applicant sought a Constitutional Interpretation, such announcement should be followed. If no such announcement is made, then the relevant courts should wait for the promulgation of a new statute or regulation and make the judgment or ruling in accordance with the new statute or regulation after it takes effect. Judicial Interpretations No. 177 and No. 185 are thereby supplemented."

When this Court declares a statute or regulation unconstitutional, the applicantmay rely on the Constitutional Interpretation rendered by this Court to seek a retrial of the case for which the applicant sought a Constitutional Interpretation or the Prosecutor General may file an extraordinary appeal or take other legal actions. The purpose of granting remedies

本院解釋憲法宣告法令違憲並應失效者，使聲請人得依據該解釋請求再審或由檢察總長提起非常上訴等法定程序，以對其原因案件循求個案救濟，係在保障聲請人之權益，並肯定其對維護憲法之貢獻（系爭解釋理由書參照），原不因本院宣告違憲之法令立即失效或定期失效，而有不同。系爭解釋本於此旨，宣示確定終局裁判所適用之法令定

in the case for which the applicant sought a Constitutional Interpretation is to protect the rights and interests of applicants and to recognize their contributions to upholding the Constitution (*see* the Reasoning part of the disputed Interpretation). This purpose does not differ whether the unconstitutional statute or regulation becomes invalid immediately or after expiry of a prescribed period of time. The disputed Interpretation, therefore, announced that when a statute or regulation applied by a court of last instance in its final judgment or ruling becomes invalid after expiry of the prescribed period of time, the applicant may seek retrial and other redresses for the case for which the applicant sought a Constitutional Interpretation. Although the disputed Interpretation did not explicitly define the phrase " the case for which the applicant sought a Constitutional Interpretation", the Holding part of the disputed Interpretation stated that "this Court, at the request of an individual applying for a Constitutional Interpretation, declares that the statute or regulation applied by a court of last instance in its final judgment

期失效者，聲請人即得據以就聲請釋憲之原因案件請求再審等救濟。該解釋雖未就「聲請人就聲請釋憲之原因案件」等語，明定其適用範圍，然由系爭解釋文所稱「本院就人民聲請解釋憲法，宣告確定終局裁判所適用之法令於一定期限後失效者」等語可知：凡本院曾宣告確定終局裁判所適用之法令於一定期限後失效之解釋原因案件，均應予再審等個案救濟之機會。且系爭解釋係針對本院為法令定期失效宣告之解釋，應係制度性之通案規範，其適用範圍自應包括凡本院曾宣告違憲法令定期失效之解釋（含本院釋字第七二五號前之宣告違憲法令定期失效之解釋），各該解釋之聲請人均得就其原因案件循求個案救濟，以保障釋憲聲請人之權益，而非僅限於系爭解釋之聲請人始得就其據以聲請該號解釋之原因案件請求救濟，俾使系爭解釋以外其他聲請本院解釋之聲請人，於本院宣告確定終局裁判所適用之法令違憲並定期失效後，皆能獲得應有之救濟，以符合憲法保障人民訴訟權之意旨，並肯定其維護憲法之貢獻。本院釋字第七二五號解釋應予補充。至各該原因案件之聲請人就其個案是否符合提起再審等救濟期限與其他程序之規範，及有無理由，法院仍應依相關規定予以審

or ruling becomes invalid after expiry of the prescribed period of time." Therefore, all cases giving rise to Judicial Interpretations that declare a statute or regulation applied by a court of last instance in its final judgment or ruling invalid after expiry of a prescribed period of time should be givena retrial or other remedies. In addition, the disputed Interpretationsets out a systematic rule that applies to all Judicial Interpretations made by this Court that declare a statute or regulation invalid after expiry of a prescribed period of time, including Judicial Interpretations that were made prior to Judicial Interpretation No. 725. All these applicants for these Judicial Interpretations may seek redress in the cases for which the applicant sought a Constitutional Interpretation so that the rights and interests of the applicants for Judicial Interpretations are protected. The disputed Interpretation does not limit itself to the applicant for the disputed Interpretation; rather, it enables all applicants for Judicial Interpretations to obtain the redresses that they deserve after the statute or regulation was declared unconstitutional and invalid following

查，自屬當然。

expiry of the prescribed period of time. The aforementioned understanding is consistent with the right to litigate protected by the Constitution, and it recognizes the applicants' contribution to upholding the Constitution. Judicial Interpretation No. 725 is, hereby, supplemented. Of course, courts still have to review whether the applicants satisfy the filing deadlines and other procedural requirements for retrial and to judge whether the applicants' cases have merit.

The applicant also applies for supplementary interpretation of Judicial Interpretation No. 709, but the applicant fails to point out specifically which part of Interpretation No. 709 is unclear or unsound in reasoning. Therefore, the application for supplementary interpretation of Interpretation No. 709 is inconsistent with Article 5, Section 1, Paragraph 2 of the Constitutional Court Procedure Act and, therefore, it should be dismissed in accordance with Article 5, Section 3 of the same Act.

有關聲請人聲請補充解釋本院釋字第七〇九號解釋部分，聲請人並未具體指明上開解釋有何文字晦澀或論證不周之情形，其聲請補充解釋難謂有正當理由。是其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，應不受理，併此敘明。

Justice Ming-Cheng TSAI, filed a concurring opinion in part, in which Justice Chen-Huan WU, joined.

Justice Chang-Fa LO filed a concurring opinion.

Justice Dennis Te-Chung TANG, filed a concurring opinion, in which Justice Beyue SU CHEN and Justice Jiun-Yi LIN, joined.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Hsi-Chun HUANG filed a dissenting opinion.

本號解釋蔡大法官明誠提出，吳大法官陳鐶加入之部分協同意見書；羅大法官昌發提出之協同意見書；湯大法官德宗提出，陳大法官碧玉、林大法官俊益加入之協同意見書；黃大法官虹霞提出之協同意見書；林大法官俊益提出之協同意見書；黃大法官璽君提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1. Mr. Peng and three other applicants appealed their case to the Supreme Administrative Court, but it was dismissed by Pan Zi Judgment No. 2092 (2011). One of the four applicants applied to this Court for Judicial Interpretation. This Court, on April 26, 2013, rendered Judicial Interpretation No. 709, declaring Article 10, Section 1, Article 10, Section 2 and the first half of Article 19, Section 3 of the Law on Urban Renewal

編者註：

事實摘要：一、聲請人彭氏等四人以最高行政法院 100 年度判字第 2092 號判決駁回其上訴而敗訴確定。嗣其中一人向本院聲請解釋，經本院於 102 年 4 月 26 日作成釋字第 709 號解釋行為時都市更新條例第 10 條第 1 項、第 2 項及第 19 條第 3 項前段為違憲，相關機關應自該解釋公布之日起 1 年內檢討修正。聲請人遂提起再審之訴，經最高行政法院於 102 年 9 月 12 日 102 年度判字第 580 號判決以上開被宣告違

unconstitutional. Interpretation No. 709 required the relevant government agencies to review and revise such provisions within one year of the announcement of Interpretation No. 709. The applicants instituted an action for retrial. The Supreme Administrative Court dismissed the action for retrial by Pan Zi Judgment No. 580 (2013) on September 12, 2013 on the grounds that the unconstitutional provisions remained valid within the one-year period prescribed by Interpretation No. 709. This Court announced Judicial Interpretation No. 725 on October 24, 2014, and the applicants relied on Interpretation No. 725 to institute an action for retrial. The action for retrial was dismissed by the Supreme Administrative Court by Cai Zi, Ruling No. 470 (2015).

憲之規定於該解釋所定期限（1 年內）屆滿前仍屬有效，予以駁回確定。嗣本院又於 103 年 10 月 24 日公布釋字第 725 號解釋，聲請人乃再基於該號解釋，對原確定判決提起再審之訴，仍遭最高行政法院以 104 年裁字第 470 號駁回確定。

2. Mr. Chen and two other applicants appealed to the Supreme Administrative Court, but the case was dismissed by Pan Zi Judgment No. 2004 (2011). One of the three applicants applied to this Court for Judicial Interpretation. This Court, on April 26, 2013, made Judicial Interpretation No. 709, declaring unconstitutional

二、聲請人陳氏等三人因都市更新案件，經最高行政法院 100 年度判字第 2004 號判決駁回其上訴而敗訴確定。嗣其中一人向本院聲請解釋，經本院於 102 年 4 月 26 日作成釋字第 709 號解釋，宣告行為時都市更新條例第 10 條第 1 項、第 2 項及第 19 條第 3 項前段規定違憲，相關機關應自該解釋

Article 10, Section 1, Article 10, Section 2, and the first half of Article 19, Section 3 of the Law on Urban Renewal. Interpretation No. 709 required the relevant government agencies to review and revise such provisions within one year of the announcement of Interpretation No. 709. The applicants instituted an action for retrial. The Supreme Administrative Court dismissed the action for retrial by Pan Zi Judgment No. 538 (2013) on August 23, 2013 on the grounds that the unconstitutional provisions remain valid within the one-year period prescribed by Interpretation No. 709. This Court announced Judicial Interpretation No. 725 on October 24, 2014, and the applicants relied on Interpretation No. 725 to institute an action for retrial. The action for retrial was dismissed by the Supreme Administrative Court by Cai Zi Ruling No. 546 (2015).

公布之日起 1 年內檢討修正。聲請人遂提起再審之訴，經最高行政法院 102 年 8 月 23 日 102 年度判字第 538 號判決以上開被宣告違憲之規定於該解釋所定期限（1 年內）屆滿前仍屬有效，無從對於聲請人據以聲請之案件發生溯及失其效力為由，駁回其再審之訴確定。嗣本院又於 103 年 10 月 24 日公布釋字第 725 號解釋，聲請人乃再基於該號解釋，對原確定判決提起再審之訴，仍遭同一法院以 104 年裁字第 546 號駁回確定。