J. Y. Interpretation No.681（September 10, 2010）*

ISSUE: A person cannot bring an administrative action to challenge the revocation of his or her parole. Objections, if any, shall be filed in the original court, which rendered the sentence whilst awaiting the execution of the remaining sentence. Is the foregoing unconstitutional ?

RELEVANT LAWS:

Articles 7, 8, and 16 of the Constitution（憲法第七條、第八條、第十六條）; J. Y. Interpretation Nos. 243, 382, 392, 418, 430, 462, 639, 653, 663, and 667（司法院釋字第二四三號、第三八二號、第三九二號、第四一八號、第四三０號、第四六二號、第六三九號、第六五三號、第六六三號、第六六七號解釋）; Article 405, Article 415, Paragraph 2, and Article 484 of the Code of Criminal Procedure（刑事訴訟法第四百零五條、第四百十五條第二項、第四百八十四條）; The Resolution of the Joint Conference of the Presiding Judges of the Supreme Administrative Court in February 2004（最高行政法院九十三年二月份庭長法官聯席會議決議）; Articles 77 and 78 of the Criminal Code（刑法第七十七條、第七十八條）; Article 81 of the Prison Act（監獄行刑法第八十一條）; Article 74–2, Subparagraphs 1 and 2, and Article 74-3, Paragraph 2, of the Rehabilitative Disposition Execution Act（保安

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* Translated by Alex C.Y. Tsai, Esq. and Chien Yeh Law Offices.

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

處分執行法第七十四條之二第一款、第二款、第七十四條之三第二項）; Article 16 of the Statute for Narcotics Elimination as amended on July 27, 1992（八十一年七月二十七日修正公布之肅清煙毒條例第十六條）; Article 5, Paragraph 1, Subparagraphs 2 and 3 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及第三項）.

KEYWORDS:

right to litigation（訴訟權）, physical freedom（人身自由）, due process（正當法律程序）, parole（假釋）, imprisonment（徒刑）, enforcement（執行）, objection（異議）, judicial administrative disposition（司法行政處分）, administrative litigation（行政爭訟）, criminal litigation（刑事訴訟）, timely remedy（適時救濟）, prisoner（受刑人）, privileged relationship（特別權力關係）.**

HOLDING: The Joint Conference of the Presiding Judges of the Supreme Administrative Court in February 2004 resolved that, "[T]he revocation of parole is a link in the enforcement of criminal judgments a judicial administrative disposition in the broad sense. The remedial procedures for any disagreement shall be in accordance with Article 484 of the Code of Criminal Procedure, that is,

解釋文：最高行政法院中華民國九十三年二月份庭長法官聯席會議決議：「假釋之撤銷屬刑事裁判執行之一環，為廣義之司法行政處分，如有不服，其救濟程序，應依刑事訴訟法第四百八十四條之規定，即俟檢察官指揮執行該假釋撤銷後之殘餘徒刑時，再由受刑人或其法定代理人或配偶向當初諭知該刑事裁判之法院聲明異議，不得提起行政爭訟。」及刑事訴訟法第

if and when the prosecutor have enforced the remaining sentence(s) following the revocation of parole, the prisoner, his/her legal representative or spouse who files a motion to object such revocation in the original court that rendered the criminal judgment may not bring forth an administrative litigation." Article 484 of the Code of Criminal Procedure stipulates that, "[A] prisoner, his/her legal representative or spouse who deems the prosecutor's enforcement inappropriate may file a motion to object in the court that rendered the criminal judgment." [These rules] do not deprive the people of the opportunity to seek remedies in court for the revocation of parole in accordance with the law and thus does not contravene the right to litigation as protected under the Constitution. However, once the parole is revoked, the parolee, under the above-indicated rules may only seek remedies in court after the prosecutor has enforced the remaining sentence(s). This is not a complete protection of the parolee's right to litigation. The relevant authorities shall promptly review and reform the regulations such that parolees who disagree with

四百八十四條規定：「受刑人或其法定代理人或配偶以檢察官執行之指揮為不當者，得向諭知該裁判之法院聲明異議。」並未剝奪人民就撤銷假釋處分依法向法院提起訴訟尋求救濟之機會，與憲法保障訴訟權之意旨尚無牴觸。惟受假釋人之假釋處分經撤銷者，依上開規定向法院聲明異議，須俟檢察官指揮執行殘餘刑期後，始得向法院提起救濟，對受假釋人訴訟權之保障尚非周全，相關機關應儘速予以檢討改進，俾使不服主管機關撤銷假釋之受假釋人，於入監執行殘餘刑期前，得適時向法院請求救濟。

the revocation of their parole may timely seek remedies in court prior to serving the remaining sentence(s).

REASONING: The protection of the people's right to litigation under Article 16 of the Constitution means the people have the right to seek remedy in courts when their rights have been infringed (*see* J.Y. Interpretation No. 418), and such right to litigation cannot be deprived due to one's social status (*see* J.Y. Interpretation Nos. 243, 382, 430, 462 and 653). As to the substantive contents of the right to litigation, it shall be realized through the enactment of relevant statutes consistent with due process by the legislature. As to whether the relevant procedural rules are appropriate, apart from considering whether the Constitution has any specific provisions and the various categories of fundamental rights involved, determination must be made based on a comprehensive consideration of the field the case is involved in, the severity and scope of the infringement on the fundamental rights, the public interests desired to pursue, the availability

解釋理由書：憲法第十六條保障人民訴訟權，係指人民於其權利遭受侵害時，有請求法院救濟之權利（本院釋字第四一八號解釋參照），不得因身分之不同而予以剝奪（本院釋字第二四三號、第三八二號、第四三０號、第四六二號、第六五三號解釋參照）。至訴訟權之具體內容，應由立法機關制定合乎正當法律程序之相關法律，始得實現。而相關程序規範是否正當，除考量憲法有無特別規定及所涉基本權之種類外，尚須視案件涉及之事物領域、侵害基本權之強度與範圍、所欲追求之公共利益、有無替代程序及各項可能程序之成本等因素，綜合判斷而為認定（本院釋字第六三九號、第六六三號、第六六七號解釋參照）。

of alternative procedures and the costs of various possible procedures, among other factors (*see* J.Y. Interpretation Nos. 639, 663 and 667).

The purpose of the parole system is to allow the halt of sentence enforcement for those imprisoned who has demonstrated repentance with concrete evidence and fulfilled the legal requirements and for the convicted to be actively reintegrated into the society (*see* Article 77 of the Criminal Code and Article 81 of the Prison Act). Once the governing authority decides to grant parole, the parolee will then be discharged from prison as the enforcement of sentence is on halt. Should the governing authority revoke its decision and reinforce the remaining sentence(s), it not only directly restricts the parolee's physical freedom but also severely impacts the various rights and interests enjoyed by the parolee since his/her reintegration into the society. Thus, any governing authority's decision concerning the revocation of a parole must follow certain due process and determined with due care. Thus, in a parole revocation decision, the parolee must be

假釋制度之目的在使受徒刑執行而有悛悔實據並符合法定要件者，得停止徒刑之執行，以促使受刑人積極復歸社會（刑法第七十七條、監獄行刑法第八十一條參照）。假釋處分經主管機關作成後，受假釋人因此停止徒刑之執行而出獄，如復予以撤銷，再執行殘刑，非特直接涉及受假釋人之人身自由限制，對其因復歸社會而業已享有之各種權益，亦生重大影響。是主管機關所為之撤銷假釋決定，允宜遵循一定之正當程序，慎重從事。是對於撤銷假釋之決定，應賦予受假釋人得循一定之救濟程序，請求法院依正當法律程序公平審判，以獲適時有效救濟之機會，始與憲法保障人民訴訟權之意旨無違。

afforded remedial procedures to seek a fair trial in accordance with due process of law in court such that opportunity for redress may be timely and effectively obtained and the intention to protect the people's right to litigation under the Constitution is not contravened.

The Joint Conference of the Presiding Judges of the Supreme Administrative Court in February 2004 resolved that, "[T]he revocation of parole is a link in the enforcement of criminal judgments a judicial administrative disposition in the broad sense. The remedial proce-dures for any disagreement shall be in accordance with Article 484 of the Code of Criminal Procedure, that is, if and when the prosecutor have enforced the remaining sentence(s) following the revocation of parole, the prisoner, his/her legal representative or spouse who files a motion to object such revocation in the original court that rendered the criminal judgment may not bring forth an administrative litigation." Article 484 of the Code of Criminal Procedure stipulates that, "[A] prisoner, his/her legal representative or

最高行政法院九十三年二月份庭長法官聯席會議決議：「假釋之撤銷屬刑事裁判執行之一環，為廣義之司法行政處分，如有不服，其救濟程序，應依刑事訴訟法第四百八十四條之規定，即俟檢察官指揮執行該假釋撤銷後之殘餘徒刑時，再由受刑人或其法定代理人或配偶向當初諭知該刑事裁判之法院聲明異議，不得提起行政爭訟。」刑事訴訟法第四百八十四條規定：「受刑人或其法定代理人或配偶以檢察官執行之指揮為不當者，得向諭知該裁判之法院聲明異議。」故受假釋人對於撤銷假釋執行殘刑如有不服，仍得依刑事訴訟法第四百八十四條規定，向當初諭知該刑事裁判之法院聲明異議，以求救濟。是上開最高行政法院決議及刑事訴訟法第四百八十四條規定並未剝奪人民依法向法院提起訴訟尋求救濟之機會，與憲法保障訴訟權之意旨尚無牴觸。惟受假釋

spouse who deems the prosecutor's enforcement inappropriate may file a motion to object in the court that rendered the criminal judgment." [These rules] do not deprive the people of the opportunity to seek remedies in court for the revocation of parole in accordance with the law and thus does not contravene the right to litigation as protected under the Constitution. However, once the parole is revoked, the parolee, under the above-indicated rules may only seek remedies in court after the prosecutor has enforced the remaining sentence(s). This is not a complete protection of the parolee's right to litigation. The relevant authorities shall promptly review and reform the regulations such that parolees who disagree with the revocation of their parole may timely seek remedies in court prior to serving the remaining sentence(s).

人之假釋處分經撤銷者，依刑事訴訟法第四百八十四條規定向法院聲明異議，須俟檢察官指揮執行殘餘刑期後，始得向法院提起救濟，對受假釋人訴訟權之保障尚非周全。相關機關應綜合考量相關因素，就該部分儘速予以檢討改進，俾使不服主管機關撤銷假釋之受假釋人，於入監執行殘餘刑期前，得適時向法院請求救濟。

Finally, one of the petitioners was of the view that Article 74-2, Paragraphs 1 and 2, and Article 74-3, Paragraph 2 of the Rehabilitation Penalty Enforcement Act violate Article 78 of the Criminal Code and the doctrine of presumption of

末查聲請人之一認保安處分執行法第七十四條之二第一款、第二款及第七十四條之三第二項等規定違反刑法第七十八條及無罪推定原則，與憲法第八條保障人身自由及司法院釋字第三九二號解釋意旨不符；另一聲請人認刑事訴

innocence and are inconsistent with the protection of physical freedom under Article 8 of the Constitution and J.Y. Interpretation No. 392. Another petitioner was of the view that Article 405 and Article 415, Paragraph 2 of the Code of Criminal Procedure, and Article 16 of the Statute for Narcotics Elimination, as amended on July 27, 1992, violate the principle of new rules take precedent in the litigation procedures and are inconsistent with Articles 7 and 16 of the Constitution. These are all contentions over the adequacy of a court's finding of facts and the application of law based on subjective personal views, and they have failed to specify exactly the rules that objectively contravene the Constitution, thus, is inconsistent with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act and [this part of the petition] shall be dismissed pursuant to Article 5, Paragraph 3 of the same Act.

訟法第四百零五條、第四百十五條第二項及八十一年七月二十七日修正公布之肅清煙毒條例第十六條等規定違反訴訟程序從新原則，牴觸憲法第七條及第十六條規定，聲請解釋憲法部分，均係以個人主觀見解爭執法院認事用法之當否，並未具體指摘該等規定於客觀上究有何牴觸憲法之處，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，併此指明。

Justice Tzu-Yi Lin filed concurring opinion, in which Justice Yu-hsiu Hsu joined.

本號解釋林大法官子儀、許大法官玉秀共同提出協同意見書；葉大法官百修提出協同意見書；黃大法官茂榮提

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed dissenting opinion.

大法官葉百修提出協同意見書；大法官黃茂榮提出協同意見書；陳大法官新民提出不同意見書。

EDITOR'S NOTE:

Summary of facts:(1) Petitioner X was convicted the offences of robbery, endangering public safety, and violations of the Anti-Corruption Act, and received respective imprisonment sentences that are to be enforced jointly. The Ministry of Justice later approved the Petitioner's parole. During the parole, the Petitioner again committed offences for the violation of the Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife, among other offences.

編者註：

事實摘要：（一）聲請人X因強盜、公共危險及違反貪污治罪條例等罪，經分別判處有期徒刑確定合併執行；嗣經法務部核准假釋出監，於假釋期間再犯違反槍砲彈藥刀械管制條例等罪。

The Ministry of Justice was of the view that the Petitioner severely breached the Rehabilitation Penalty Enforcement Act during parole, and revoked the parole. The Petitioner disagreed and petitioned to the Executive Yuan, but the case was dismissed. His appeal to the Taipei High

法務部認聲請人於假釋中違反保安處分執行法規定，情節重大，撤銷假釋。聲請人不服，向行政院提起訴願遭到駁回，遂向臺北高等行政法院起訴，均遭以不得提起行政訴訟為由，裁定駁回。

Administrative Court was denied on the ground that the no administrative litigation may be brought [under the circumstances].

The Petitioner continued to appeal the ruling. Yet, the Supreme Administrative Court, in the rulings of. (93) *Kan zi* No. 230 (2004) and (94) *Cai Zi* No. 1680 (2005), respectively, affirmed the dismissal and the rulings were final. The Petitioner argues that the resolution, as was applied in the aforementioned final rulings, is susceptible to being inconsistent with the protection of physical freedom under Article 8 of the Constitution and the right to litigation under Article 16 of the Constitution.

聲請人續行抗告，分別經最高行政法院 93 年度裁字第 230 號及 94 年度裁字第 1680 號裁定，駁回確定，爰認上開確定終局裁定所適用之系爭決議有牴觸憲法第 8 條及第 16 條之疑義，聲請解釋。

(2) Petitioner Y was a parolee released from the Yun Lin Prison and was subjected to a protective restriction order. The Ministry of Justice subsequently deemed the Petitioner to have committed serious violation of the Rehabilitation Penalty Enforcement Act during parole, and revoked the parole.

（二）聲請人 Y 係臺灣雲林監獄假釋出獄人，並接受保護管束。嗣法務部認聲請人於假釋中違反保安處分執行法規定，情節重大，撤銷假釋。

The Petitioner disagreed and filed an objection to the Taiwan Yun Lin District Court. After the court dismissed the case, the Petitioner appealed to the Taiwan High Court Tainan Branch, which confirmed the dismissal in criminal judgment (98) *Kan Zi* No. 24 (2009) on the ground that the Petitioner has not served the remaining of the sentence(s). The dismissal ruling was final. The Petitioner argued that the disputed resolution and provision, as applied in the aforementioned rulings, were susceptible to being contradictory to the protection of physical freedom under Article 8 of the Constitution and the right to litigation under Article 16 of the Constitution.

聲請人不服，向臺灣雲林地方法院聲明異議，案經該院裁定駁回後，向臺灣高等法院臺南分院提起抗告，亦遭該院 98 年度抗字第 24 號刑事裁定以尚未入監服刑為由，駁回確定，爰認上開確定終局裁定所適用之系爭決議及系爭規定，有牴觸憲法第 8 條及第 16 條規定之疑義，聲請解釋。