

J. Y. Interpretation No.686 (March 25, 2011) *

ISSUE: Shall an interpretation delivered by the Judicial Yuan following a certain petition be equally applied to other legally filed petition case(s) concerning the same law or regulation if such cases were filed prior to the delivery of the subject interpretation, yet not consolidated with the subject case for review ?

RELEVANT LAWS:

Articles 7 and 16 of the Constitution (憲法第七條、第十六條) ; J. Y. Interpretation Nos. 177, 185, 193 and 586 (司法院釋字第一七七號、第一八五號、第一九三號、第五八六號解釋) ; Article 273-II of the Administrative Litigation Act (行政訴訟法第二百七十三條第二項).

KEYWORDS:

effect of an interpretation (解釋效力) , supplemental interpretation (補充解釋) , the same law or regulation (同一法令) , prior to the delivery of an interpretation (解釋公布日前) , the subject case for the petition (據以聲請 (案件)) , satisfying the statutory requirements (符合法定要件) , consolidation (合併辦理) , resolution (決議) , principle of equality (平等原則) .**

* Translated by Ed Ming-Hui Huang.

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

HOLDING: In cases where, prior to the date that the Judicial Yuan delivers 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 law or regulation while such petition having satisfied the statutory requirements by the resolution of the Council of Grand Justices but not consolidated in a joinder, the holding of J. Y. Interpretation No. 177 that “an interpretation given by this Yuan in response to a petition shall also be applicable with respect to the legal action of the petitioner, for which the original petition was made” shall be applied equally to make the subject interpretation applicable in the aforesaid individual’s case. J. Y. Interpretation No. 193 is hereby supplemented.

REASONING: With regard to the effect on individual cases by the Grand Justices’ interpretations of the Constitution, J. Y. Interpretation No. 177 states: “An interpretation given by this

解釋文：本院就人民聲請解釋之案件作成解釋公布前，原聲請人以外之人以同一法令牴觸憲法疑義聲請解釋，雖未合併辦理，但其聲請經本院大法官決議認定符合法定要件者，其據以聲請之案件，亦可適用本院釋字第一七七號解釋所稱「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」。本院釋字第一九三號解釋應予補充。

解釋理由書：關於本院大法官解釋憲法對於個案之效力，本院釋字第一七七號解釋：「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」，旨在使聲請人聲請解釋憲法

Yuan in response to a petition shall also be applicable with respect to the legal action of the petitioner, for which the original petition was made.” Its purpose is to allow the petitioner to seek relief through statutory procedure based on the favorable outcome of the interpretation of Constitution. To elaborate further on this point, J. Y. Interpretation No. 193 adds that, if the constitutionality of the same law or regulation should be called into question with several cases by the same petitioner, provided that these petitions are filed respectively and sequentially prior to the delivery of the interpretation, for the one not consolidated in a joinder by this Yuan but is conformed with the statutory requirements, it can also apply J. Y. Interpretation No. 177 so as to be covered by the effect of the subject interpretation. However, J. Y. Interpretation No. 193 does not provide a clear guidance on whether J.Y. Interpretation No. 177 will be similarly applicable to those cases in the situation where petitions are legally filed by different petitioners on the same ground that the same law or regulation contradicts the Constitution but are

之結果，於聲請人有利者，得依法定程序請求救濟。又依本院釋字第一九三號解釋意旨，如同一聲請人有數案發生同一法令抵觸憲法疑義，於解釋公布前已先後提出聲請解釋，雖未經本院合併辦理，但其聲請符合法定要件者，其據以聲請之案件，亦可適用上開釋字第一七七號解釋，而為解釋效力所及。惟於本院就人民聲請解釋之案件作成解釋公布前，不同聲請人以同一法令抵觸憲法疑義聲請解釋，而未經合併辦理者，如其聲請符合法定要件者，其據以聲請之案件，是否亦可適用上開釋字第一七七號解釋，本院釋字第一九三號解釋尚未明確闡示，自有補充解釋之必要。

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not consolidated. Therefore, it is necessary that J. Y. Interpretation No. 193 be supplemented.

Pursuant to the Principle of Equality, there should not be discriminatory treatment toward all petitioners whose petitions were filed before the delivery of the interpretation and have satisfied the statutory requirements. Besides, in order to carry through the objective of the J. Y. Interpretations No. 177 and No. 193 so that petitioner(s) may seek relief in accordance with the statutory procedure, it is held that in cases where, prior to the date that the Judicial Yuan delivers a particular interpretation, an individual other than the petitioner of the subject case has also filed a petition to challenge the constitutionality of the same law or regulation while such petition having satisfied the statutory requirements by the resolution of the Council of Grand Justices but not consolidated in a joinder, the holding of J. Y. Interpretation No. 177 that “an interpretation given by this Yuan in response to a petition shall also be applicable with respect to the legal action of the peti-

為貫徹上述釋字第一七七號及第一九三號解釋使聲請人得依法定程序請求救濟之意旨，且基於平等原則，對均於解釋公布前提出聲請且符合法定要件之各聲請人，不應予以差別待遇，故本院就人民聲請解釋之案件作成解釋公布前，原聲請人以外之人以同一法令牴觸憲法疑義聲請解釋，雖未合併辦理，但其聲請經本院大法官決議認定符合法定要件者，其據以聲請之案件，亦可適用本院釋字第一七七號解釋所稱「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」。本院釋字第一九三號解釋應予補充。

tioner, for which the original petition was made” shall be applied equally to make the subject interpretation applicable in such cases. J. Y. Interpretation No. 193 is hereby supplemented.

Furthermore, as Article 273-II of the Administrative Litigation Act materializes the essence of J. Y. Interpretations No. 177 and No. 185, it is therefore followed that J. Y. Interpretation No. 193 would also apply to cover the cases of a single petitioner filing a number of separate petitions to challenge the constitutionality of the same law or regulation. That being the case, this Interpretation (No. 193) shall equally extend to allow for the action of retrial for those other individuals who have petitioned upon the same law or regulation interpreted in the subject case prior to the delivery of the subject interpretation, provided that each case has satisfied all statutory requirements.

Justice Shin-Min Chen filed dissenting opinion.

Justice Pi-Hu Hsu filed dissenting opinion.

另行政訴訟法第二百七十三條第二項之規定，係依本院釋字第一七七號、第一八五號解釋意旨所為之具體規定，同一聲請人以同一法令抵觸憲法疑義而聲請解釋之各案件，固得依本院釋字第一九三號解釋意旨加以適用。即不同聲請人以同一法令抵觸憲法疑義而於解釋公布前聲請解釋，且符合聲請法定要件之各案件，自亦有本號解釋之適用而得提起再審之訴請求救濟。

本號解釋陳大法官新民提出不同意見書；徐大法官璧湖提出不同意見書；黃大法官茂榮提出部分協同、部分不同意見書。

Justice Mao-Zong Huang filed concurring opinion in part and dissenting opinion in part.

EDITOR'S NOTE:

Summary of facts: Petitioners X and Y filed an administrative litigation for [the alleged] violation of the Security Transactions Act. The Supreme Administrative Court dismissed the action on appeal. X and Y claimed that Article 43-I of the Guidelines for Filing Reports on the Acquisition of Shares being applied in the judgment presents questions of constitutionality and thus filed this petition for interpretation on December 8, 2004.

However, before X and Y filed their petition, there had been other individuals petitioning against the same Guideline and J. Y. Interpretation No. 586 was thus delivered on December 17, 2004, declaring [the provision in question] unconstitutional and setting the date of its nullification. Because the present petition was not consolidated with the subject cases in No. 586 for review, it was dismissed at the 1260th Meeting of the Grand Justices

編者註：

事實摘要：聲請人 X 及 Y 因違反證券交易法案件提行政爭訟，嗣經最高行政法院判決駁回其上訴確定，而認判決所適用之「證券交易法第 43 條之 1 第 1 項取得股份申報事項要點」有違憲疑義，於 93 年 12 月 8 日聲請解釋。

然於聲請人聲請前，已另有他案聲請人就同要點聲請解釋，並經本院於 93 年 12 月 17 日公布釋字第 586 號解釋宣告違憲定期失效，惟聲請人之聲請案未併案處理，而於 94 年 4 月 8 日為大法官第 1260 次會議以無再解釋必要等理由，議決不受理。

on April 8, 2005 on the ground that it was not necessary to render another interpretation, among other things.

Claiming that their petition was filed prior to the delivery of J. Y. Interpretation No. 586 and thus should be entitled to the remedies rendered by the Interpretation, X and Y filed a motion for a retrial pursuant to Article 273-II of the Administrative Litigation Act. Nevertheless, in (96) *Pan-Tze* No. 2019 Judgment, this motion was dismissed by the Supreme Administrative Court for the reason that Article 273-II and J. Y. Interpretation No. 193 would not apply because X and Y were not the original parties to J.Y. Interpretation No. 586 . X and Y then filed the present petition for constitutional interpretation.

聲請人認其聲請在釋字第 586 號解釋公布之前，應為該解釋效力所及，乃依行政訴訟法第 273 條第 2 項規定聲請再審，惟最高行政法院 96 年度判字第 2019 號判決認，聲請人並非釋字第 586 號解釋之聲請人，不符該條規定及釋字第 193 號解釋意旨而駁回其再審，聲請人爰提本件釋憲聲請。