J. Y. Interpretation No.691（October 21, 2011）*

ISSUE: Which court shall have the jurisdiction to adjudicate the inmate's petition against the denial of parole rendered by the administrative authority ?

RELEVANT LAWS:

Articles 16 of the Constitution（憲法第十六條）；Article 77, Paragraph 1 of the Criminal Code（刑法第七十七條第一項）Article 6, Paragraphs 1 and 3, and Article 81, Paragraph 1 of the Prison Act（監獄行刑法第六條第一項及第三項、第八十一條第一項）；Articles 75 and 76 of the Statute of Progressive Execution of Penalty（行刑累進處遇條例第七十五條、第七十六條）；Article 484 of the Criminal Procedure Law（刑事訴訟法第四百八十四條）；Article 2 of the Administrative Procedure Law（行政訴訟法第二條）.

KEYWORDS:

parole （假釋）, denial of parole（撤銷假釋）, the Administrative Court（行政法院）.**

HOLDING: The judicial relief for an inmate who files[d] a petition against the denial of parole rendered by the administrative authority, shall

解釋文：受刑人不服行政機關不予假釋之決定者，其救濟有待立法為通盤考量決定之。在相關法律修正前，由行政法院審理。

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* Translated by Li-Chih Lin, Esq., J.D.

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be provided by the legislation after full consideration of all circumstances by the legislature. Thus, before the legislation is amended to provide judicial relief, the Administrative Court shall have the jurisdiction to adjudicate an inmate's petition against the denial of parole rendered by the administrative authority.

REASONING: Article 77, Paragraph 1 of the Criminal Code provides: If there is evidence of repentance during the execution of imprisonment, a parole may be granted upon application by the prison authority to the Ministry of Justice after twenty-five years of a sentence to life imprisonment or after one half of a sentence to imprisonment or after twothirds of the imprisonment of a recidivist has been served. Article 81, Paragraph 1 of the Prison Act provides: The cond-itional release of an inmate is to be dete-rmined in terms of his/her repentance, grade two or above in conformity with the conditions of parole, by a resolution of the parole board and after approval from the Ministry of Justice. Article 75 of the Statute of Progressive Execution

解釋理由書：刑法第七十七條第一項規定：「受徒刑之執行而有悛悔實據者，無期徒刑逾二十五年，有期徒刑逾二分之一、累犯逾三分之二，由監獄報請法務部，得許假釋出獄。」監獄行刑法第八十一條第一項規定：「對於受刑人累進處遇進至二級以上，悛悔向上，而與應許假釋情形相符合者，經假釋審查委員會決議，報請法務部核准後，假釋出獄。」行刑累進處遇條例第七十五條規定：「第一級受刑人合於法定假釋之規定者，應速報請假釋。」同條例第七十六條規定：「第二級受刑人已適於社會生活，而合於法定假釋之規定者，得報請假釋。」上開規定，乃係規範假釋之要件及核准程序，惟受刑人不服不予假釋之決定者，除得依監獄行刑法第六條第一項及第三項規定，經由典獄長申訴於監督機關、視察人員，或

of Penalty provides: The first class of inmates who are eligible for statutory parole shall promptly apply for parole. Article 76 of the Statute of Progressive Execution of Penalty provides: The second class of inmates who are fit for social life and are eligible for statutory parole, may apply for parole. The preceding regulations provide the parole eligibility requirements and procedures of approval. An inmate who objects to the denial of parole rendered by the administrative authority may file a petition against the decision to the prison supervisory authority or prison inspectors through the prison warden, or directly to the prison inspectors when they are inspecting the prison in accordance with provisions set forth in Article 6, Paragraphs 1 and 3 of the Prison Act. The Prison Act does not expressly provide other legal remedies for an inmate who wants to petition against the denial of parole rendered by the administrative authority.

於視察人員蒞監獄時逕向其提出外，監獄行刑法並無明文規定其他救濟途徑。

The Supreme Administrative Court T.T. No. 2391 held that the regular court shall have the jurisdiction to decide a peti-

最高行政法院九十九年度裁字第二三九一號裁定認為，聲請人不服行政機關不予假釋之決定，依據刑事訴訟法

tion filed by a petitioner against the denial of parole. This holding was based on the ground that the petitioner filed the petition to the Taiwan High Court (Kaohsiung Branch) in accordance with Article 484 of the Criminal Procedure Law and both the Supreme Court T.S.T. No. 605 and the Taiwan High Court (Kaohsiung Branch) have heard the petition and dismissed it for want of legal grounds. With reference to the petition against the revocation of parole also handled by the regular court, the Supreme Administrative Court thus determined that, before the legislation is amended to provide judicial relief, the proper court to decide the petition filed by the petitioner against the denial of parole shall be the regular court. On the other hand, the Supreme Court T.S.T. No. 605 held that because the parole was not granted by the prosecutor, and the denial of parole rendered by the administrative authority was not derived from an unlawful enforcement of law by the prosecutor, the petitioner had no right to petition to the regular court for judicial relief in accordance with relevant provisions set forth in the Prison Act. The Supreme

第四百八十四條規定向臺灣高等法院高雄分院聲明異議，並經該院及最高法院九十九年度台抗字第六〇五號刑事裁定以無理由駁回，顯示職司刑事裁判之普通法院認為其就受刑人不予假釋之聲明異議具有審判權。參照同屬刑事裁判執行一環之假釋撤銷，其救濟程序係向刑事裁判之普通法院提出，則受刑人不服行政機關不予假釋之決定，於相關法律修正前，其救濟程序自仍應由刑事裁判之普通法院審判。而最高法院九十九年度台抗字第六〇五號刑事裁定，則以受刑人不服行政機關不予假釋之決定，因假釋與否非由檢察官決定，不生檢察官執行之指揮是否違法或執行方法是否不當，而得向法院聲明異議之問題，於現行法下僅得依監獄行刑法相關規定提出申訴，於修法增列救濟途徑前，尚非該法院所得審究。是以，修法前受刑人不服行政機關不予假釋之決定，得向何法院訴請救濟，最高行政法院與最高法院所表示之見解發生歧異。

Court, therefore, held that before the legislation is amended to provide judicial relief, the proper court to decide the petition filed by the petitioner against the denial of parole is not the regular court. As a result, with regard to which court shall have the jurisdiction to adjudicate an inmate's petition against the denial of parole rendered by the administrative authority, the Supreme Administrative Court and the Supreme Court are in conflict.

Approval of parole terminates an inmate's term of imprisonment and ends the restrictions imposed on an inmate's personal liberty. The design of the current parole system allows the first or second class of inmates, who have shown repentance and who are eligible for statutory parole, to apply to the Prison Parole Commission for parole. After the Prison Parole Commission decides to grant the parole, the prison will submit the decision to the Department of Justice for approval in accordance with Article 77 of the Criminal Code and Article 81 of the Prison Act. Thus the approval of parole is made by the Department of Justice.

假釋與否，關係受刑人得否停止徒刑之執行，涉及人身自由之限制。現行假釋制度之設計，係以受刑人累進處遇進至二級以上，悛悔向上，而與假釋要件相符者，經監獄假釋審查委員會決議後，由監獄報請法務部予以假釋（刑法第七十七條、監獄行刑法第八十一條規定參照）。是作成假釋決定之機關為法務部，而是否予以假釋，係以法務部對受刑人於監獄內所為表現，是否符合刑法及行刑累進處遇條例等相關規定而為決定。受刑人如有不服，雖得依據監獄行刑法上開規定提起申訴，惟申訴在性質上屬行政機關自我審查糾正之途徑，與得向法院請求救濟並不相當，基於憲法第十六條保障人民訴訟權之意

Whether to grant [a]parole is determined by the applicant inmate's good behavior while in prison and the applicant inmate's compliance with relevant provisions of the Statute of Progressive Execution of Penalty. Should the prisoner not come up to the required standard, although he/she may appeal according to the stipulations of the Prison Act, yet the nature of the appeal is to instigate a review of the administrative authority's own procedure and is not equivalent to asking a court of law for redress. Pursuant to Article 16 of the Constitution to protect the people's right of action, the petition at issue cannot substitute for the right to obtain judicial redress (refer to J. Y. Interpretation No. 653). Thus an inmate who objects to the denial of parole rendered by the administrative authority may file a petition for judicial redress to a court. However, which court shall have the jurisdiction to hear the petition, and what type of procedure shall be adopted to resolve the issue, is to be decided by legislation after full consideration of the following matters by the legislature: the nature of the petition and relevance of the legal proceeding, im-

旨，自不得完全取代向法院請求救濟之訴訟制度（本院釋字第六五三號解釋參照）。從而受刑人不服行政機關不予假釋之決定，而請求司法救濟，自應由法院審理。然究應由何種法院審理、循何種程序解決，所須考慮因素甚多，諸如爭議案件之性質及與所涉訴訟程序之關聯、即時有效之權利保護、法院組織及人員之配置等，其相關程序及制度之設計，有待立法為通盤考量決定之。在相關法律修正前，鑑於行政機關不予假釋之決定具有行政行為之性質，依照行政訴訟法第二條以下有關規定，此類爭議由行政法院審理。

mediate and effective protection of the inmate's rights, the organization of the court and assignment of personnel, and the design of the relevant procedures and parole systems. Since a decision to grant parole is an administrative procedure in nature, the petition against denial of parole by the administrative authority shall be decided by the Administrative Court in accordance with Article 2 of the Administrative Procedure Law.

Justice Sea-Yau Lin filed concurring opinion.

Justice Ching-You Tsay filed concurring opinion, in which Justice Chi-Ming Chih joined.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion.

Justice Dennis Te-Chung Tang filed concurring opinion, in which Justice Chen-Shan Li joined.

Justice Pai-Hsiu Yeh filed concurring opinion.

本號解釋林大法官錫堯提出協同意見書；蔡大法官清遊、池大法官啟明共同提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出，李大法官震山加入之協同意見書；葉大法官百修提出部分協同意見書；李大法官震山提出部分協同部分不同意見書；黃大法官璽君提出不同意見書。

Justice Chen-Shan Li filed concurring opinion in part and dissenting opinion in part.

Justice Huang, Hsi-Chun filed dissenting opinion.

EDITOR’S NOTE:

Summary of facts: The petitioner was sentenced to 23 years of imprisonment for the crime of robbery. The petitioner served his sentence in the Taiwan (Kaohsiung) prison. During the term of imprisonment, the petitioner claimed he was eligible for statutory parole and applied for parole many times. The prison also submitted a parole application on behalf of the petitioner many times to the Prison Parole Commission. All of the parole applications were subsequently denied. Objecting to the denial of parole, the petitioner filed an administrative action and also filed a petition against the denial of parole to the regular court in accordance with Article 484 of the Criminal Procedure Law. In the case of the administrative action, the Supreme Administrative Court held that before the legislation is amended to provide judicial redress, the

編者註：

事實摘要：聲請人因強盜等罪，經判處徒刑 23 年餘，於臺灣高雄監獄執行中。其間聲請人多次以其已達法定假釋之條件，向該監獄申請假釋。該監獄亦數度將聲請人之假釋事項，提報該監獄假釋審查委員會審查，均未獲同意假釋。聲請人不服，乃 (1) 提起行政訴訟；(2) 依刑事訴訟法第 484 條規定向普通法院聲明異議。(1) 行政訴訟部分，最高行政法院 99 年度裁字第 2391 號裁定認為，目前並無不服假釋否准得請求訴訟救濟之規定，於立法完成前，應由普通法院審判，因而裁定移送臺灣高等法院高雄分院。(2) 聲明異議部分，最高法院 99 年度台抗字第 605 號裁定認為，假釋與否並非檢察官之決定，非普通法院所得審究，而予以裁定駁回。聲請人因此聲請統一解釋。

proper court to decide the petition filed by the petitioner against the denial of parole shall be the regular court. In the matter of the petition against the denial of parole, the Supreme Court T.S.T. No. 605 held that, because the parole was not decided by the prosecutor, and the denial of parole by the administrative authority was not derived from the unlawful enforcement of law by the prosecutor, the regular court had no jurisdiction to adjudicate the petitioner's petition against the denial of parole. The Supreme Court thus dismissed the petition. The petitioner therefore applied for uniform judicial interpretation.