

J. Y. Interpretation No.695 (30 December 2011) *

ISSUE: Given the dual system of litigation adopted by the Constitution, it is asked if disputes over the denial of a lease granted according to the Operational Guidelines for the Restoration of over-cultivated, state-owned Woodland, are to be resolved by administrative litigation or not.

RELEVANT LAWS:

J. Y. Interpretation No. 448, No. 466, and No. 540 (司法院釋字第四四八號、第四六六號、第五四〇號解釋) ; the Operational Guidelines for the Restoration of over-cultivated, state-owned Woodland (Promulgated on 23 April 2008) (國有林地濫墾地補辦清理作業要點，中華民國九十七年四月二十三日訂定發布) ; Article 5 of the Forest Law (森林法第五條) .

KEYWORDS:

public law relations (公法關係) , administrative litigation (行政爭訟) , administrative proceedings (行政訴訟) , administrative court (行政法院) , private law relations (私法關係) , civil action (民事訴訟) , court of general jurisdiction (普通法院) , trial (審判) , remedy (救濟) , state-owned woodland (國有林地) , over-cultivation (濫墾) , homeland security (國土保安) , public interest (公共利益) , major public interest (重大公益) , public authorities (公權力) , lease (租賃契約) .**

* Translated by Marie C.Y. Li .

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

HOLDING: Cases involving district offices of the Council of Agriculture of the Executive Yuan's Forestry Bureau which, in accordance with the Operational Guidelines for the Restoration of over-cultivated, state-owned Woodland, have denied applications for leases are to be considered as disputes arising from relations governed by public law, and therefore the injured party may seek remedy through administrative litigation duly adjudicated by the administrative courts.

REASONING: Under the existing law, trials of civil and administrative cases are conducted in separate courts: that is, the administrative courts and the courts of general jurisdiction. Unless otherwise stipulated by law, disputes arising from relations governed by private law shall be determined by courts of general jurisdiction; disputes arising from relations governed by public law shall be adjudicated by administrative courts (see J. Y. Interpretation No. 448 and No. 466). In cases involving civilians applying for contracts with the Authorities based on administrative regulations, the said Au-

解釋文：行政院農業委員會林務局所屬各林區管理處對於人民依據國有林地濫墾地補辦清理作業要點申請訂立租地契約未為准許之決定，具公法性質，申請人如有不服，應依法提起行政爭訟以為救濟，其訴訟應由行政法院審判。

解釋理由書：我國關於民事訴訟與行政訴訟之審判，依現行法律之規定，分由不同性質之法院審理。除法律別有規定外，關於因私法關係所生之爭執，由普通法院審判；因公法關係所生之爭議，則由行政法院審判之（本院釋字第四四八號、第四六六號解釋參照）。至於人民依行政法規向主管機關為訂約之申請，若主管機關依相關法規須基於公益之考量而為是否准許之決定，其因未准許致不能進入訂約程序者，此等申請人如有不服，應依法提起行政爭訟（本院釋字第五四〇號解釋參照）。

thorities may grant rejection on grounds of public interests, and the injured party may resort to administrative litigation for relief (see J. Y. Interpretation No. 540).

To continue on the work of restoration mandated in Agriculture Order No. 35876 issued by the Secretary of the former Taiwan Province on 27 May 1969 (also known as the “Taiwan Provincial Plan for the Restoration of Over-cultivated State-owned Woodland”), the Council of Agriculture under the Executive Yuan enacted the Operational Guidelines for the Restoration of Overcultivated, State-owned Woodland (hereafter “the Guidelines at issue”) along with an Enforcement Plan on 23 April 2008 in an attempt to handle persons who engage in illegal cultivation or reclamation, and further launched forestry restoration to improve forestland security and boost public welfare. To this end, District Offices of the Council of Agriculture under the Executive Yuan’s Forestry Bureau (hereafter “Forestry District Offices”) may only contract with civilian applicants after the said applicants have actually applied for

行政院農業委員會為接續清理前依臺灣省政府中華民國五十八年五月二十七日農秘字第三五八七六號令公告「臺灣省國有林事業區內濫墾地清理計畫」，尚未完成清理之舊有濫墾地，於九十七年四月二十三日訂定發布國有林地濫墾地補辦清理作業要點（下稱系爭要點）暨國有林地濫墾地補辦清理實施計畫，將違法墾植者導正納入管理，以進行復育造林，提高林地國土保安等公益功能。行政院農業委員會林務局所屬各林區管理處（下稱林區管理處）於人民依據系爭要點申請訂立租地契約時，經審查確認合於系爭要點及相關規定，始得與申請人辦理訂約。

a lease in accordance with the Guidelines at issue as well as other related ordinances.

The main purpose of such restoration task lies in resolving problems arisen from over-cultivation on stateowned woodland as well as preserving long-term public interests such as homeland security (see Article 5 of the Forest Law). Hence, the Forestry District office has the authority to reject any leasing contract proposed by civilian applicant on grounds of threats to maintain sustainable forestry management or to matters of major public interest such as homeland security during its investigation process or having confirmed the compliance of the said civilian occupier. As a result, the threshold lies in whether the decision made by the Forestry District Office is based on the exercise of public authority. In other words, if public policy plays a part in the determination by the Forestry District Office when weighing up whether or not to lease stateowned woodland to civilian applicants, the subsequent decision certainly pertains to public law. As a

按補辦清理之目的在於解決國有林地遭人民濫墾之問題，涉及國土保安長遠利益（森林法第五條規定參照）。故林區管理處於審查時，縱已確認占用事實及占用人身分與系爭要點及有關規定相符，如其訂約有違林地永續經營或國土保安等重大公益時，仍得不予出租。是林區管理處之決定，為是否與人民訂立國有林地租賃契約之前，基於公權力行使職權之行為，仍屬公法性質，如有不服，自應提起行政爭訟以為救濟，其訴訟應由行政法院審判。

consequence, an injured party must resort to administrative litigation for relief, and all related disputes of this kind shall be adjudicated by administrative courts.

Justice Chang-Fa Lo filed concurring opinion

Justice Si-Yao Lin filed dissenting opinion.

Justice Pai-Hsiu Yeh filed dissenting opinion in which Justice Mao-Zong Huang joined.

Justice Shin-Min Chen filed dissenting opinion.

Justice Hsi-Chun Huang filed dissenting opinion.

EDITOR'S NOTE:

Summary of facts: The Petitioner (for this Interpretation) serves as a civil court judge at Taiwan Yilan District Court (hereafter "Yilan Court"). The reason for this petition arose from the fact that the Yilan Court was the original trial court for the leasing dispute. The plaintiffs, including A applied to Luodong Forest District Office for a lease based on the Operational Guidelines for the Res-

本號解釋羅大法官昌發提出協同意見書；林大法官錫堯提出不同意見書；葉大法官百修及黃大法官茂榮共同提出不同意見書；陳大法官新民提出不同意見書；黃大法官璽君提出不同意見書。

編者註：

事實摘要：聲請人係臺灣宜蘭地方法院（下稱宜蘭地院）民事庭法官，原因案件係該庭審理之租地契約事件。原告 A 等二人先依據國有林地濫墾地補辦清理作業要點（下稱系爭要點）向羅東林管處申請補辦清理訂立租地契約，經該處以申請資格及申請標的俱與相關規定不符為由否准；原告乃提起訴願、行政訴訟，經臺北高等行政法院認無受理權限，以 98 年度訴字第 1590 號

330 J. Y. Interpretation No.695

toration of Over-cultivated, State-owned Woodland (hereafter “the Guidelines at issue”). Their application was rejected on grounds of poor qualifications as well as failure to attain objective compliance. The plaintiffs filed for petition and administrative litigation, but were then vacated (Judgment of 98 Su Zi No. 1590 (2009)) and remanded back to the Yilan Court by the Taipei High Administrative Court based on lacking of justified jurisdiction. After the case was dismissed by the Luodong Summary Division of the Yilan Court, the plaintiffs appealed. Chief Justice B of the Civil Division of the Yilan Court, and Justices C and D all held the same position that the case at issue was of public law nature and thus the Civil Division of the Yilan Court lacked jurisdiction over such case. Owing to the discrepancy of judicial opinions between the Civil Division of the Yilan Court and the Taipei High Administrative Court and pursuant to Article 182-1 Section 1 of the Code of Civil Procedure, the case at issue was ruled to cease and petition for interpretation by the Judicial Yuan was properly requested (Civil Judgment of 99

裁定移送宜蘭地院。案經宜蘭地院羅東簡易庭以判決駁回，原告遂向宜蘭地院提起上訴，宜蘭地院民事庭審判長 B、法官 C 及 D 認該事件為公法爭議，其並無受理權限，因此一見解與上開臺北高等行政法院確定裁定有異，遂依民事訴訟法第 182-1 條第 1 項前段規定，以 99 年度簡上字第 48 號民事裁定，裁定停止訴訟，聲請統一解釋。

Jian Shang Zi No. 48 (2010)).