

J. Y. Interpretation No.400 (April 12, 1996) *

ISSUE: Does the government ruling, which orders the owners of private preexisting roads to be burdened with public easement without receiving compensation, constitute an infringement upon said owners' property rights as protected by Article 15 of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Articles 851 and 852 of the Civil Code (民法第八百五十一條、第八百五十二條) ; Articles 14, 208, and 209 of the Land Act (土地法第十四條、第二百零八條、第二百零九條) ; Article 5, Paragraph 1, Subparagraph 2, 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) ; Directive T.67.N.No.6301 (Executive Yuan, 1978) (行政院六十七年台六十七內字第六三〇一號函) ; Directive T.69.N.No.2072 (Executive Yuan, 1980) (行政院六十九年台六十九內字第二〇七二號函) .

KEYWORDS:

property right (財產權) , fair compensation (相當補償) , preexisting road (既成道路) , public easement (公共地役權) , principle of fairness (平等原則) .**

* Translated by Dr. Tze-Shiou Chien, Associate Research Fellow, Sun Yat-Sen Institute for Social Sciences and Philosophy, Academia Sinica.

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HOLDING: The purpose of Article 15 of the Constitution, which provides that the people's property right shall be protected, is to guarantee each individual the freedom to exercise his/her rights to use, profit and dispose for the duration of the property, and to prevent the infringements from public power and other parties to allow him/her to realize his/her freedoms, to develop his/her personality and to maintain his/her dignity. To be consistent with this constitutional protection of property right, state organizations, for the necessity for public use or other public interests, might expropriate people's property according to law, but should give a fair compensation in return. In the case where roads already exist on which public easement has been established due to some specific criteria, the owners of those roads have been deprived of their freedom to use and make profits from the lands. Their interests on the property have been specifically sacrificed for the general interest. To act fairly, the state should expropriate those lands according to law and provide compensation. If central or local governments, due to financial difficulties,

解釋文：憲法第十五條關於人民財產權應予保障之規定，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴。如因公用或其他公益目的之必要，國家機關雖得依法徵收人民之財產，但應給予相當之補償，方符憲法保障財產權之意旨。既成道路符合一定要件而成立公用地役關係者，其所有權人對土地既已無從自由使用收益，形成因公益而特別犧牲其財產上之利益，國家自應依法律之規定辦理徵收給予補償，各級政府如因經費困難，不能對上述道路全面徵收補償，有關機關亦應訂定期限籌措財源逐年辦理或以他法補償。若在某一道路範圍內之私有土地均辦理徵收，僅因既成道路有公用地役關係而以命令規定繼續使用，毋庸同時徵收補償，顯與平等原則相違。至於因地理環境或人文狀況改變，既成道路喪失其原有功能者，則應隨時檢討並予廢止。行政院中華民國六十七年七月十四日台六十七內字第六三〇一號函及同院六十九年二月二十三日台六十九內字第二〇七二號函與前述意旨不符部分，應不再援用。

can not completely expropriate those lands and make compensation, relevant organizations should set a deadline for compensation on annual installment or by other means. It is obviously contrary to the principle of equality that the state is not required to expropriate those lands and make compensation on which public easement has already been established and maintained by ordinances given that other privately owned lands within the same road plan have been expropriated and compensated for. Those parts of Directive T.67.N.No.6301 (Executive Yuan, 1978) and Directive T.69.N.No.2072 (Executive Yuan, 1980) which are inconsistent with the abovementioned reasons shall no longer apply.

REASONING: Firstly, it should be said that the final and binding judgment concerned in this petition has been made on the premise that Directive T.67.N.No.6301 (Executive Yuan, 1978) and Directive T.69.N.No.2072 (Executive Yuan, 1980) are not in conflict with Article 14 of the Land Act, although the petitioner has explicitly asserted those two

解釋理由書：本件確定終局判決係以行政院六十七年七月十四日台六十七內字第六三〇一號函及同院六十九年二月二十三日台六十九內字第二〇七二號函並未違反土地法第十四條規定為前提論據，上開函件既經聲請人具體指陳有牴觸憲法之疑義，應依司法院大法官審理案件法第五條第一項第二款規定，予以受理，合先說明。

ordinances might be in violation of the Constitution. According to Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act, therefore, this petition should be granted.

The purpose of Article 15 of the Constitution, which provides that the people's property right shall be protected, is to guarantee each individual the freedom to exercise his/her rights to use, profit and dispose for the duration of the property, and to prevent the infringements from public power and other parties upon his/her freedoms, so that he/she may develop his/her personality and maintain his/her dignity. However, individuals' freedom to exercise their property rights should be restrained by their social or ecological responsibilities according to the law. Those individuals whose property rights have been restrained due to the abovementioned responsibilities and have been specifically sacrificed for public benefits shall have the right to be fairly compensated. To be consistent with the abovementioned constitutional protection of property rights, although the state, for

憲法第十五條關於人民財產權應予保障之規定，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴。惟個人行使財產權仍應依法受社會責任及環境生態責任之限制，其因此類責任使財產之利用有所限制，而形成個人利益之特別犧牲，社會公眾並因而受益者，應享有相當補償之權利。至國家因興辦公共事業或因實施國家經濟政策，雖得依法律規定徵收私有土地（參照土地法第二百零八條及第二百零九條），但應給予相當之補償，方符首開憲法保障財產權之意旨。

setting up public enterprises or implementing national economic policies, according to law (See Articles 208 and 209 of the Land Act), might expropriate privately owned lands, it should compensate them fairly.

The public easement, distinguished from the easement of the Civil Code, is a legal relationship in which those privately owned lands inherently should be for public use. This has long been established in our legal institutions (See J.Y. Interpretation No. 255; Judgment P.T. No. 8 [Ad. Ct., 1956] and Judgment P.T. No. 435 [Ad. Ct., 1972]). To determine if the owners of preexisting roads have been burdened by public easement, the following requirements should be met: first, it has to be a necessity, not just a convenience or a time-saving measure, for the unspecified public to use it as a crossing; second, owners did not stop the public from crossing when it began; third, this status has remained uninterrupted for a long time, although this does not mean it should have a definite period, it does mean that, except for some vague recollections (e.g.,

公用地役關係乃私有土地而具有公共用物性質之法律關係，與民法土地役權之概念有間，久為我國法制所承認（參照本院釋字第二五五號解釋、行政法院四十五年判字第八號及六十一年判字第四三五號判例）。既成道路成立公用地役關係，首須為不特定之公眾通行所必要，而非僅為通行之便利或省時；其次，於公眾通行之初，土地所有權人並無阻止之情事；其三，須經歷之年代久遠而未曾中斷，所謂年代久遠雖不必限定其期間，但仍應以時日長久，一般人無復記憶其確實之起始，僅能知其梗概（例如始於日據時期、八七水災等）為必要。至於依建築法規及民法等之規定，提供土地作為公眾通行之道路，與因時效而形成之既成道路不同，非本件解釋所指之公用地役關係，乃屬當然。私有土地因符合前開要件而存在公用地役關係時，有關機關自應依據法律辦理徵收，並斟酌國家財政狀況給予相當補

beginning in the Japanese Occupation Era or around the time of the flood of August 7), the exact beginning of this significantly lengthy period could not be remembered by ordinary persons. As regards those lands provided to be roads for public transportation under construction laws and the Civil Code, being different from preexisting roads which derive from prescription, logically, their owners should not be burdened by public easement as mentioned in this Interpretation. In the circumstances in which the owners of private lands are burdened by public easement due to the abovementioned criteria, the relevant organizations should, according to the law, expropriate the lands and, based on the government's financial resources, give fair compensation. If the central or local governments, due to financial difficulties, can not completely expropriate and compensate for those lands, they should consult Directive T.84.N.T. No. 38493 (Executive Yuan, 1995) and Directive T.84.N.I.T.No.8480481 (Ministry of the Interior, 1995) and set a feasible plan to appropriate financial resources to give compensation on annual

償。各級政府如因經費困難不能對前述道路全面徵收補償，亦應參酌行政院八十四年十月二十八日發布之台八十四內字第三八四九三號函及同年十月十一日內政部台八十四內營字第八四八〇四八一號函之意旨，訂定確實可行之期限籌措財源逐年辦理，或以其他方法彌補其損失，諸如發行分期補償之債券、採取使用者收費制度、抵稅或以公有土地抵償等以代替金錢給付。若在某一道路範圍內之私有土地均辦理徵收，僅因既成道路有公用地役關係而以命令規定繼續使用毋庸同時徵收補償，顯與平等原則相違。又因地理環境或人文狀況改變，既成道路喪失其原有功能者，則應隨時檢討並予廢止。行政院六十七年七月十四日台六十七內字第六三〇一號函所稱：「政府依都市計畫主動辦理道路拓寬或打通工程施工後道路形態業已改變者，該道路範圍內之私有土地，除日據時期之既成道路目前仍作道路使用，且依土地登記簿記載於土地總登記時，已登記為『道』地目之土地，仍依前項公用地役關係繼續使用外，其餘土地應一律辦理徵收補償。」及同院六十九年二月二十三日台六十九內字第二〇七二號函所稱：「查台六十七內字第六三〇一號院函說明二第二項核釋日據時期既成

installment or use other means, such as issuing bonds maturing at various dates, setting up user-pay systems, rendering it tax-deductible or giving publicly owned lands to substitute for monetary payments. It is obviously against the principle of equality that the state is not required to expropriate and compensate for those lands on which public easement has already been established and maintained by ordinances given that other privately owned lands within the same road project have been expropriated and compensated for. Furthermore, once geographic or social environments have changed to such an extent that the necessity for preexisting roads no longer exists, the public easement should be immediately reviewed and repealed. Executive Yuan's Directive T.67.N.No.6301 (1978) stated that "after governments, according to urban planning, take actions to broaden or lengthen roads and change the type of roads, those privately owned lands within the scope of the road project, except for those preexisting roads from the Japanese Occupation Era which are still used and were registered in the 'road' category in the land

道路仍依公用地役關係繼續使用乙節，乃係顧及地方財政困難，一時無法籌措鉅額補償費，並非永久不予依法徵收，依土地法第十四條：『公共交通道路土地不得為私有……其已成為私有者，得依法徵收。』之原旨，作如下之補充規定：『今後地方政府如財政寬裕或所興築道路曾獲得上級專案補助經費，或依法徵收工程受益費，車輛通行費者，則對該道路內私有既成道路土地應一律依法徵收補償。』」與前述意旨不符部分，應不再援用。

registration book remaining burdened by public easement as mentioned before, shall be expropriated and compensated for.” The Executive Yuan’s Directive T.69.N.No.2072 (1980) further clarified that “The reason for the Executive Yuan’s Directive T.67.N.No.6301 (1978) which said that preexisting roads from the Japanese Occupation Era could still be used based on public easement takes into account governments’ financial difficulties in providing a large sum of compensation, which definitely does not allow governments to take any action to expropriate those lands legally. Accordingly, considering that Article 14 of the Land Act provides that “public roads for transportation should not be privately owned...those privately owned lands might be expropriated according to law”, the Directive should be modified as follows: “Local governments, once relieved of financial difficulties, subsidized by higher level governments for the specific road project, or having levied a benefit tax or user’s fee, should compensate those owners of private lands of preexisting roads within the road project according to law.” Those parts of these

two Directives which are inconsistent with the abovementioned reasoning shall no longer apply.

Justice Sen-Yen Sun filed dissenting opinion.

本號解釋孫大法官森焱提出不同意見書。