

## J. Y. Interpretation No.422 ( March 7, 1997 ) \*

**ISSUE:** Where the Constitution specifically protects the people's right of existence and the law further provides that the landlord shall not repossess the farmland leased to the tenant-farmer upon the expiration of a farm lease if the repossession might seriously affect the livelihood of the tenant-farmer and his family, are the directives issued by the Executive Yuan and the Ministry of the Interior constitutional in adopting the minimum living expense standard table for the military draftees' families as a basis to evaluate the tenant-farmer's annual living expense?

**RELEVANT LAWS:**

Articles 15 and 153 of the Constitution (憲法第十五條、第一百五十三條) ; Article 19, Paragraph 1, Subparagraph 3, of the Act Governing the Reduction of Farm Rent to 37.5 Percent (耕地三七五減租條例第十九條第一項第三款) .

**KEYWORDS:**

tenant-farmers (佃農) ; tenancy (租賃) ; minimum living expense (最低生活費) ; right of existence (生存權) ; farm lease (農地租約) .\*\*

**HOLDING:** Article 15 of the Constitution provides that the people's right to life shall be protected. Article 153

**解釋文：**憲法第十五條規定，人民之生存權應予保障；第一百五十三條復明定，國家為改良農民之生活，增

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

of the Constitution also provides that the State, in order to improve the livelihood of farmers and to improve their productive skill of farmers, shall enact laws therefore and carry out policies for their protection. Both articles declare explicitly that the State is obliged to protect the farmers' right to life and improve their standard of living. The Act Governing the Reduction of Farm Rent to 37.5 Percent (hereinafter the "Act") was therefore enacted. In order to protect tenant farmers and to prevent the livelihood of their family and right to life from being severely damaged by landlords' repossession of tenant farms, Article 19, Paragraph 1, Subparagraph 3, of the Act stipulates that if the landlord's repossession of a tenant farm would result in the tenant farmer's being unable to support his family, the landlord shall not repossess the tenant farm upon the expiration of the tenancy. Directive T. (49) N.T. No. 7226 of the Executive Yuan dated December 23, 1960, as well as Directive T.N. D.T. No. 266779 of the Ministry of the Interior dated November 1, 1984, stated that the standard of minimum living expense listed in Taiwan's (Taipei's,

進其生產技能，應制定保護農民之法律，實施保護農民之政策，明確揭示國家負有保障農民生存及提昇其生活水準之義務。耕地三七五減租條例即屬上開憲法所稱保護農民之法律，其第十九條第一項第三款規定，出租人因收回耕地，致承租人失其家庭生活依據者，耕地租約期滿時，出租人不得收回自耕，目的即在保障佃農，於租約期滿時不致因出租人收回耕地，嚴重影響其家庭生活及生存權利。行政院於中華民國四十九年十二月二十三日以台四九內字第七二二六號令及內政部七十三年十一月一日七十三台內地字第二六六七七七九號函，關於承租人全年家庭生活費用之核計方式，逕行準用臺灣省（台北市、高雄市）辦理役種區劃現行最低生活費支出標準計算審核表（原役種區劃適用生活標準表）中，所列最低生活費支出標準金額之規定，以固定不變之金額標準，推計承租人之生活費用，而未斟酌承租人家庭生活之具體情形及實際所生之困窘狀況，難謂切近實際，有失合理，與憲法保護農民之意旨不符，應不再援用。

Kaohsiung's) Minimum Living Expense Standard Table for the Division of Conscript shall be used to estimate the annual family living expense for tenant farmers. However, it is neither realistic nor reasonable to apply fixed amounts to estimate the family living expense for individual tenant farmers without considering the actual family livelihood of the tenant farmer on a case-by-case basis and the difficulties a particular tenant farmer may encounter. Hence the abovementioned Directives are inconsistent with the constitutional intention to protect farmers and therefore shall not be applied.

**REASONING:** Article 15 of the Constitution provides that the people's right to life shall be protected. Article 153 of the Constitution also provides that the State, in order to improve the livelihood and productive skill of farmers, shall enact laws therefore and carry out policies for their protection. As such, the State shall have the responsibility to secure Farmers' right to life and raise farmers' standards of living.

**解釋理由書：**生存權應予保障；國家為改良農民之生活，增進其生產技能，應制定保護農民之法律，實施保護農民之政策，分別為憲法第十五條及第一百五十三條所明定，明確揭示國家負有保障農民生存及提昇其生活水準之義務。

The legislative purposes of the Act Governing the Reduction of Farm Rent to 37.5 Percent (hereinafter the “Act”) are to improve the tenancy system, stabilize the society of agricultural communities, promote agricultural production, increase the income of farmers as well as to lay a foundation for the economic development of the country. In order to integrate Article 19 of the Act with the measures for overall agriculture land reform in 1983, it was therefore revised as “upon the expiration of the tenancy, the landlord may repossess the tenant farm for the purpose of expanding the scale of his family farms.” However, in order to protect the right to life of tenant farmers who make livings by tenant farming, Article 19, Paragraph 1, Subsection 3, of the Act further provides that if the landlord’s repossession of a tenant farm would result in the tenant farmer’s being unable to support his family, the landlord shall not repossess the tenant farm upon the expiration of the tenancy. Directive T. (49) N.T. No. 7226 of the Executive Yuan dated December 23, 1960, stated that the Living Expense Standard Table for the Division of Con-

耕地三七五減租條例係為改善租佃制度，安定農村社會，同時亦為促進農業生產，提高農民所得，奠定國家經濟發展之基礎而制定。其後為配合國家整體農地改革之措施，於七十二年雖有就上開條例第十九條租約期滿時，地主為擴大家庭農場經營規模，得收回其出租耕地之相應性修正。惟同條例第十九條第一項第三款復規定「出租人因收回耕地，致承租人失其家庭生活依據者，耕地租約期滿時，出租人不得收回自耕」，用以保障仰賴承租耕地農作收入為生活憑藉之佃農的生存權。行政院四十九年十二月二十三日台四九內字第七二二六號令，關於承租人本人及其配偶與同一戶內之直系血親全年生活費用之核計方式，逕行準用臺灣省當年度辦理役種區劃適用生活標準表規定部分；內政部七十三年十一月一日台內地字第二六六七七七九號函，關於承租人之收益與生活費用之審核標準，定為以耕地租約期滿前一年，承租人本人及其配偶與同一戶內之直系血親綜合所得總額與全年生活費為準，生活費用之計算標準則準用臺灣省（台北市、高雄市）辦理役種區劃現行最低生活費支出標準金額計算審核表（原役種區劃適用生活標準表）中所列最低生活費支出標準金額之規

scription of that year shall apply to estimate the annual living expense of the tenant farmer, spouse and lineal relatives who live in the same household; Directive T.N. D.T. No. 266779 of the Ministry of the Interior dated November 1, 1984, stated that the standard for reviewing the income and living expense of the tenant farmer, tenant farmer's spouse and lineal relatives of the tenant farmer who live in the same household shall be calculated with reference to their annual income and their annual living expense of the year before the expiration of the tenancy. Therefore, the standard of minimum living expense listed in Taiwan's Minimum Living Expense Standard Table for the Division of Conscription shall be used to estimate the family living expense of tenant farmers. However, it is neither realistic nor reasonable to apply fixed amounts to estimate the family living expense of individual tenant farmers without considering the commodity prices in different areas, the actual family livelihood and other individual circumstances of the tenant farmer on a case-by-case basis, such as necessary medical and insurance ex-

定，以固定不變之金額標準，推計承租人之生活費用，而未就不同地域物價水準之差異作考量，亦未斟酌各別農家具體收支情形或其他特殊狀況，諸如必要之醫療及保險相關費用之支出等實際所生困窘狀況，自難謂為切近實際，有失合理，與憲法保護農民之意旨不符，應不再援用。

penses or difficulties the tenant farmer may encounter. Hence the abovementioned Directives are inconsistent with the Constitutional intention to protect farmers and therefore shall not be applied.