J. Y. Interpretation No.446（February 13, 1998）*

ISSUE: Is the relevant provision of the Act on the Discipline of Public Functionaries, prescribing that the period for filing a review starts from the date of a final criminal judgment, unconstitutional?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; J. Y. Interpretation No. 396（司法院釋字第三九六號解釋）; Articles 33, 34, Subparagraph 2, and 35 of the Public Functionaries Discipline Act（公務員懲戒法第三十三條、第三十四條第二款、第三十五條）; Resolution Ref. No. TS-431 of the Committee on the Discipline of Public Functionaries（公務員懲戒委員會再審字第四三一號議決案例）.

KEYWORDS:

right to sue（訴訟權）, judicial beneficiary right（司法受益權）, due process of law（正當法律程序）, discipline of public functionaries（公務員懲戒）, starting point of the period during which application or petition for review may be filed（移請、聲請再審議期間起算點）, date of final judgment（裁判確定日）, date of service of judgment （裁判書送達日）.**

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* Translated by Vincent C. Kuan.

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HOLDING: It is provided in Article 34, Subparagraph 2, of the Public Functionaries Discipline Act that the application or petition for review shall be completed no later than thirty days from the date on which the relevant criminal judgment becomes final and conclusive. In the case of any trial of the first and second instance where any judgment rendered thereby may be appealed, the starting point of such period should fall on the date when the judgment becomes final and conclusive. On the other hand, however, in the case of any trial of the first or second instance where judgment rendered thereby is not appealable or any trial of the third instance, the party subjected to the disciplinary measure cannot possibly file a petition in accordance with the aforesaid provision because such judgment becomes final and conclusive without the necessity of service of process thereof once it has been announced or published after the decision of the deliberation, as the case may be. Consequently, the constitutional intent to protect the people's right to sue under Article 16 thereof will not be served unless the start-

解釋文：公務員懲戒法第三十四條第二款規定移請或聲請再審議，應自相關之刑事裁判確定之日起三十日內為之。其期間之起算點，就得聲明不服之第一審及第二審裁判言，固應自裁判確定之日起算；惟對於第一審、第二審不得聲明不服之裁判或第三審之裁判，因一經宣示或經評決而為公告，不待裁判書之送達，即告確定，受懲戒處分人即難依首開規定為聲請。是其聲請再審議之期間，應自裁判書送達之日起算，方符憲法第十六條保障人民訴訟權之意旨。公務員懲戒委員會再審字第四三一號議決案例及其他類似案例與此意旨不合部分，應不再援用。

ing point of the period for filing such review falls on the date of service of such judgment. Resolution Ref. No. TS-431 of the Committee on the Discipline of Public Functionaries and other similar cases, to the extent that they are in contradiction to the intent hereof, should no longer be applied.

REASONING: The people shall have the rights to petition, to file administrative appeal and to sue, as clearly stated in Article 16 of the Constitution. The right to sue is the kind of judicial beneficiary right of the people that not only entitles the people to take judicial action to protect their rights when infringed upon, but, in particular, guarantees the right of the people to a fair and speedy trial and, ultimately, to adequate remedies so that the people are free from any inappropriate restrictions imposed by any written or unwritten practice beyond the law and thus are guaranteed with the status as the primary participant in the judicial process. The discipline of public functionaries, which falls within the judicial power, is handled and heard by the Committee on

解釋理由書：人民有請願、訴願及訴訟之權，為憲法第十六條所明定。所稱訴訟權，乃人民在司法上之受益權，不僅指人民於其權利受侵害時得提起訴訟請求權利保護，尤應保障人民於訴訟上有受公正、迅速審判，獲得救濟之權利，俾使人民不受法律以外之成文或不成文例規之不當限制，以確保其訴訟主體地位。公務員之懲戒事項，屬司法權之範圍，由公務員懲戒委員會審理，而懲戒處分影響人民服公職之權利至鉅，懲戒案件之審議，自應本正當法律程序之原則，對被付懲戒人予以充分之程序保障，乃憲法第十六條保障人民訴訟權之本旨，本院釋字第三九六號解釋已有闡示。

the Discipline of Public Functionaries in the form of trial. And, since disciplinary measures have significant impact on the right of the people to hold public offices, the party subject to such discipline should be guaranteed with adequate procedural protection based on the principle of due process of law, which, as has been elaborated by this Yuan in Interpretation No. 396, is in line with the constitutional intent to protect the people's right to sue under Article 16 of the Constitution.

According to Article 33, Paragraph 1, Subparagraph 3, of the Public Functionaries Discipline Act, the original transferring authority or the party subjected to the disciplinary measure shall have the right to apply or petition, as the case may be, for the review of the original resolution, which has been reached based on a criminal judgment that is later changed by a final and conclusive judgment. The legislative purpose thereof is to deal with the unreasonable situation where no alternative remedy is available to a public functionary in the event of any mistake found in the resolution regarding the discipline,

公務員懲戒法第三十三條第一項第三款規定「原議決所憑之刑事裁判，已經確定裁判變更者，原移送機關或受懲戒處分人得移請或聲請再審議」，其立法目的係在補救對於公務員之懲戒一經議決即行確定，如有錯誤，並無其他救濟途徑之不合理現象。同法第三十四條第二款規定，移請或聲請再審議，「依前條第一項第二款至第四款為原因者，自相關之刑事裁判確定之日起三十日內」為之，亦係為維繫法安定性而設。對於公務員懲戒案件之決議，聲請再審議，應以書面敘述理由，附具繕本，連同原議決書影本及證據為之，同法第三十五條定有明文，則上開第三十

which becomes final as soon as it is reached. Article 34, Paragraph 2, of the same Act provides that the application or petition for review shall be completed no later than thirty days from the date on which the relevant criminal judgment becomes final and conclusive if the application or petition for review is based on one of the reasons prescribed in Subparagraphs 2 through 4 of the preceding Article, and the rationale behind such provision is to maintain the stability of the law. It is clearly prescribed under Article 35 thereof that the petition for review of the resolution regarding the discipline of any public functionary shall be made in writing, with reasons shown, along with a transcript thereof and a copy of the original resolution and the relevant evidence. Therefore, it is appropriate for the period prescribed in the aforesaid Article 34, Subparagraph 2, thereof to start from the date when the judgment becomes final and conclusive in the case of any trial of the first and second instance where any judgment rendered thereby may be appealed. On the other hand, however, in the case of any trial of the first or second in-

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stance where judgment rendered thereby is not appealable or any trial of the third instance, the party subjected to the disciplinary measure cannot possibly file a petition in accordance with the provisions of Article 34, Subparagraph 2, and Article 35 thereof because such judgment becomes final and conclusive without the necessity of service of process thereof once it has been announced or published after the decision of the deliberation, as the case may be. The protection with regard to the time limit available to the people to petition for remedy through litigation is obviously inadequate in this respect. Consequently, the constitutional intent to protect the people's right to sue under Article 16 thereof will not be served unless the starting point of the period for filing such review falls on the date of service of such judgment. Resolution Ref. No. TS-431 of the Committee on the Discipline of Public Functionaries and other similar cases, failing to determine the starting points of the period for filing a review by distinguishing whether the judgment of a particular case is appealable, should no longer be applied insofar

as they are in contradiction to the intent as illustrated above.