J. Y. Interpretation No.482（April 30, 1999）*

ISSUE: Is the precedent of the Supreme Court stating that "pertinent to the peremptory period of a retrial prescribed by the Code of Civil Procedure the court in conducting inquiry may take into account the specific circumstances of the case and order the party to produce the required evidence" in conformity with the provision of the Code of Civil Procedure and constitutional protection of the right of instituting legal proceedings?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Articles 121, Paragraph 1, and 501, Paragraph 1, Subparagraph 4 of the Code of Civil Procedure（民事訴訟法第一百二十一條第一項、第五百零一條第一項第四款）.

KEYWORDS:

proceeding for re-trial（再審程序）, peremptory period（不變期間）, right of action（訴訟權）, power of inquiry（闡明權）, amendment（補正）.**

HOLDING: The Code of Civil Procedure provides in Article 501, Paragraph 1, Subparagraph 4 that a party instituting the proceeding for a retrial shall

解釋文：民事訴訟法第五百零一條第一項第四款規定，提起再審之訴，應表明再審理由及關於再審理由並遵守不變期間之證據。其中關於遵守不

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state clearly in his/her petition the cause for such trial and the evidence pertinent to such cause and to the fact that the peremptory period of limitation has been observed. The evidence required in relation to the peremptory period includes documents and materials to be presented in addition to and in company with the petition or written statement filed with the court, and must be distinguished from the petition or statement referred to in Article 121, Paragraph 1, of the Code as being made inconsistent with the proper form required. Thus, it gives rise to no question of the necessity of amendment by reason of procedural defects. If, however, the party has stated the cause for a retrial and the evidence pertinent to his/her cause for a retrial, but has failed to produce evidence to prove his/her compliance with the peremptory period requirement, we see no reason that the court, in the exercise of its power of inquiry and taking into account the specific circumstances of the case, should be denied the power to order the production of the required evidence. The Supreme Court Precedent Tai-Kang No. 538 of 1971, being in agreement with

變期間之證據，係屬提出書狀時，應添具之文書物件，與同法第一百二十一條第一項規定之書狀不合程式之情形不同，自不生程式欠缺補正之問題。惟當事人於再審書狀中已表明再審理由並提出再審理由之證據，而漏未表明其遵守不變期間之證據時，法院為行使闡明權，非不得依具體個案之情形，裁定命其提出證據。最高法院六十年台抗字第五三八號判例，符合上開意旨，與憲法保障人民訴訟權之規定並無牴觸。

our opinion given above, does not violate the Constitution in protecting the people's right to bring action.

REASONING: It must be noted that the people shall have the right to petition and to bring administrative appeals and the right of instituting legal proceedings under Article 16 of the Constitution. The so-called "right of instituting legal proceedings" denotes the people's right to enjoy judicial benefit, namely, the right to entreat the court to hold timely trial in case one's right is encroached upon, and this right of instituting legal proceedings includes the right to apply for a hearing, due process, an open trial, and equality in procedures. The retrial proceeding provided in the Code of Civil Procedure is a special remedial system, making it possible for a case determined by an irrevocable final judgment to be put under trial once again. In order to ensure that the lawsuit will proceed in an equal and fair procedure for both parties and to maintain the stability of an irrevocable final judgment, the Code of Civil Procedure imposes relatively strict restrictions on the

解釋理由書：憲法第十六條規定，人民有請願、訴願及訴訟之權。所謂訴訟權，乃人民司法上之受益權，即人民於其權利受侵害時，依法享有向法院提起適時審判之請求權，且包含聽審、公正程序、公開審判請求權及程序上之平等權等。民事訴訟法中再審程序為特別救濟程序，係對於確定終局判決重新再次審理，為確保兩造當事人能立於平等、公正之程序下進行訴訟及對已確定終局判決之穩定性，故對民事再審之提起有較嚴格之限制，並不違背憲法保障人民訴訟權利之意旨。

institution of the retrial proceeding, and such restrictions do not contradict the intent of the Constitution in protecting the people's right of instituting legal proceedings.

While the form of the motion for a retrial is set forth in Article 501, Paragraph 1, of the Code of Civil Procedure, the clause "evidence pertinent to the cause and to the fact that the peremptory period of limitation has been observed" contained in Subparagraph 4 thereof, which requires that the party shall "state clearly the cause for a retrial and the evidence pertinent to the cause and to the fact that the peremptory period of limitation has been observed," refers to the documents and materials to be presented in addition to and in company with the petition or written statement filed with the court rather than the form of the petition or written statement itself, and thus is not a matter subject to amendment. Failure to produce such evidence will merely give rise to the question of whether there are grounds for making the judgment, and must be distinguished from the situation

民事訴訟法第五百零一條第一項之規定，固為提起再審之訴之書狀程式。然同條項第四款之規定「應表明再審理由及關於再審理由並遵守不變期間之證據」，其中關於「再審理由並遵守不變期間之證據」，係屬其提出書狀時，所應添具之文書物件，非書狀程式本身，不屬於應補正事項，其未提出之效果，僅係可否據為判決之基礎，與同法第一百二十一條第一項規定所指之書狀不合程式，及第五百零一條第一項前三款書狀程式之欠缺有間。

specified in Article 121, Paragraph 1, of the Code where the petition or written statement is not made in the proper form required and the situation mentioned in Article 501, Paragraph 1, Subparagraphs 1 through 3, inclusive, with respect to defects in the form of the petition or statement.

The retrial system is so designed and provided in the Code of Civil Procedure that the possibility for the party to make his/her own independent decision is taken into consideration and substantial fairness between the parties is maintained. Thus, it does not give rise to the problem of amendment by reason of formality defects. If, however, the statement presented by the party is not clearly understandable or is incomplete, the presiding judge must exercise his power of inquiry and order the party to make clarification or supplementary statement. It follows therefore that the Supreme Court Precedent Tai-Kang No. 538 of 1971, in holding that "while a party instituting the proceeding for a retrial shall state clearly in his/her petition the cause for such trial and the

民事訴訟法就此項程序之設計，已顧及當事人自主之可能性，並維持當事人間之實質公平，自不生程式欠缺補正之問題。惟如其表明之事項不明瞭或不完足者，審判長應行使闡明權，令其敘明或補充之。是以最高法院六十年台抗字第五三八號判例：「提起再審之訴，應表明再審理由，及關於再審理由並遵守不變期間之證據（民事訴訟法第五百零一條第一項第四款），其未表明者無庸命其補正。」符合上開意旨，與憲法保障人民訴訟權之規定並無牴觸。

evidence pertinent to such cause and to the fact that the peremptory period of limitation has been observed (the Code of Civil Procedure, Article 501, Paragraph 1, Subparagraph 4), no order for amendment is necessary if no such statement has been made" is in agreement with our opinion given above and does not violate the Constitution in protecting the people's right to bring action.