

J. Y. Interpretation No.273 (February 1, 1991) *

ISSUE: Is the provision of the Regulation Governing the Surveying and Administration of Urban Planning Stakes, prescribing that no objection may be raised as to a decision regarding second survey, unconstitutional?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) .

REASONING:

right to administrative appeal (訴願權), right of instituting legal proceedings (訴訟權), incorrect location of the survey stake (樁位測定錯誤), objection (異議).**

HOLDING: The latter part of Article 8 of the Regulation Governing the Surveying and Administration of Urban Planning Stakes as amended and promulgated by the Ministry of the Interior on May 4, 1979, providing that: “no objections may be made against the result of the resurvey determined by the competent authority,” has imposed restrictions on the people’s right to seek administrative

解釋文：內政部於中華民國六十八年五月四日修正發布之都市計畫樁測定及管理辦法第八條後段「經上級政府再行複測決定者，不得再提異議」之規定，足使人民依訴願法及行政訴訟法提起行政救濟之權利受其限制，就此部分而言，與憲法第十六條之意旨不符，應不予適用。

* Translated by Vincent C. Kuan.

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remedies under the Administrative Appeal Act and the Administrative Proceedings Act. The said provision, in that respect, is in conflict with Article 16 of the Constitution and thus shall no longer apply.

REASONING: According to Article 16 of the Constitution, the people have the rights of lodging complaints and of instituting legal proceedings, which means that the people shall have a right to file administrative appeal or to sue when their rights are infringed upon, whereas the authority or court with which the appeal or lawsuit is filed shall be obligated to make a decision or render a judgment, as the case may be, in accordance with the law. The aforesaid right cannot be restricted by means of any administrative regulation.

According to Article 23 of the Urban Planning Act, the erection of stakes, the calculation of coordinates, and the survey of division of registration of land shall be made within one year upon the announcement and execution of the detailed plan of the urban plan. Based on the said

解釋理由書：憲法第十六條規定人民有訴願及訴訟之權，乃指人民於其權益受侵害時，有提起訴願或訴訟之權利，受理訴願之機關或受理訴訟之法院亦有依法決定或裁判之義務而言。此項權利，不得以行政命令予以限制。

都市計畫法第二十三條規定，都市計畫之細部計畫核定發布實施後，應於一年內，豎立樁誌、計算座標、辦理地籍分割測量等事項，內政部基於上述規定，乃於六十八年五月四日修正發布都市計畫樁測定及管理辦法。依該辦法第六條及第八條之規定，土地權利關係

Article, the Ministry of the Interior amended and promulgated the Regulation Governing the Surveying and Administration of Urban Planning Stakes on May 4, 1979. In accordance with Articles 6 and 8 thereof, where an interested party to the land believes that there is any mistake in the location of the survey stake, the party may apply for resurvey and re-survey; nonetheless, the latter part of Article 8 provides that “no objections may be made against the result of the resurvey determined by the supervising authority.” The Administrative Court, in its 77-Tsai-86 ruling, states that a literal reading of the provision “no objections may be made” includes the meaning that neither administrative appeal nor administrative litigation may be filed. Thus, in that respect, it has imposed restrictions on the people’s right to seek administrative remedies under the Administrative Appeal Act and the Administrative Proceedings Act.

Although there are such remedies as resurvey and re-survey under the abovementioned Regulation for the infringement of the interests of an interested

人如認為樁位測定錯誤時，雖得申請複測及再複測，但第八條後段則有「經上級政府再行複測決定者，不得再提異議」之規定。行政法院七十七年度裁字第八十六號裁定，依文義解釋認所謂不得再提異議，含有不得訴願及提起行政訴訟之意，就此部分而言，足使人民依訴願法及行政訴訟法提起行政救濟之權利受其限制。

按因樁位測定錯誤，致特定土地權利關係人之權益遭受侵害時，雖上述辦法已有複測及再複測之救濟途徑，然其限制人民訴願及行政訴訟之權部分，

party to the land resulting from the mistake in the location of the survey stake, the restrictions on the people's rights of filing administrative appeal and administrative litigation are apparently in conflict with the abovementioned constitutional intent to protect the people's rights and hence shall no longer apply.

則與憲法保障人民權利之意旨不符，應不予適用。