

J. Y. Interpretation No.290 (January 24, 1992) *

ISSUE: Are the relevant provisions of the Public Officials Election and Recall Act During the Period of National Mobilization for Suppression of the Communist Rebellion, prescribing restrictions for the education and experience of candidates for elected representatives at the various levels, unconstitutional?

RELEVANT LAWS:

Article 130 of the Constitution (憲法第一百三十條); Article 32, Paragraph 1, of the Public Officials Election and Recall Act During the Period of National Mobilization for Suppression of the Communist Rebellion (動員戡亂時期公職人員選舉罷免法第三十二條第一項) .

KEYWORDS:

election and recall (選舉與罷免) .**

HOLDING: Article 32, Paragraph 1, of the Public Officials Election and Recall Act During the Period of National Mobilization for Suppression of the Communist Rebellion (the title of the Act was changed to the Public Service Election and Recall Act on August 2, 1991),

解釋文：中華民國七十八年二月三日修正公布之動員戡亂時期公職人員選舉罷免法（八十年八月二日法律名稱修正為公職人員選舉罷免法）第三十二條第一項有關各級民意代表候選人學、經歷之限制，與憲法尚無牴觸。惟此項學、經歷之限制，應隨國民之教育

* Translated by Su-Po Kao.

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

revised and publicized on February 3, 1989, with regard to the restrictions on educational background and working experience of candidates for all levels of elected representatives, does not contradict the Constitution. However, such restrictions should be reconsidered in light of the popularity of education among people. Should they be deemed necessary, their underlying reasoning should be supported by evidence? The circumstances of those who have difficulty completing compulsory education should also be taken into consideration and appropriate rules should be proposed accordingly. These should be done through the reasonable discretion of the legislature.

People should seek redress through administrative appeal and litigation for any administrative dispositions they deem to be unjust. However, there are no rules in the current State Compensation Act governing whether the procedure of administrative litigation should be applied first where the issue is the legality of an administrative disposition which is a precondition for recovery in a civil action.

普及加以檢討，如認為仍有維持之必要，亦宜重視其實質意義，並斟酌就學有實際困難者，而為適當之規定，此當由立法機關為合理之裁量。

人民對於行政處分有所不服，應循訴願及行政訴訟程序請求救濟。惟現行國家賠償法對於涉及前提要件之行政處分是否違法，其判斷應否先經行政訴訟程序，未設明文，致民事判決有就行政處分之違法性併為判斷者，本件既經民事確定終局判決，故仍予受理解釋，併此說明。

Therefore, some cases that involve the legality of administrative dispositions have been decided in civil court. It should be further noted that since the final judgment has been rendered in a civil action for the case currently before us, we still accept the filing for Constitutional interpretation.

REASONING: Article 130 of the Constitution provides: “Any citizen of the Republic of China who has attained the age of 20 years shall have the right to vote in accordance with law. Except as otherwise provided by this Constitution or by law, any citizen who has attained the age of 23 years shall have the right to be elected in accordance with law.” Accordingly, the law provides some latitude by stipulating some conditions to regulate the exercise of the right to be elected within reasonable discretion. Article 32, Paragraph 1, of the Public Officials Election and Recall Act During the Period of National Mobilization for Suppression of the Communist Rebellion (the title of the Act was changed to the Public Service Election and Recall Act on August 2, 1991),

解釋理由書：憲法第一百三十條規定：「中華民國國民年滿二十歲者，有依法選舉之權；除本憲法及法律別有規定者外，年滿二十三歲者，有依法被選舉之權」，是法律對於被選舉權之具體行使，於合理範圍內，並非完全不得定其條件。中華民國七十八年二月三日修正公布之動員戡亂時期公職人員選舉罷免法（八十年八月二日法律名稱修正為公職人員選與罷免法）第三十二條第一項有關各級民意代表候選人學、經歷之限制，雖與其他國家不盡相同，但為提升各級民意代表機關之議事功能及問政品質，衡諸國情，尚難謂其與憲法有所牴觸。惟國民之教育日益普及，選舉人對於候選人選擇之能力相對提高，此項對各級民意代表候選人學、經歷之限制是否仍繼續維持，宜參酌其他民主國家之通例，隨時檢討，如認有繼

revised and publicized on February 3, 1989, with regard to the restrictions on educational background and working experience of candidates for all levels of elected representatives, though not typical in comparison with other countries, shall not be deemed contrary to the Constitution for the purpose of promoting the efficacy and quality of all levels of representative organs in light of the current state of this country. However, as the pursuit of education grows even more popular and voters' ability to make informed choices becomes better, whether such restrictions should be maintained should be considered in light of the examples of other democracies. Should they be deemed necessary, their underlying reasoning should be supported by evidence. The circumstances of those who have difficulty completing compulsory education should also be considered (e.g., those with physical or other disabilities who have difficulties completing a normal education) and appropriate rules should be stipulated accordingly by reasonable discretion of the legislature.

續維持之必要，亦應重視其實質意義，並斟酌就學有實際困難之人士（例如因身體或其他原因其接受學校教育顯較一般國民有難於克服之障礙者），由立法機關為合理之裁量，而作適當之規定。

People should seek redress through

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administrative appeals and litigation for administrative dispositions they deem unjust. However, there are no rules in the current State Compensation Act governing whether the procedure of administrative litigation should be applied first where the issue is the legality of an administrative disposition which is a precondition for recovery in a civil action. Therefore, some cases that involve the legality of administrative dispositions have been decided in civil court. It should be further noted that since the final judgment has been rendered in a civil action for the case currently before us, we still accept the filing for Constitutional interpretation.

Justice Chien-Tsai Cheng filed dissenting opinion in part, in which Justice Zu-Zan Yang joined.

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本號解釋鄭大法官健才與楊大法官日然共同提出理由一部不同意見書。