

J. Y. Interpretation No.320 ( June 18, 1993 ) \*

**ISSUE:** Is the provision of the Enforcement Rules of the Act Governing Land Grants to Anti-Communist and Anti-Soviet Combatants, which prescribes a base day for the issuance of disability benefits, unconstitutional?

**RELEVANT LAWS:**

Article 172 of the Constitution (憲法第一百七十二條) ; Articles 2, 5 and 11-II of the Act Governing Land Grants to Anti-Communist and Anti-Soviet Soldiers (反共抗俄戰士授田條例第二條、第五條、第十一條第二項) ; Articles 1, 3-I and 10 of the Act Governing the Handling of Land Grant Certificates to Soldiers, (戰士授田憑據處理條例第一條、第三條第一項、第十條) ; Article 3, Paragraph 1, Subparagraph 3, of the Enforcement Rules of the Handling Act Governing the Handling of Land Grant Certificates to Soldiers (戰士授田憑據處理條例施行細則第三條第一項第三款) .

**KEYWORDS:**

land grant certificates to soldiers (戰士授田憑證) , restrictions on disability benefits (補償金發給之限制) , retroactivity (溯及既往) .\*\*

**HOLDING:** The Act Governing the Handling of Land Grant Certificates to

**解釋文：**戰士授田憑據處理條例，係為收回已依反共抗俄戰士授田條

\* Translated by Vincent C. Kuan.

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

Soldiers (hereinafter the “Handling Act”) is enacted to make compensation according to various bases that are determined by different situations for the purpose of recovering the land grant certificates for soldiers already received by eligible soldiers pursuant to the Act Governing Land Grants to Anti-Communist and Anti-Soviet Soldiers (hereinafter the “Land Grant Act”). Although the Land Grant Act did not come into force until October 18, 1951, the provisions of Article 5 and Article 11, Paragraph 2, thereof do not set limits by stating that the war-induced physical injuries and disabilities contemplated thereunder should have occurred subsequent to that date. Article 3, Paragraph 1, of the Enforcement Rules of the Act Governing the Handling of Land Grant Certificates to Soldiers provides that disability benefits will not be issued to the personnel whose disability occurred after October 18, 1951, thus ruling out the opportunity of those who were injured and disabled during war before that date and have already had land grant certificates to receive disability benefits based on the criteria set forth in the Handling

例領取之戰士授田憑據，分別情形給予不同基數之補償金而制定。該授田條例雖於中華民國四十年十月十八日生效，但依其第五條、第十一條第二項規定之意旨，關於作戰受傷致成殘廢，並不以該日以後發生者為限。戰士授田憑據處理條例施行細則第三條第一項謂殘廢以四十年十月十八日以後發生者，始發給殘廢標準之補償金，致在該日以前作戰受傷致成殘廢，而已領有授田憑據之人員，失其依該條例所定殘廢標準領取補償金之機會，與法律規定不符，有違憲法保障人民權利之意旨，應不予適用。至此項人員負傷所由致之作戰，其範圍如何，應由主管機關依各該條例立法意旨予以界定，乃屬當然。

Act. The said provision is inconsistent with the law and violates the intent of the Constitution to protect the rights of the people and, therefore, should not be applied. In respect of the scope of war from which the injury sustained by the respective soldiers or soldiers resulted, the competent authorities should, as a matter of course, set limits according to the legislative intent of the respective laws.

**REASONING :** Article 1 of the Act Governing the Handling of Land Grant Certificates to Soldiers, as enacted and promulgated on April 23, 1990, provides, “This Act is enacted to recover the land grant certificates for soldiers previously issued upon repeal of the Act Governing Land Grants to Anti-Communist and Anti-Soviet Soldiers and the Enforcement Rules thereof.” Article 3, Paragraph 1, of the same Act further provides, “A compensation for each land grant certificate for soldiers shall be given according to a base number from one to ten; and the amount for each base is fifty thousand New Taiwan dollars (NT\$50,000). Other than the dependent(s) of a soldier killed in

**解釋理由書：**中華民國七十九年四月二十三日制定公布之戰士授田憑據處理條例第一條規定：「反共抗俄戰士授田條例及其施行細則廢止後，為收回戰士授田憑據，特制定本條例」。同條例第三條第一項本文並規定：「每份戰士授田憑據發給一至十個基數之補償金；每一個基數之金額為新臺幣五萬元，除陣亡或公亡戰士之家屬及作戰受傷致成殘廢及年逾五十五歲未享退休給與、未輔導就養、就業之自謀生活者，給與最高十個基數外，餘由行政院就補償對象分別訂定之」。該授田條例雖於中華民國四十年十月十六日公布，十八日生效，但其中關於發給授田憑據時，有無殘廢之認定，依該授田條例第五條、第十一條第二項規定之意旨，並不

action or killed in the line of duty, or a soldier disabled due to injury during war, or a soldier over the age of fifty living on his own without any retirement benefits, or assistance and counsel in care or employment, who shall receive the maximum of ten bases, the number of bases for the remaining soldiers shall be determined by the Executive Yuan on a case-by-case basis.” Although the Land Grant Act was promulgated on October 16, 1951, and came into force on October 18 of the same year, the provisions of Article 5 and Article 11, Paragraph 2, thereof do not set any limit by stating that the war-induced physical injury and disability contemplated thereunder should have occurred subsequent to that date when it is a matter of determining whether a disability existed at the time of issuance of the land grant certificate. Furthermore, the Handling Act is originally designed and intended to deal with the pre-existing fact that such land grant certificates were previously received by certain people and the fact that a land grant certificate is presumed to be issued under Article 10 thereof by making compensation under

限於以該日以後發生之狀況為準。而戰士授田憑據處理條例本係就以前已領有授田憑據之既存事實或依其第十條視同已發給授田憑據擬制之既存事實，賦予依一定程序發給補償金之效果，別無所謂溯及既往之問題。其關於殘廢之既存事實，該處理條例亦無僅以四十年十月十八日以後發生者為限之限制。乃該處理條例施行細則第三條第一項第三款竟規定：「作戰受傷致成殘廢之戰士，指於四十年十月十八日反共抗俄戰士授田條例公布日後，作戰受傷，經核定為三等殘以上，並辦理傷殘撫卹有案者」，致在該日以前作戰受傷致成殘廢，而已領有授田憑據之人員，失其依上述殘廢標準領取補償金之機會，與法律規定不符，有違憲法保障人民權利之意旨，應不予適用。至此項人員負傷所由致之作戰，其範圍如何，應由主管機關斟酌上述授田條例第二條關於戰士之定義及處理條例第三條第一項但書關於總補償金額之限制等整體意旨，予以界定，乃屬當然。

certain procedures and, therefore, there should be no issue concerning retroactivity. With respect to the pre-existing fact that a disability occurred, the Handling Act does not impose any restrictions by limiting the benefit to such disability as has occurred subsequent to October 18, 1951. Article 3, Paragraph 1, Subparagraph 3, of the Enforcement Rules of the Handling Act abruptly provides, "A soldier injured and disabled during war should mean one who was so injured subsequent to the date of promulgation of the Act Governing Land Grants to Anti-Communist and Anti-Soviet Soldiers, and whose injury was determined to be a level three disability or above, and whose application for injury and/or disability compensation was duly recorded." Accordingly, any opportunity for those who were injured and disabled during war before that date and have already had land grant certificates to receive disability benefits based on the criteria set forth in the Handling Act is ruled out. Such provision is inconsistent with the law and violates the intent of the Constitution to protect the rights of the people and, therefore, should

not be applied. In respect of the scope of war from which the injury sustained by the relevant soldiers or soldiers resulted, the competent authorities should, as a matter of course, set limits by taking into consideration the legislative intent of the respective laws, including the definition of soldiers as prescribed under Article 2 of the Land Grant Act and the limitations on the total amount of compensation as set forth in the proviso of Article 3, Paragraph 1, of the Handling Act.