J. Y. Interpretation No.368（December 9, 1994）*

ISSUE: Where the legal opinion given in a decision made or an action taken by an administrative agency is held by an Administrative Court judgment to have erred in law, is it legal and constitutional for its supervisory agency to sustain such decision upon re-investigation of the facts and evidence carried out by the original agency?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 4 of the Administrative Proceedings Act（行政訴訟法第四條）; Supreme Administrative Court Precedent P.T. 35 (1971)（行政法院六十年判字第三十五號判例）.

KEYWORDS:

final disposition（終局解決）, jural relations（權利義務關係）, nullify/set aside the decision（撤銷原決定）, binding force/effect（拘束力）.**

HOLDING: Article 4 of the Administrative Proceedings Act providing that: "a judgment of the Administrative Court, insofar as the matter adjudged is concerned, shall have a binding effect upon all related government agencies," is

解釋文：行政訴訟法第四條「行政法院之判決，就其事件有拘束各關係機關之效力」，乃本於憲法保障人民得依法定程序，對其爭議之權利義務關係，請求法院予以終局解決之規定。

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* Translated by Raymond T. Chu.

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

a statute designed to guarantee the people the constitutional right to demand through legal procedure final disposition by the court of their disputes over jural relations. Thus, where the judgment entered by the Administrative Court setting aside an administrative decision or action is one pointing out that the facts of the case are unclear and requiring the defendant government agency to take alternative action upon investigation into the facts and evidence, such agency must conduct an investigation into the facts and evidence either in pursuance of the substance of the judgment or ex officio. If, based upon the facts found in consequence of such further investigation, the previous action is deemed to be free of error in law, the opinions given in support of the previous action may be sustained. If, however, the judgment entered by the Supreme Administrative Court setting aside an administrative decision or action is one that points out an error in law in such administrative action, the judgment must be taken as binding upon its supervisory government agency. The Supreme Administrative Court Precedent P.T. 35 (1971), holding

故行政法院所為撤銷原決定及原處分之判決，如係指摘事件之事實尚欠明瞭，應由被告機關調查事證另為處分時，該機關即應依判決意旨或本於職權調查事證。倘依重為調查結果認定之事實，認前處分適用法規並無錯誤，雖得維持已撤銷之前處分見解；若行政法院所為撤銷原決定及原處分之判決，係指摘其適用法律之見解有違誤時，該管機關即應受行政法院判決之拘束。行政法院六十年判字第三十五號判例謂：「本院所為撤銷原決定及原處分之裁判，如於理由內指明由被告官署另為復查者，該官署自得本於職權調查事證，重為復查之決定，其重為復查之結果，縱與已撤銷之前決定持相同之見解，於法亦非有違」，其中與上述意旨不符之處，有違憲法第十六條保障人民訴訟權之意旨，應不予適用。

that "if it is specifically pointed out in the reasoning of our judgment to nullify an administrative decision or action and that the defendant government agency must review the case, such administrative agency may of course conduct an investigation ex officio into the facts and evidence and make a decision based upon its review, and the result of such investigation, even if of the same opinion as the decision previously nullified, is not against the law," is contrary to Article 16 of the Constitution in protecting the people's right to sue, to the extent that it is inconsistent with the essence of our opinion given above, and must therefore be rendered invalid.

REASONING: Article 16 of the Constitution providing that the people shall have the right to sue means that the people have the right to demand through legal procedure judicial remedy for final disposition of their disputes over jural relations. Thus, Article 4 of the Administrative Proceedings Act providing that: "a judgment of the Administrative Court, insofar as the matter adjudged is con-

解釋理由書：憲法第十六條規定人民有訴訟之權，係指人民有依法定程序，就其權利義務之爭議，請求法院救濟，以獲致終局解決與保障之權利。行政訴訟法第四條規定：「行政法院之判決，就其事件有拘束各關係機關之效力」，即為保障人民依行政訴訟程序請求救濟之權利得獲終局解決。是行政法院所為撤銷原決定及原處分之判決，原機關自有加以尊重之義務；原機關有須

cerned, shall have a binding effect upon all related government agencies," is a statute designed to guarantee the people the opportunity to obtain a final disposition of their right for which a remedy is sought pursuant to administrative proceedings. Accordingly, a judgment of the administrative court to nullify the decision made or the action taken by an administrative agency must be respected by the original agency, and if a new action is ordered to be taken by the original agency, it must be taken in accordance with the substance of the judgment in order to fully protect the plaintiff's constitutional right or interest in seeking remedy through litigation. The Supreme Administrative Court held in its Precedent P.T. 35 (1971) that "if it is specifically pointed out in the reasoning of our judgment to nullify an administrative decision or action and that the defendant government agency must review the case, such administrative agency may of course conduct an investigation ex officio into the facts and evidence and make a decision based on its review, and the result of such review, even if of the same opinion as the decision

重為處分者，亦應依據判決之內容為之，以貫徹憲法保障原告因訴訟而獲得救濟之權利或利益。行政法院六十年判字第三十五號判例謂：「本院所為撤銷原決定及原處分之裁判，如於理由內指明由被告機關另為復查者，該官署自得本於職權調查事證，重為復查之決定，其重為復查之結果，縱與已撤銷之前決定持相同之見解，於法亦非有違。」其中如係指摘事件之事實尚欠明瞭，應由被告機關調查事證後另為處分者，該機關依判決意旨或本於職權再調查事證，倘依調查結果重為認定之事實，認前處分適用法規並無錯誤，而維持已撤銷之前決定之見解者，於法固非有違；惟如係指摘原決定及處分之法律見解有違誤者，該管機關即應受行政法院判決所示法律見解之拘束，不得違背。上開判例與上述意旨不符之處，有違憲法保障人民訴訟權之意旨，應不予適用。

previously nullified, is not against the law." While it is not against law in the event where it is pointed out in such judgment that the facts of the case are not sufficiently clear and that the defendant administrative agency must take a new action upon investigation into the facts and evidence, and where, as a result of the re-investigation carried out ex office by the agency or in pursuance of the essence of the judgment, it is found by such agency that the previous action did not err in law and that the opinion of the previous decision nullified must be sustained, the supervisory agency must be bound by the legal opinion given in the administrative court judgment if it is pointed out in such judgment that the original administrative decision or action has erred in law. The Precedent quoted above is contrary to Article 16 of the Constitution in protecting the people's right to sue, to the extent that it is inconsistent with the essence of our opinion given above, and must therefore be rendered invalid.

Justice Geng Wu filed concurring opinion.

本號解釋吳大法官庚提出協同意見書。