

J. Y. Interpretation No.371 (January 20, 1995) *

ISSUE: Do Article 5, Paragraphs 2 and 3 of the Constitutional Interpretation Procedure Act authorizing only the Supreme Court and Administrative Court to have the right to petition the Grand Justices Council for the interpretation of statutes governing pending litigation violate Article 80 of the Constitution, which provides that a judge shall try cases in accordance only with law?

RELEVANT LAWS:

Articles 78, 79, Paragraph 2, 80, 171 and 173 of the Constitution (憲法第七十八條、第七十九條第二項、第八十條、第一百七十一條及第一百七十三條); Article 4, Paragraph 2, of the Amendments to the Constitution (憲法增修條文第四條第二項); Articles 5, Paragraphs 2 and 3, 8 of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第五條第二項、第三項、第八條).

KEYWORDS:

Grand Justices (大法官), judge (法官), constitution (憲法), law (法律), reasonable assurance (合理確信), suspend the pending procedure (停止訴訟程序), judicial review (司法審查). **

* Translated by Jaw-Perng Wang.

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

HOLDING: The Constitution is the state's highest legal authority. Any statute that contradicts the Constitution shall be null and void. Whether a given statute contradicts the Constitution shall be interpreted by the Grand Justices of the Judicial Yuan. The above statement is obvious from Articles 171, 173 and 78, and Article 79, Paragraph 2, of the Constitution. In addition, Article 80 of the Constitution clearly provides that judges shall only try cases in accordance with law. In trying a case, a judge shall base his decision on statutes that have been promulgated and effective in accordance with the legal procedure. A judge shall have no capacity to hold a statute unconstitutional, and shall not refuse to apply a statute for that reason. Nonetheless, since the Constitution's authority is higher than the statute's, judges have the obligation to obey the Constitution over any other statutes. Therefore, in trying a case where a judge, with reasonable assurance, has suspected that the statute applicable to the case is unconstitutional, he shall surely be allowed to petition for interpretation of its constitutionality. In the abovementioned

解釋文：憲法為國家最高規範，法律牴觸憲法者無效，法律與憲法有無牴觸發生疑義而須予以解釋時，由司法院大法官掌理，此觀憲法第一百七十一條、第一百七十三條、第七十八條及第七十九條第二項規定甚明。又法官依據法律獨立審判，憲法第八十條定有明文，故依法公布施行之法律，法官應以其為審判之依據，不得認定法律為違憲而逕行拒絕適用。惟憲法之效力既高於法律，法官有優先遵守之義務，法官於審理案件時，對於應適用之法律，依其合理之確信，認為有牴觸憲法之疑義者，自應許其先行聲請解釋憲法，以求解決。是遇有前述情形，各級法院得以之為先決問題裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋。司法院大法官審理案件法第五條第二項、第三項之規定，與上開意旨不符部分，應停止適用。

situation, judges of different levels may suspend the pending procedure on the ground that the constitutionality of the statute is a prerequisite issue. At the same time, they shall provide concrete reasons for objectively believing the unconstitutionality of the statute, and petition to the Grand Justices of the Yuan to interpret its constitutionality. The provisions of Article 5, Paragraphs 2 and 3, of the Constitutional Interpretation Procedure Act which are inconsistent with the above decision shall no longer be applied.

REASONING: Based on the constitutional principle of separation of powers, modern countries with a written constitution and rule of law have set up a judicial review system. Those which do not have a special judicial tribunal for judicial review delegate this power to their ordinary courts through precedents, as the United States does, or through explicit constitutional provisions, as Japan does (Article 81 of the 1946 Constitution). In those countries which have special judicial tribunals for judicial review, the constitutionality of statutes is reviewed by

解釋理由書：採用成文憲法之現代法治國家，基於權力分立之憲政原理，莫不建立法令違憲審查制度。其未專設違憲審查之司法機關者，此一權限或依裁判先例或經憲法明定由普通法院行使，前者如美國，後者如日本（一九四六年憲法第八十一條）。其設置違憲審查之司法機關者，法律有無牴觸憲法則由此一司法機關予以判斷，如德國（一九四九年基本法第九十三條及第一百條）、奧國（一九二九年憲法第一百四十條及第一百四十條之一）、義大利（一九四七年憲法第一百三十四條及第一百三十六條）及西班牙（一九七八年

the special judicial tribunals, such as the Constitutional Courts of Germany (Articles 93 and 100 of the 1949 Basic Law), Austria (Articles 140 and 141-1 of the 1929 Constitution), Italy (Articles 134 and 136 of the 1947 Constitution), and Spain (Articles 161 and 163 of the 1978 Constitution). Different countries with different situations could not be expected to have the same systems and applications. Nonetheless, their purposes are all to protect the constitution's highest authority in law, as well as to maintain a judge's independence in exercising his duties, in order that in trying a case, a judge shall obey nothing but the constitution and statutes without any interference. Because our legal system mainly adopted the statutes of continental countries, the development of our judicial review system has been very similar to those of the abovementioned continental countries since our Constitution went into effect.

Article 171 of the Constitution provides: "Laws that contradict the Constitution shall be null and void. In case of doubts as to whether a given statute con-

憲法第一百六十一條至第一百六十三條)等國之憲法法院。各國情況不同,其制度之設計及運作,雖難期一致,惟目的皆在保障憲法在規範層級中之最高性,並維護法官獨立行使職權,俾其於審判之際僅服從憲法及法律,不受任何干涉。我國法制以承襲歐陸國家為主,行憲以來,違憲審查制度之發展,亦與上述歐陸國家相近。

憲法第一百七十一條規定:「法律與憲法牴觸者無效。法律與憲法有無牴觸發生疑義時,由司法院解釋之」,第一百七十三條規定:「憲法之解釋,

tradicts the Constitution, the matter shall be interpreted by the Judicial Yuan.” Article 173 of the Constitution provides: “The Constitution shall be interpreted by the Judicial Yuan.” Article 78 of the Constitution provides: “The Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders.” Article 79, Paragraph 2, of the Constitution and Article 4, Paragraph 2, of the Amendment to the Constitution clearly provide that the Grand Justices of the Judicial Yuan shall be responsible for the matters specified in Article 78 of the Constitution. Accordingly, the power to interpret a statute’s constitutionality and to declare its nullity rests exclusively on the Grand Justices of the Judicial Yuan. Pursuant to Article 80 of the Constitution, judges of different levels shall try cases in accordance with law. In trying a case, a judge, therefore, shall base his decision on statutes that have been promulgated and effective in accordance with the legal procedure. A judge shall have no capacity to hold a statute unconstitutional, and shall not refuse to apply a statute for that reason. Nonetheless, since

由司法院為之」，第七十八條又規定：「司法院解釋憲法，並有統一解釋法律及命令之權」，第七十九條第二項及憲法增修條文第四條第二項則明定司法院大法官掌理第七十八條規定事項。是解釋法律牴觸憲法而宣告其為無效，乃專屬司法院大法官之職掌。各級法院法官依憲法第八十條之規定，應依據法律獨立審判，故依法公布施行之法律，法官應以其為審判之依據，不得認定法律為違憲而逕行拒絕適用。惟憲法乃國家最高規範，法官均有優先遵守之義務，各級法院法官於審理案件時，對於應適用之法律，依其合理之確信，認為有牴觸憲法之疑義者，自應許其先行聲請解釋憲法以求解決，無須受訴訟審級之限制。既可消除法官對遵守憲法與依據法律之間可能發生之取捨困難，亦可避免司法資源之浪費。是遇有前述情形，各級法院得以之為先決問題裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋。司法院大法官審理案件法第五條第二項、第三項之規定，與上開意旨不符部分，應停止適用。關於各級法院法官聲請本院解釋法律違憲事項以本解釋為準，其聲請程式準用同法第八條第一項之規定。

the Constitution is the state's highest authority, judges have an obligation to obey the Constitution over any other statutes. Therefore, in trying cases where judges of different levels have suspected, with reasonable assurance, that the statute applicable to the cases is unconstitutional, they shall be allowed to petition for interpretation of its constitutionality, regardless of the levels where the cases are pending. This may eliminate a judge's dilemma of obeying the Constitution and applying the controversial statute, as well as avoid the waste of judicial resources. In the above-mentioned situation, judges of different levels may suspend the pending procedure on the ground that the constitutionality of the statute is a prerequisite issue. At the same time, they shall provide concrete reasons for objectively believing the unconstitutionality of the statute, and petition to the Justices of the Yuan to interpret its constitutionality. The provisions of Article 5, Paragraphs 2 and 3, of the Constitutional Interpretation Procedure Act which are inconsistent with the above interpretation shall no longer be applied. Petitions for interpretation of the constitu-

tionality of statutes by judges of different levels shall be determined according to the interpretation of this case, and the form of the petition shall apply to Article 8, Paragraph 1, of the said Act.