J. Y. Interpretation No.148（May 6, 1977）*

ISSUE: Does the competent authority's alteration of an urban plan constitute an administrative act not directed to any specific person, thus entitling him to institute administrative litigation?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Article 21 of the Urban Planning Act（都市計畫法第二十一條）.

KEYWORDS:

Ruling（裁定）, appeal（訴願）, administrative litigation（行政訴訟）, administrative act（行政處分）.**

HOLDING: The competent authority's alteration of an urban plan is not regarded as a person-specific administrative measure by the administrative court, thereby barring the people from initiating administrative litigations against it. Based on the foregoing, the court has dismissed the application with a ruling. Although the said ruling is inconsistent with the said court's precedents, it does not raise issues as to the constitutionality of the laws or

解釋文：主管機關變更都市計劃，行政法院認非屬於對特定人所為之行政處分，人民不得對之提起行政訴訟，以裁定駁回。該項裁定，縱與同院判例有所未合，尚不發生確定終局裁判適用法律或命令是否牴觸憲法問題。

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* Translated by THY Taiwan International Law Offices.

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

orders adopted by the final court judge.

REASONING: The objectives of this application can be summarized as follows: the Ministry of the Interior gave approval to the Taipei City Government to alter the urban plan for a residential area, on the minor section of the Sichiko in Ching-Mei District, to an industrial zone to be used as a bitumen and cement-mixing site. The applicant claimed that the Ministry's decision, which had the consequence of disturbing the peace in the area and affecting the people's right to life, was an administrative act that infringed upon the Constitution. The administrative court refused to rule on its substance and dismissed the application by a ruling, Ruling No.103 (Ad.Ct., 1976), despite the applicant's institution of an administrative appeal, re-appeal and administrative litigation to question the constitutionality of the laws cited in the Ruling. The administrative court did not regard the competent authority's alteration of the urban plan as a person-specific administrative measure and thus barred the people from initiating administrative litigations against it by

解釋理由書：本件聲請解釋意旨略稱：內政部核准台北市政府將景美區溪子口小段都市主要計劃之住宅區變更為機關用地，並用以設置瀝青混凝土拌合場，破壞環境安寧，影響人民生存權利，係違背憲法之行政處分，經訴願、再訴願，並提起行政訴訟，行政法院不為實體之審理，而以裁定駁回（六十五年度裁字第一〇三號），認該項裁定適用法律有牴觸憲法之疑義等情。查主管機關變更都市計畫，行政法院認非屬於對特定人所為之行政處分，人民不得對之提起行政訴訟，不為實體之審理，而以程序不合裁定駁回，該項裁定，縱與同院五十九年判字第一九二號判例有所未合，亦僅係能否依法聲請再審以資救濟，尚不發生確定終局裁判適用法律或命令是否牴觸憲法問題。

dismissing the application on procedural grounds with a ruling, without reviewing and analyzing its substance. Although the said Ruling may be inconsistent with Judgment P.T. No.192 (Ad.Ct., 1970) rendered by the same court, it only raises the question of whether the law permits application for relief. It does not raise questions of the constitutionality of the laws or orders cited by the final court judge.