

## J. Y. Interpretation No.153 (July 7, 1978) \*

**ISSUE:** Where there is an appeal against the ruling without the payment of court costs, and the presiding judge immediately dismisses the appeal by a ruling without fixing a period and ordering the defects to be amended within such period, is there any issue of whether the application of laws or regulations violates the Constitution if the said ruling becomes final?

### **RELEVANT LAWS:**

Article 16 of the Constitution (憲法第十六條) ; Paragraph 1 of Article 121 of the Code of Civil Procedure (民事訴訟法第一百二十一條第一項) ; Precedent T.K.T. No. 242 (Sup. Ct. 1961) (最高法院五十年台抗字第二四二號民事判例) .

### **KEYWORDS :**

right of suit (訴訟權) , irrevocable final decision (確定終局裁判) , substantial certainty effect (實體上確定力) .\*\*

**HOLDING:** If there is an appeal against the ruling without the payment of court costs, the presiding judge shall fix a period and order the defects to be amended within such period, and shall not immediately dismiss the appeal by a rul-

**解釋文：**提起抗告，未繳納裁判費者，審判長應定期命其補正，不得逕以裁定駁回，最高法院五十年台抗字第二四二號判例，雖與此意旨不符，惟法院就本案訴訟標的未為裁判，當事人依法既得更行起訴，則適用上開判例之

\* Translated by Jer -Shenq Shieh.

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

ing. Although Precedent T.K.T. No. 242 (Sup. Ct. 1961) is not in accordance with the above-mentioned opinion, since courts of each grade did not adjudicate on the subject matter of an action in the present case, according to the laws the parties may still bring the same action for remedies again. Thus, this irrevocable ruling applying the above Precedent is not a matter of whether the laws or regulations applied by an irrevocable final decision violate the Constitution or not.

**REASONING:** The point of this petition may be briefly stated as follows. There was a case of a dispute over a pension payment between the petitioner and the Taiwan Power Company. The petitioner was not content with the ruling of dismissal of the case by the court of the first grade, and appealed against the ruling. Because the petitioner failed to pay the court costs, the court of first appeal immediately dismissed the appeal without an order to amend it. The ruling by the court of first appeal was appealed as well; the Supreme Court applied the Precedent T.K.T. No. 242 (Sup. Ct. 1961), and there-

確定裁定，尚不發生確定終局裁判所適用之法律或命令是否抵觸憲法問題。

**解釋理由書：**本件聲請意旨略稱：聲請人與台灣電力股份有限公司清償退休金事件，不服第一審法院駁回其訴之裁定，提起抗告，未繳納裁判費，第二審法院未命補正，逕以裁定駁回。經提起再抗告，最高法院援引五十年台抗字第二四二號判例，亦以同一理由裁定駁回，使其訴訟權遭受侵害且有違憲疑義等情，聲請解釋。

fore dismissed this appeal for the same reason. The petitioner asserted that the ruling by the Supreme Court had infringed upon his right of instituting legal proceedings and could be unconstitutional, so he petitioned for an interpretation.

According to Article 16 of the Constitution, "The people shall have the right of presenting petitions, administrative appeals, or instituting legal proceedings." As for the so-called right of instituting legal proceedings, it is a judicial beneficiary right for the people, and it means not only that people may file lawsuits when they believe their rights have been infringed upon, but also that the court shall particularly regard this right, facilitate people's complaints, and shall not cause any hindrance to it. And this is why Paragraph 1 of Article 121 of the Code of Civil Procedure provides: "If the petition or the written statement is not made in proper form or is defective in other respects, the presiding judge shall fix a period and order the defects to be amended within such period." If there is an appeal against the ruling without the payment of court costs,

查人民有請願、訴願及訴訟之權，為憲法第十六條所明定，所謂訴訟權，乃人民司法上之受益權，不僅指人民於其權利受侵害時，得提起訴訟而已，法院尤應多加尊重，便利其申訴之機會，不得予以妨礙，民事訴訟法第一百二十一條第一項規定「書狀不合程式或有其他欠缺者，審判長應定期間命其補正」即本此意。提起抗告，未繳納裁判費用者，其情形尚非不可補正，審判長應定期命抗告人補正，不得逕以裁定駁回。最高法院五十年度台抗字第二四二號判例謂：「提起抗告之未繳納裁判費用者，可不定期命其補正」。雖與上開意旨不符，惟各級法院就本案訴訟標的既未予裁判，即於當事人之請求事項，不生實體上之確定力，依法自非不得更行起訴，以求救濟，則適用上開判例之確定裁定，尚不發生確定終局裁判所適用之法律或命令是否抵觸憲法問題。

since it still could be amended, the presiding judge shall fix a period and order the defects to be amended within such period, and shall not immediately dismiss the appeal by a ruling. Precedent T.K.T. No. 242 (Sup. Ct. 1961) reveals: "If there is an appeal against the ruling without the payment of court costs, the court may decide against fixing a period and ordering the defects to be amended within such period." Although this Precedent is not in accordance with the above-mentioned opinion, since courts in each grade did not adjudicate on the subject matter of an action in the present case, which means there will not be any substantial certainty effect on the matter, according to the laws the parties may still bring the same action for remedies again. Thus, this irrevocable ruling applying the above Precedent is not a matter of whether the laws or regulations applied by an irrevocable final decision violate the Constitution or not.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。