J. Y. Interpretation No.154（September 29, 1978）*

ISSUE: The Administrative Court in its precedent held that a party in an administrative litigation may not petition for a retrial on the same facts and causes over which an initial motion for a retrial was denied. Does the said precedent violate the constitutional protection of the people's rights to litigate, thus being null and void?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution（憲法第十六條、第二十三條）; Article 4, Paragraph 1, Subparagraph 2 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條第一項第二款）; Article 25 of the Court Organic Act（法院組織法第二十五條）.

KEYWORDS:

petition for rehearing（聲請再審）, abuse of litigation（濫訴）, clearly erroneous in the application of law（適用法律顯有錯誤）, Conference of the Alteration of Judicial Precedents（變更判例會議）.**

HOLDING: In accordance with the Precedent of (46) Tsai Tze No. 41 of the Administrative Court, "once the

解釋文：行政法院四十六年度裁字第四十一號判例所稱：「行政訴訟之當事人對於本院所為裁定，聲請再

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petition for a retrial is denied, the petitioner in the administrative litigation may not petition for another retrial based on that same denial." The purpose is to prevent abuse of litigation, which does not interfere with the proper administration of the right to litigate and, therefore, does not violate the Constitution.

審，經駁回後，不得復以同一原因事實，又對駁回再審聲請之裁定，更行聲請再審。」旨在遏止當事人之濫訴，無礙訴訟權之正當行使，與憲法並無牴觸。

REASONING: The petitioner in this case argued, briefly, that he leased farmland from the lessor Ji-shen Yeh. In the process of completing the 375 leasing agreement,[1] the Yang-mei Township Administrative Office of Taiwan Province erroneously recorded the lessor of two parcels of land as Ji-rei Yeh, and failed to record the remaining three parcels of land. Because Ji-shen Yeh had already passed away and it was impossible to correct the errors jointly, the petitioner filed a unilat-

解釋理由書：本件聲稱意旨略稱：聲請人承租葉吉顯之耕地，臺灣省桃園縣楊梅鎮公所辦理訂立三七五租約時，將其中兩筆之出租人誤載為葉吉瑞，並漏列其餘三筆，因葉吉顯死亡，不能協同更正，乃依照規定單獨聲請辦理，該公所置之不理，經訴願，再訴願並提起行政訴訟，為行政法院六十六年度判字第十七號判決駁回。經以「適用法令顯有錯誤」為理由，訴請再審，為同院同年度裁字第九十九號裁定駁回；復以「不適用法令」為理由，對該裁定

[1] The Legislative Yuan in 1951 enacted a special legislation entitled "Statute for the Reduction of Farm Rent to 37.5%" by which no landlord of any farmland may collect more than 37.5% of the overall value of the harvest from a farmer/tenant in a given year as the total collectable lease payment. This measure was designed to protect farmers from unfair or unconscionable terms in the lease and use of farmland. Note that the Nationalist Party (or Kuomintang, KMT) lost to the Chinese Communist Party in the civil war and the control over Mainland China in 1949. KMT subsequently concluded that one of the main reasons in losing the civil war was its failure in farmland reform, hence the support of farmers.

eral petition to that Administrative Office but to no avail. The petitioner then filed an administrative appeal, re-appeal and the Administrative Court eventually dismissed the case in (66) Pan Tze No. 17 Judgment. The petitioner then filed a motion for a retrial on the ground that the judgment was "clearly erroneous in the application of law," but the same court dismissed the motion in (66) Tsai Tze No. 99 Judgment. The petitioner again moved for a retrial on the ground of "inapplicable law." Following the Precedent of (46) Tsai Tze No. 41 of the Administrative Court, the Administrative Court again dismissed the petitioner's motion in its (66) Tsai Tze No. 159 Judgment. The petitioner then requested an interpretation in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act on the ground that [the judgments] interfered with the petitioner's right to litigate and contradicted Article 16 of the Constitution.

聲請再審，亦為同院同年度裁字第一五九號裁定適用同院四十六年度裁字第四十一號判例駁回，妨害聲請人之訴訟權，有牴觸憲法第十六條之疑義，爰依司法院大法官會議法第四條第一項第二款之規定聲請解釋。

The applicable "laws or regulations" concerning the finality of the judgment, in accordance with Article 4, Paragraph 1,

按司法院大法官會議法第四條第一項第二款關於確定終局裁判所適用之「法律或命令」，乃指確定終局裁判作

Subparagraph, of the Grand Justices Council Adjudication Act, means the laws or regulations or their equivalents based on which the finality of the judgment is rendered. Furthermore, Article 25 of the Court Organic Act provides, "[if] a chamber of the Supreme Court should render legal opinions that differ from existing legal precedents, the President shall submit [the case] to the President of the Judicial Yuan who in turn shall call forth the Conference of the Alteration of Judicial Precedents to determine [the outcome of the opinion]." Article 24 of the Directives for the Operational Procedure of Administrative Court [also] provides, "[if] a chamber renders different legal opinions from existing legal precedents, the President shall submit [the case] to the President of the Judicial Yuan who in turn shall call forth the Conference of the Alteration of Judicial Precedents to determine [the outcome of the opinion] " (Currently Article 38, Paragraph 1). Suffice it to say that barring the modification or alteration process, the legal precedents of the Supreme Court and Administrative Court shall have binding effect and can be the

為裁判依據之法律或命令或相當於法律或命令者而言。依法院組織法第二十五條規定：「最高法院各庭審理案件，關於法律上之見解，與本庭或他庭判決先例有異時，應由院長呈由司法院院長召集變更判例會議決定之。」及行政法院處務規程第二十四條規定：「各庭審理案件關於法律上之見解，與以前判例有異時，應由院長呈由司法院院長召集變更判例會議決定之。」（現行條次為第三十八條第一項）足見最高法院及行政法院判例，在未變更前，有其拘束力，可為各級法院裁判之依據，如有違憲情形，自應有司法院大法官會議法第四條第一項第二款之適用，始足以維護人民之權利，合先說明。

bases for courts at all levels in rendering their respective judgments. Article 4, Paragraph 1, Section 2, of the Grand Justices Council Adjudication Act is applicable if and when the issue of constitutionality is present so that the rights of the people can be maintained.

The right to litigate, as indicated in Article 16 of the Constitution, is a judicial entitlement of the people, which refers to the right of the people to file suits or complaints when their rights are infringed upon and the courts are obligated to review and render judgments in accordance with the law. However, such rights may be restricted in accordance with Article 23 of the Constitution if it is necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare. Once a judgment is finalized, all parties must abide by the ruling that may not be easily altered or modified. Consequently, the grounds for a retrial are limited to those expressly provided by statutes. The Precedent of (46) Tsai Tze No. 41 of the Administrative Court, "once

憲法第十六條所謂人民有訴訟之權，乃人民司法上之受益權，指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言。惟此項權利，依憲法第二十三條規定，為防止妨害他人自由，避免緊急危難，維持社會秩序，或增進公共利益所必要者，得以法律限制之。裁判確定後，當事人即應遵守，不容輕易變動，故再審之事由，應以法律所明定者為限。行政法院四十六年度裁字第四十一號判例所稱：「行政訴訟之當事人對於本院所為裁定，聲請再審經駁回後，不得復以同一原因事實，又對駁回再審聲請之裁定，更行聲請再審。」係對於當事人以原裁定之再審事由，再對認該事由為不合法之裁定聲請再審，認為顯不合於行政訴訟法之規定者而言，旨在遏止當事人之濫訴，無礙訴訟權之正當行使，與憲

the petition for a retrial is denied, the petitioner in the administrative litigation may not petition for another retrial based on that same denial," is meant to deal with the situation in which a party petitions for a retrial over the initial retrial judgment because the latter was unlawful and in violation of the Administrative Proceedings Act. The purpose is to prevent abuse of litigation, which does not interfere with the proper administration of the right to litigate and, therefore, does not violate the Constitution.

法並無牴觸。

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。