

## J. Y. Interpretation No.156 ( March 16, 1979 ) \*

**ISSUE:** Does the competent authority's alteration of an urban plan constitute an administrative act, thus justifying the individuals whose rights and interests are so affected to institute appeals or administrative litigations as a form of relief?

**RELEVANT LAWS:**

Articles 15 and 172 of the Constitution ( 憲法第十五條及第一百七十二條 ) ; Article 4 of the Grand Justices Council Adjudication Act ( 司法院大法官會議法第四條 ) ; Article 26 of the Urban Planning Act ( 都市計畫法第二十六條 ) ; Articles 1 and 2 of the Administrative Appeal Act ( 訴願法第一條及第二條 ) ; Article 1 of the Administrative Proceedings Act ( 行政訴訟法第一條 ) .

**KEYWORDS:**

urban planning ( 都市計畫 ) , administrative act ( 行政處分 ) , ruling ( 裁定 ) , precedent ( 判例 ) , appeal ( 訴願 ) , administrative litigation ( 行政訴訟 ) .\*\*

**HOLDING:** Alteration of an urban plan by the competent authority is a unilateral administrative act which, if it directly abridges the rights and privileges

**解釋文：**主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其

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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.

of people within a certain region or intensifies their burdens, has the characteristics of an administrative act. In the event the said action leads to the improper or unlawful impediment of the rights of a certain individual or an identifiable group of individuals, the said individual(s) shall be permitted to institute an appeal or administrative litigation as a relief. The foregoing shall supplement the explanation in this Yuan's Interpretation No.148.

**REASONING:** The application at hand has been ruled by this Yuan's Interpretation No. 148 as follows: "The competent authority's alteration of an urban plan is not regarded as a person-specific administrative act 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 the issues as to the constitutionality of the laws or orders adopted by the final court judge." The applicant applied to the administrative court for a re-

因而致特定人或可得確定之多數人之權益遭受不當或違法之損害者，自應許其提起訴願或行政訴訟以資救濟，本院釋字第一四八號解釋應予補充釋明。

**解釋理由書：**本件前經本院大法官會議釋字第一四八號解釋：「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」。聲請人等據以向行政法院聲請再審。復經行政法院以原裁定與該院判例並無不合等理由，從程序上予以駁回。聲請人等乃再請本院解釋。

trial in reliance on the foregoing, and requested an interpretation from this Yuan after the administrative court dismissed the case on procedural matters, based on its finding that the original ruling was not inconsistent with the court's precedents.

The Resolution of the 607th Council of Grand Justices Coouncil states: "Applications by the people for interpretations supplementing this Yuan's interpretation on their initial applications, once determined to be based on reasonable cause, shall be handled and interpreted in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act." The court should render a supplementary interpretation in answer to the application at hand pursuant to the abovementioned Resolution.

Alteration of an urban plan by the competent authority is a unilateral administrative act which, if it directly abridges the rights and privileges of people within a certain region or intensifies their burdens, has the characteristics of an administrative act. In the event the said action

按本院大法官會議第六百零七次會議議決：「人民對於本院就其聲請解釋案件所為之解釋，聲請補充解釋，經核確有正當理由應予受理者，得依司法院大法官會議法第四條第一項第二款之規定，予以解釋。」本件聲請，依照上項決議，認為應予補充解釋。

主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其因而是致使特定人或可得確定之多數人之權益遭受不當或違法之損害者，依照訴願法第一條、第二條第一項及行政訴

leads to the improper or unlawful impediment of the rights of a certain individual or an identifiable group of individuals, the said individual(s) shall be permitted to institute an appeal or administrative litigation as a relief in accordance with Article 1 and Article 2, Paragraph 1, of the Administrative Appeal Act and Article 1 of the Administrative Proceedings Act. The foregoing is consistent with the objectives of the people's right of appeal and of administrative litigation protected by the Constitution. Individual alterations to this urban plan are different from the draft and announcement of the urban plan and the necessary alterations, by the drafting authority pursuant to its regular full analysis over the five-year period stipulated by the regulations, which do not directly impair the rights or add burden to the people within the region. Judgment P.T. No.192 (Ad.Ct., 1970) states: "Unilateral administrative acts, whether they are targeted at a specific individual or a group of relevant individuals, by the government pursuant to its right to administration and in response to factual matters cannot be said to be non-administrative

訟法第一條之規定，自應許其提起訴願或行政訴訟，以資救濟。始符憲法保障人民訴願權或行政訴訟權之本旨。此項都市計畫之個別變更，與都市計畫之擬定、發布及擬定計畫機關依規定五年定期通盤檢討所作必要之變更（都市計畫法第二十六條參照），並非直接限制一定區域內人民之權益或增加其負擔者，有所不同。行政法院五十九年判字第一九二號判例，認為：「官署依其行政權之作用，就具體事件所為之單方行政行為，發生公法上具體效果者，不問其對象為特定之個人或某一部份有關係之人民，要不能謂非行政處分。人民如因該行政處分致權利或利益受有損害，自得提起訴願以求救濟；此與官署對於一般人民所為一般性之措施或雖係就具體事件，而係為抽象之規定，不發生公法上具體之效果，影響其權利或利益者不同。本件被告官署變更已公布之都市計畫，……原告以此項變更計畫，將使其所有土地降低其價值，損害其權益，對被告官署此項變更都市計畫之行為，提起訴願，自非法所不許」。其意旨，與此尚屬相符。而同院受理聲請人等因變更都市計畫所提起之行政訴訟事件有無理由，未為實體上之審究，即以主管機關變更都市計劃非屬於對特定人所為之

acts if the said actions produce tangible results in the context of public law. People whose rights or interests have been impaired by the said administrative acts may appeal for relief. The foregoing is different from the general measures imposed by the government on the public or abstract rules on concrete matters that do not produce tangible results in the context of public law or impact on their rights or interests. In this case, the defendant public authority altered the urban plan that it had announced ...the plaintiff's appeal, against the defendant public authority's alteration plan, based on the argument that the said alteration will diminish the value of its land thereby injuring its interests, is not prohibited by the law." The objective of the foregoing is consistent with this Interpretation. The said Yuan, when handling the case at hand, did not consider or determine the substance of this administrative litigation matter concerning the alteration of an urban plan. Rather, the same Court dismissed the applicant's claim, by its Ruling No.103 (Ad.Ct., 1976), based on the reasoning that since the relevant authority's alteration of an urban plan is

行政處分，人民對之不得提起訴願或行政訴訟等理由，將聲請人等之請求以六十五年度裁字第一〇三號裁定予以駁回，則與上述意旨有所未合。本院釋字第一四八號解釋，應予補充釋明。

not an administrative act targeted at specific individuals, the people may not initiate appeals or administrative litigations against the said act. The Ruling is incompatible with this Yuan's reasoning set forth above. Thus, the reasoning shall supplement this Yuan's Interpretation No.148.

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。