

J. Y. Interpretation No.162 (April 25, 1970) *

ISSUE: 1.Is Article 81 of the constitution applicable to the Chief Judge of the Administrative Court or the Chairperson of the Commission on the Disciplinary Sanction of Functionaries?

2.Is a judge of the Administrative Court or a commissioner of the Commission on the Disciplinary Sanction of Functionaries considered as a “judge” under the Constitution?

RELEVANT LAWS:

Articles 77, 80 and 81 of the Constitution (憲法第七十七條, 第八十條及第八十一條) ; J.Y. Interpretation No. 13 (司法院釋字第十三號解釋) .

KEYWORDS:

the President of the Administrative Court (行政法院院長) , the Chief Commissioner of the Public Functionaries Disciplinary Commission (公務員懲戒委員會委員長) , presiding judge (庭長) , deliberation (審議) , disciplinary action (懲戒案件) , tenure (終身職) , the supreme judicial agency of the country (國家最高司法機關) , civil cases (民事訴訟) , criminal cases (刑事訴訟) , administrative cases (行政訴訟) , dismissal (免職) , suspension or discharge of official duties (停職) , incompetency (不能勝任職務) , the qualification of a judge (法官任用資格) .**

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

HOLDING: 1. The President of the Administrative Court and the Chief Commissioner of the Public Functionaries Disciplinary Commission are the administrative heads of the respective agencies. Therefore, the provisions set forth in Article 81 of the Constitution are not applicable to the President of the Administrative Court or the Chief Commissioner of the Public Functionaries Disciplinary Commission.

2. The adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission have authority to adjudicate or deliberate administrative cases independently and impartially pursuant to the law without political interference. Therefore, the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission should be considered as judges under the Constitution in accordance with Articles 78 and 80 of the Constitution. The purpose of granting tenure to judges under Article 81 of the Constitution is to allow judges to adjudicate or deliberate cases

解釋文：一、行政法院院長、公務員懲戒委員會委員長，均係綜理各該機關行政事務之首長，自無憲法第八十一條之適用。

二、行政法院評事、公務員懲戒委員會委員，就行政訴訟或公務員懲戒案件，分別依據法律，獨立行使審判或審議之職權，不受任何干涉，依憲法第七十七條、第八十條規定，均應認係憲法上所稱之法官。其保障，應本發揮司法功能及保持法官職位安定之原則，由法律妥為規定，以符憲法第八十一條之意旨。

independently and impartially pursuant to the law without political interference. The respective entitlements granted to the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission shall be properly regulated by law to allow them to exercise judicial functions and to maintain job stability in compliance with the intention and purpose of Article 81 of the Constitution.

REASONING: 1. The President of the Administrative Court and the Chief Commissioner of the Public Functionaries Disciplinary Commission are the administrative heads of the respective agencies. The President of the Administrative Court, who also serves as an adjudicator, may be required by his/her position to serve as a presiding judge. The Chief Commissioner of the Public Functionaries Disciplinary Commission does not participate in the deliberation of a disciplinary action against a civil servant. Neither the President of the Administrative Court nor the Chief Commissioner of the Public Functionaries Disciplinary omission is consid-

解釋理由書：一、行政法院院長、公務員懲戒委員會委員長，均係綜理各該機關行政事務之首長。行政法院院長兼任評事，並得充庭長，乃擔任院長職務之結果；公務員懲戒委員會委員長，並不參與懲戒案件之審議，均非憲法第八十條所稱之法官，無終身職之可言。故行政法院院長、公務員懲戒委員會委員長，自無憲法第八十一條之適用。

ered to be a judge under Article 80 of the Constitution and is not entitled to tenure. Therefore, the provisions set forth in Article 81 of the Constitution are not applicable to the President of the Administrative Court or the Chief Commissioner of the Public Functionaries Disciplinary Commission.

2. Article 77 of the Constitution provides that the Judicial Yuan is the supreme judicial agency of the country, adjudicating civil, criminal or administrative cases and civil servant disciplinary actions. The adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission have authority to adjudicate or deliberate administrative cases independently and impartially pursuant to the law without political interference. Therefore, the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission should be considered as judges under the Constitution in accordance with Article 80 of the Constitution. J. Y. Interpretation No. 13 has clarified that a judge under Article 81

二、司法院為國家最高司法機關，掌理民事、刑事、行政訴訟之審判及公務員之懲戒。憲法第七十七條定有明文。行政法院評事，公務員懲戒委員會委員，就行政訴訟或公務員懲戒案件，分別依據法律，獨立行使審判或審議之職權，不受任何干涉，依同法第八十條規定，均應認係憲法上所稱之法官。而憲法第八十一條所稱之法官，係指同法第八十條之法官而言，業經本院釋字第十三號解釋有案。惟憲法第八十一條「法官為終身職」之保障規定，固在使法官能依法獨立行使職權，無所顧忌，但非謂法官除有同條所定之免職、停職等情事外，縱有體力衰弱致不能勝任職務者，亦不能停止其原職務之執行而照支俸給，故行政法院評事及公務員懲戒委員會委員之保障，應本發揮司法功能及保持法官職位安定之原則，由法

of the Constitution is the same as a judge prescribed in Article 80 of the Constitution. The purpose of granting tenure to judges under Article 81 of the Constitution is to allow judges to adjudicate or deliberate cases independently and impartially pursuant to the law without political interference. However, judges entitled to tenure are not exempted from dismissal, suspension or discharge of official duties due to incompetency. Thus the entitlements granted to the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission shall be properly regulated by law to allow them to exercise the judicial functions and to maintain the job stability in compliance with the intention and purpose of Article 81 of the Constitution. To ensure that judges properly perform their official duties, their qualifications shall also be regulated by law accordingly.

Justice Shih-Ron Chen filed dissenting opinion in part.

律妥為規定，以符憲法第八十一條之意旨，至法官任用資格應如何求其適當，俾能善盡職責，乃屬立法時考慮之問題，併予敘明。

本號解釋陳大法官世榮提出一部不同意見書。