

## J. Y. Interpretation No.169 ( July 31, 1981 ) \*

**ISSUE:** Is a judicial judgment based on an alleged unconstitutional administrative ordinance that had been repealed before the cause of action accrued unconstitutional?

**RELEVANT LAWS:**

Article 172 of the Constitution ( 憲法第一百七十二條 ) ; Article 8 of the Public Functionaries Retirement Act ( 公務人員退休法第八條 ) .

**KEYWORDS:**

Taiwan Forestry Bureau ( 臺灣省林務局 ) .\*\*

**HOLDING:** At the time the cause of petition occurred, if the alleged unconstitutional administrative ordinance by the petitioner had already been repealed, even if based on which a court has already rendered a judgment, the issue is whether the petition may seek redress or remedy in accordance with the litigation procedure, not whether there is any contradiction with the Constitution.

**解釋文：**聲請人指為違憲之命令，於其請求裁判之事項發生時，業經廢止者，該命令既已失其效力，縱令法院採為裁判之依據，亦僅係可否依訴訟程序請求救濟，尚不發生是否牴觸憲法問題。

---

\* Translated by Professor Andy Y. Sun.

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

**REASONING:** In summary, the petitioner claims that he filed a request for retirement in 1974 to the Jade Mountain District Office of the Taiwan Forestry Bureau. Yet the pension he received did not include a certain “professional supplement,” an item deleted in accordance with Article 11 of the Measures on the Adjustment of Compensation to Military, Government and Education Personnel of 1971, promulgated by the Executive Yuan. The Supreme Court, in its (67) Tai Shun No. 1464 Judgment, ruled against the petitioner by relying on the same provision. Now the petitioner files the present petition claiming this regulation contradicts Article 8 of the Public Functionaries Retirement Act and Article 172 of the Constitution.

That ordinances, regulations, or rules contradictory to the Constitution or laws shall be null and void, as provided in Article 172 of the Constitution, means those regulations still in effect whose content contradicts the Constitution or laws. The regulation in question here was repealed as of July 1, 1973, in accordance with Tai

**解釋理由書：**本件聲請解釋意旨略稱：聲請人於民國六十三年間，向台灣省林務局玉山林區管理處聲請退休，該處所發給之退休金，未將「專業補助費」列入退休俸額內計算，係依行政院令頒「六十年度軍公教人員待遇調整辦法」第十一條辦理，經訴請給付，最高法院六十七年度台上字第一四六四號判決亦適用該辦法第十一條為聲請人敗訴之判決確定。該項命令，有牴觸公務人員退休法第八條及憲法第一百七十二條之疑義，聲請解釋。

查憲法第一百七十二條所稱命令與憲法或法律牴觸者無效，係指命令尚屬有效，而其內容牴觸憲法或法律者而言。上開辦法，業經行政院於六十二年六月十五日以台六十二人政肆字第一九五〇〇號函令自六十二年七月一日起廢止，並經台灣省政府於同月二十七日以府人丙字第六八七六五號函轉知所屬機

(62) Ren Cheng Si Tze No. 19500 Letter, issued by the Executive Yuan on June 15, 1973, and transmitted to all subordinate agencies through the Taiwan Provincial Government by its Fu Ren Bin Tze No. 68765 Letter on June 27. Since this regulation was repealed prior to the petitioner's request for retirement, the calculation of his pension was not based on that regulation, which can be found in Taiwan Forestry Bureau's (70) Lin Ren Tze No. 24203 Letter of Response, issued on June 18, 1981. Therefore, the alleged unconstitutional regulation was repealed and had lost its effect before the cause of action was raised. Even though a court has already rendered a judgment based on this regulation, the issue is whether the petition may seek redress or remedy in accordance with the litigation procedure, not whether there is any contradiction with the Constitution.

關，該辦法既已於聲請人退休前廢止，其退休金之計發，亦非依該辦法辦理，有台灣省政府農林廳林務局於七十年六月十八日七十林人字第二四二〇三號復函可稽。是聲請人指為違憲之上述命令，於其請求裁判之事項發生時，業經廢止，失其效力，縱令法院採為裁判之依據，亦僅係可否依訴訟程序請求救濟，尚不發生是否牴觸憲法問題。