J. Y. Interpretation No.177（November 5, 1982）*

ISSUE: Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure permits initiation of an action for retrial if the final judgment is based upon "apparently erroneous application of law or regulation." Does the said provision cover the situation where the Court consciously or unconsciously fails to apply the relevant provision of law in rendering its final judgment in order to implement the protection of the rights and interests guaranteed by the Constitution?

RELEVANT LAWS:

Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure（民事訴訟法第四百九十六條第一項第一款）; 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）; Precedent T.T.T. No.170 (Sup. Ct 1971)（最高法院六十年台再字第一七〇號判例）.

KEYWORDS:

action for retrial（再審）, apparent erroneous application of provisions of law（適用法規顯有錯誤）.**

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HOLDING: The meaning of "apparent erroneous application of provisions of law" described in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure shall include the case of a simple failure to apply relevant provisions of law in the rendition of a final and binding judgment, where such failure presents material impact on the outcome of said judgment. In such instance, the protection of people's rights and interests guaranteed by the Constitution should dictate that the party thus aggrieved be permitted to initiate an action for retrial. The portion of the Supreme Court opinion in its Precedent T.T.T. No.170 (Sup. Ct., 1971) insofar as it is inconsistent with the above view, shall no longer be upheld. On the other hand, where such simple failure to apply relevant provisions presented no prejudicial effect on the outcome of the judgment, no retrial should be permitted. As such, said Supreme Court precedent should not be deemed as contrary to the Constitution.

解釋文：確定判決消極的不適用法規，顯然影響裁判者，自屬民事訴訟法第四百九十六條第一項第一款所定適用法規顯有錯誤之範圍，應許當事人對之提起再審之訴，以貫徹憲法保障人民權益之本旨。最高法院六十年度台再字第一七〇號判例，與上述見解未洽部分，應不予援用。惟確定判決消極的不適用法規，對於裁判顯無影響者，不得據為再審理由，就此而言，該判例與憲法並無牴觸。

An Interpretation given by this Yuan in response to a petition shall also be ap-

本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力。

plicable with respect to the legal action of the petitioner, for which the original petition was made.

REASONING: In its Precedent T.T.T.No.170, (Sup. Ct., 1971), the Supreme Court held that, "apparent erroneous application of provisions of law' provided in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure refers to the case where application of certain legal provisions in the rendition of an final and binding judgment is manifestly erroneous under laws or manifestly contrary to any of prevailing Interpretations by the Judicial Yuan or Grand Justices Council or currently valid Precedents of this Yuan but does not include the case of simple failure to apply certain provisions. This can be deduced from a textual interpretation of said Article 496, further supported by reference to Article 468 of said Act in which 'failure to apply legal provisions' and 'improper application of legal provisions' are expressly listed side by side." If the above opinion prevails, a party aggrieved would be barred from pursuing the relief of retrial with respect

解釋理由書：最高法院六十年度台再字第一七〇號判例稱：「民事訴訟法第四百九十六條第一項第一款所謂適用法規顯有錯誤者，係指確定判決所適用之法規顯然不合於法律規定，或與司法院現尚有效及大法官會議之解釋，或本院尚有效之判例顯然違反者而言，並不包括消極的不適用法規之情形在內，此觀該條款文義，並參照同法第四百六十八條將判決不適用法規與適用不當二者並舉之規定自明。」依此見解，當事人對於消極的不適用法規之確定裁判，即無從依再審程序請求救濟。

to a final and binding judgment rendered in relation to a simple failure to apply relevant provisions.

"Apparent erroneous application of provisions of law" shall refer to the case where certain legal provisions which should have been applied were not applied and certain legal provisions which should not have been applied were instead erroneously applied. Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure was amended in reference to the Grounds for Second Appeal prescribed in the Code of Civil Procedure and provisions for Extraordinary Appeal prescribed in the Code of Criminal Procedure, for ensuring due protection of rights and interests under the Constitution, whereas the statutory ground for granting permission to Second Appeal in a civil matter or Extraordinary Appeal in a criminal case is on the basis of a judgment or an irrevocable judgment being rendered contrary to provisions of law. Such judgment rendition contrary to laws shall mean both failure to apply provisions of law and improper application of provisions of law. Therefore,

查判決適用法規顯有錯誤，係指應適用之法規未予適用，不應適用之法規誤予適用者而言，民事訴訟法第四百九十六條第一項第一款，原係參照有關民事訴訟法第三審上訴理由及刑事訴訟法非常上訴之規定所增設，以貫徹憲法保障人民權益之本旨。按民事第三審上訴及刑事非常上訴係以判決或確定判決違背法令為其理由，而違背法令則兼指判決不適用法規及適用不當而言，從而上開條款所定：「適用法規顯有錯誤者」，除適用法規不當外，並應包含消極的不適用法規之情形在內。

"apparent erroneous application of provisions of law" in said Article 496 shall also include within its meaning "simple failure to apply provisions of law," in addition to "improper application of provisions of law."

However, only if a simple failure to apply provisions of law has resulted in apparent impact to the outcome of a judgment may a party aggrieved be permitted to seek the relief of retrial for safeguarding his or her interests. On the other hand, if such a failure had presented no prejudicial effect on the judgment, no protection should then be necessary, and accordingly, no such ground for retrial may be available.

In conclusion, the meaning of "apparent erroneous application of provisions of law" described in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure shall include the case of a simple failure to apply relevant provisions of law in the rendition of an irrevocable judgment, where such failure presents material impact on the outcome of said

惟確定判決消極的不適用法規，須於裁判之結果顯有影響者，當事人為其利益，始得依上開條款請求救濟。倘判決不適用法規而與裁判之結果顯無影響者，即無保護之必要，自不得據為再審理由。

綜上所述，確定判決消極的不適用法規，顯然影響裁判者，自屬民事訴訟法第四百九十六條第一項第一款所定適用法規顯有錯誤之範圍，應許當事人對之提起再審之訴，以貫徹憲法保障人民權益之本旨，最高法院六十年台再字第一七〇號判決，與上述見解未洽部分，應不予援用。惟確定判決消極的不適用法規，對於裁判顯無影響者，不得

judgment. In such instance, protection of the people's rights and interests guaranteed by the Constitution should dictate that the party thus aggrieved be permitted to initiate an action for retrial. The portion of the Supreme Court opinion in its Precedent T.T.T.No.170 (Sup. Ct., 1971), insofar as it is inconsistent with the above view, shall no longer be upheld. On the other hand, where such simple failure to apply relevant provisions presented no prejudicial effect on the outcome of the judgment, no retrial should be permitted. As such, said Supreme Court precedent should not be deemed as contrary to the Constitution.

據為再審理由，就此而言，該判例與憲法並無牴觸。

Furthermore, in case an Interpretation, given in response to a petition, is favorable to the petitioner, pursuant to Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act, permitting the people's petition for Interpretation, said Interpretation shall be applicable to the petitioner's case for which the petition was made; as such, the present petitioner may seek for relief pursuant to statutory procedure.

次查人民聲請解釋，經解釋之結果，於聲請人有利益者，為符合司法院大法官會議法第四條第一項第二款，許可人民聲請解釋之規定，該解釋效力應及於聲請人據以聲請之案件，聲請人得依法定程序請求救濟。

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。