

J. Y. Interpretation No.185 (January 27, 1984) \*

**ISSUE:** Concerning the statute or ordinance upon which a final and irrevocable judgment relies or the opinion expressed on such statute or ordinance wherein is held unconstitutional by the Grand Justices Council upon a petition by the interested person for interpretation, is the party against whom such final and irrevocable judgment is entered entitled to file for a retrial or an extraordinary appeal on the basis of said interpretation?

**RELEVANT LAWS:**

Articles 78, 171, Paragraph 1 and 172 of the Constitution (憲法第七十八條、第一百七十一條第一項及第一百七十二條); Code of Civil Procedure (民事訴訟法); Code of Criminal Procedure (刑事訴訟法); Administrative Proceedings act (行政訴訟法) .

**KEYWORDS:**

retrial (再審), extraordinary appeal (非常上訴), mere differences in legal interpretations (法律見解歧異), erroneous application of law (適用法律錯誤) .\*\*

**HOLDING:** Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the

**解釋文：**司法院解釋憲法，並有統一解釋法律及命令之權，為憲法第七十八條所明定，其所為之解釋，自有

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

Constitution, and to provide uniform interpretations with respect to statutes and ordinances. The interpretations of the Judicial Yuan shall be binding upon every institution and person in the country, and each institution shall abide by the meaning of these interpretations in handling relevant matters. Prior precedents which are contrary to these interpretations shall automatically be nullified. In the case of a final and irrevocable judgment where the statute or ordinance or the interpretation of such statute or ordinance applied in rendering such judgment is deemed contrary to the Constitution pursuant to an interpretation rendered by this Judicial Yuan upon an application by the interested person for such an interpretation, the party against whom such final and irrevocable judgment is entered shall be entitled to file for a retrial or an extraordinary appeal on the basis of said interpretation, and this should not be construed as mere differences in legal interpretations. As such, any part of Precedent P.T. No.610 (Ad. Ct., 1973) contrary to this Interpretation shall cease to apply.

拘束全國各機關及人民之效力各機關處理有關事項，應依解釋意旨為之，違背解釋之判例，當然失其效力。確定終局裁判所適用之法律或命令，或其適用法律、命令所表示之見解，經本院依人民聲請解釋認為與憲法意旨不符，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由，已非法律見解歧異問題。行政法院六十二年判字第六一〇號判例，與此不合部分應不予援用。

**REASONING:** Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the Constitution, and to provide uniform interpretations with respect to statutes and ordinances. The intent is to have the Judicial Yuan assume the responsibility of clarifying and enunciating the correct meaning of the Constitution and statutes and ordinances. The interpretations thus rendered shall be binding upon every institution and person in the country, and each institution shall abide by the meaning of these interpretations in handling relevant matters. Prior precedents which are contrary to these interpretations shall automatically be nullified.

According to Article 171, Paragraph 1, and Article 172 of the Constitution, a statute is nullified if it is contrary to the Constitution and an ordinance is nullified if it is contrary to the Constitution or a statute. In the case of a final and irrevocable judgment where the statute or ordinance or the interpretation of such statute or ordinance applied in rendering such judgment is suspected of being contrary

**解釋理由書：**憲法第七十八條規定，司法院解釋憲法，並有統一解釋法律及命令之權，旨在使司法院負闡明憲法及法令正確意義之責，其所為之解釋，自有拘束全國各機關及人民之效力，各機關處理有關事項時，應依解釋意旨為之，違背解釋之判例，當然失其效力。

法律與憲法牴觸者無效，命令與憲法或法律牴觸者無效，為憲法第一百七十一條第一項及第一百七十二條所明定。確定終局裁判所適用之法律或命令，或其適用法律、命令所表示之見解發生有牴觸憲法之疑義，經本院依人民聲請解釋認為確與憲法意旨不符時，是項確定終局裁判即有再審或非常上訴之理由。蓋確定終局裁判如適用法規顯有錯誤或違背法令，得分別依再審、非常

to the Constitution, and then confirmed to be indeed contrary to the Constitution pursuant to an interpretation rendered by this Judicial Yuan upon an application by the interested person for such an interpretation, a ground for filing a retrial or an extraordinary appeal with respect to such final and irrevocable judgment then arises. It is expressly stipulated in the Code of Civil Procedure, the Code of Criminal Procedure and the Administrative Proceedings act and further interpreted by Interpretations No. 135 and 177 of this Judicial Yuan that if the application of laws in rendering a final and irrevocable judgment is manifestly erroneous or unlawful, the aggrieved party is entitled to file for retrial, extraordinary appeal or other legally prescribed remedy. Therefore, based upon the Interpretation by this Judicial Yuan, the party aggrieved by a judgment is entitled to seek retrial or other legally prescribed remedy after the publication of said Interpretation.

Precedent P.T. No.610 (Ad. Ct., 1973) states that, "Article 24 of the Administrative Proceedings act provides

上訴及其他法定程序辦理，為民、刑事訴訟法及行政訴訟法所明定，並經本院釋字第一三五號及第一七七號解釋在案。故業經本院解釋之事項，其受不利裁判者，得於解釋公布後，依再審或其他法定程序請求救濟。

行政法院六十二年判字第六一〇號判例稱：「行政訴訟法第二十四條規定，有民事訴訟法第四百九十六條所

that a party is entitled to file for a trial with respect to the judgment rendered by this Yuan if any of the circumstances listed under Items of Article 496 of the Code of Civil Procedure exists. However, the so-called ‘clearly erroneous in the application of law as referred to in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure refers to the situation where the laws applied in the rendition of the judgment in question are contrary to the prevailing laws which should have been applied to the instant case or contrary to the interpretations or prior precedents. As for differences in legal interpretations, even if the plaintiff for retrial presents argument thereto, it still cannot be regarded as a case of being clearly erroneous in the application of law based on which a trial should be granted.’” If the laws or prior precedents applied in rendering a final and irrevocable judgment are found to be contrary to the Constitution pursuant to an interpretation by this Judicial Yuan upon an application for such an interpretation, then following from the discussion above, there automatically arises ground for a retrial or an

列各款情形之一者，當事人對於本院判決，固得提起再審之訴，惟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，係指原判決所適用之法規與該案應適用之現行法規相違背或與解釋、判例有所牴觸者而言。至於法律上見解之歧異，再審原告對之縱有爭執，要難謂為適用法規錯誤，而據為再審之理由。」按確定終局裁判於裁判時所適用之法規或判例，經本院依人民聲請解釋認為與憲法意旨不符時，依上所述，是項確定終局裁判，即有再審或非常上訴之理由，其受不利確定終局裁判者，如以該解釋為理由而請求再審，受訴法院自應受其拘束，不得再以其係法律見解之歧異，認非適用法規錯誤，而不適用該解釋。行政法院上開判例，與此不合部分應不予援用。

extraordinary appeal with respect to such final and irrevocable judgment. The party aggrieved by such final and irrevocable judgment is entitled to file for a retrial on the ground of such interpretation. And the court may no longer argue that such interpretation amounts to differences in legal interpretations only and is not a case of being clearly erroneous in the application of law and thus proceed without applying the interpretation. As such, any part of the said Precedent of the Administrative Court contrary to this Interpretation shall cease to apply.