

J. Y. Interpretation No.187 (May 18, 1984) *

ISSUE: Are civil servants' rights to retirement and pension guaranteed by the Constitution and protected through the administrative appeal process?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條); J.Y. Interpretation Yuan-tze Nos.311, 339 and 1285 (司法院院字第三一一號、第三三九號及第一二八五號解釋); Judgment P.T. No.98 (Ad. Ct. 1961) (行政法院五十年判字第九八號判例); Article 4 of the Grand Justices Council Adjudication Act (司法院大法官會議法第四條); J.Y. Interpretation No.154 (司法院釋字第一五四號解釋); Articles 1 and 2 of the Public Functionary Service Act (公務員服務法第一條及第二條) .

KEYWORDS:

civil servants (公務人員), retirement annuity (退休金), administrative litigation (行政訴訟) .**

HOLDING: Applications for retirement and pension by civil servants pursuant to the law are an exercise of a legally granted right founded on the Con-

解釋文：公務人員依法辦理退休請領退休金，乃行使法律基於憲法規定所賦予之權利，應受保障。其向原服務機關請求核發服務年資或未領退休

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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stitution, and should be protected. In the event requests for certifications of working period and non-receipt of pension are refused, they may be used as grounds for an appeal or administrative litigation. The relevant sections of Interpretation Yuan-tze Nos. 338 and 1285 shall be amended accordingly. The parts in Judgment P.T. No.98 (Ad. Ct., 1961) that are incompatible with this Interpretation shall no longer be applicable.

REASONING: Reference to laws or orders applicable in final and binding judgments in Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act means laws, orders or their equivalents based on which the final court judge makes the judgment. The foregoing has been interpreted in this Yuan's Interpretation No. 154. We are of the view that this case should be determined by this Yuan.

According to Article 16 of the Constitution, the people have rights of appeal and of instituting legal proceedings. This means that when the people's rights are

金之證明，未獲發給者，在程序上非不得依法提起訴願或行政訴訟。本院院字第三三九號及院字第一二八五號解釋有關部分，應予變更。行政法院五十年判字第九十八號判例，與此意旨不合部分，應不再援用。

解釋理由書：司法院大法官會議法第四條第一項第二款所稱確定終局裁判所適用之法律或命令，乃指確定終局裁判作為裁判依據之法律或命令或相當於法律或命令者而言，業經本院釋字第一五四號解釋於其解釋理由書內明示在案。本件聲請應予受理，合先說明。

按憲法第十六條所謂人民有訴願及訴訟之權，乃指人民於其權利受侵害時，有提起訴願或訴訟之權利，受理訴願機關或受理訴訟法院亦有依法審查決

infringed upon, they shall have a right to appeal or to sue, and the governing appeal institutes or courts are under obligation to view, determine or judge the case in accordance with the law. With respect to civil servants, their right to appeal or sue is treated differently. For an illustration, civil servants are under the obligation to abide by the law and orders of the authority that are within the scope of their duty, unless the said orders are obviously against the law or exceed the authority's scope of supervision. Subordinate civil servants may only put forward their views in disagreement, but may not appeal under the Administrative Appeal Act (See Articles 1 and 2 of the Public Functionary Service Act and Interpretation Yuan-tze No. 311). Other than the aforementioned exceptional circumstance, civil servants are not barred from seeking administrative or legal relief when their constitutionally- or legally-guaranteed rights are abridged due to the relevant authority's illegal or improper administrative acts. Applications for retirement and pension by civil servants pursuant to the law are an exercise of a legally granted right founded on the

定或裁判之義務而言。此項權利，間因其具有公務員身分而有所差別，如公務員關於其職務之執行，有遵守法律，服從長官所發命令之義務，除長官所發命令顯然違背法令或超出其監督範圍外，下屬公務員縱有不服，亦僅得向該長官陳述意見，要無援引訴願法提起訴願之餘地（參照公務員服務法第一條、第二條及本院院字第三一一號解釋）。從而除有此類特殊情形外，憲法或法律所保障之公務員權利，因主管機關之違法或不當之行政處分，致受損害時，尚非均不得循行政或司法程序尋求救濟。公務人員依法辦理退休請領退休金，乃行使法律基於憲法規定所賦予之權利，應受保障。其向原服務機關請求核發服務年資或未領退休金、退職金之證明，未獲發給者，在程序上非不得依法提起訴願或行政訴訟。本院院字第三三九號及院字第一二八五號解釋有關部分，應予變更；行政法院五十年判字第九十八號判例，與此意旨不合部分，應不再援用。又本件解釋，僅認公務員非均不得依法定程序提起訴願或行政訴訟，至原服務機關應否核發上開證明，乃實體上問題，仍應由各該機關依法辦理，不在本件解釋範圍之內。

Constitution, and should be protected. In the event requests for certifications of working period and non-receipt of pension are refused, they may be used as grounds for an appeal or administrative litigation. The relevant sections of Interpretation Yuan-tze Nos. 338 and 1285 shall be amended accordingly. The parts in Judgment P.T. No.98 (Ad. Ct., 1961) that are incompatible with this Interpretation shall no longer be applicable. This Interpretation merely affirms that civil servants may institute appeals or administrative litigation pursuant to the law. The question as to whether the relevant authority shall grant the aforementioned certification is one of substance which shall be handled by the various authorities in accordance with the law, and is beyond the scope of this Interpretation.

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。