

J. Y. Interpretation No.197 (July 26, 1985) *

ISSUE: Is the Supreme Administrative Court precedent constitutional in holding that a motion for retrial on the ground of errors in the original judgment must be filed within two months from the time of receipt of the issuance of such judgment?

RELEVANT LAWS:

Articles 29 and 30, of the Administrative Proceedings Act (行政訴訟法第二十九條、第三十條) ; Supreme Administrative Court precedent T. T. 23 (Supreme Administrative Court, 1972) (行政法院六十一年度裁字第二十三號判例) ; Supreme Administrative Court order T. T. 27 (Supreme Administrative Court, 1983) (行政法院七十二年度裁字第二十七號裁定) .

KEYWORDS:

error in law (適用法規錯誤) , service of judgment (判決之送達) , statutory cause for a retrial (法定再審事由) .**

HOLDING: The Supreme Administrative Court held in its precedent T. T. 23 (Supreme Administrative Court, 1972) to the effect that whether there was any error in law in the judgment of the lower court was known to the party at the

解釋文：行政法院六十一年裁字第二十三號判例略以：原判決適用法規有無錯誤，當事人於收受判決之送達時，即已知悉，不生知悉在後之問題。此項判例，並未涉及本院就確定終局裁判適用之法規依人民聲請而為解釋後，

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time of receipt of the issuance of such judgment and it thus gave rise to no issue of whether the party knew of such error afterwards. The precedent is irrelevant in regard to counting the period wherein the party may legally file a motion for a new trial on the ground of and after an interpretation delivered by this Yuan upon a petition filed by the people with respect to the application of law in an irrevocable final decision, and it gives rise to no issue of constitutionality.

REASONING: The Administrative Proceedings Act clearly provides in Articles 29 and 30 that a party may file a motion for a new trial if there exists in the judgment delivered by an administrative court any circumstance giving rise to a statutory cause for a new trial, provided that the motion is filed within a period of two months as of the time of issuance of such judgment, unless such circumstance occurs or is known afterwards, in which case the period shall be counted from the time of occurrence of the circumstance or the same is known. Whether the circumstance alleged by the party as a legal

該聲請人據以依法請求再審期間之計算，尚不發生牴觸憲法問題。

解釋理由書：行政法院之裁判，具有法定再審事由者，當事人得請求再審，但應於裁判送達時起二個月內為之，其事由發生在後或知悉在後者，前項期間自發生或知悉時起算，行政訴訟法第二十九條及第三十條規定甚明。當事人主張再審之事由，發生在後或知悉在後者，應由法院依職權調查認定之。行政法院七十二年度裁字第二十七號裁定所依據之同院六十一年度裁字第二十三號判例略以：原判決適用法規有無錯誤，其事由於判決效力發生之時，即已存在，而當事人於收受判決之送達時，即已知悉，不生知悉在後之問題。此項判例，並未涉及本院就確定終局裁

ground for a new trial occurs or is known afterwards is subject to investigation to be carried out by the court *ex officio*. The Supreme Administrative Court Precedent T. T. 23 (Supreme Administrative Court, 1972), on which the Supreme Administrative Court order T. T. 27 (Supreme Administrative Court, 1983) was based, held to the effect that the circumstance involving the question whether there was any error in law in the original judgment existed at the time when the judgment became effective and was known to the party at the time of receipt of the issuance of such judgment, and thus it gave rise to no question of whether the party knew of such error afterwards. The Precedent is irrelevant in regard to counting the period wherein the party may legally file a motion for a new trial on the ground of and after an interpretation delivered by this Yuan upon a petition filed by the people with respect to the application of law in an irrevocable final decision, and it gives rise to no issue of constitutionality.

Justice Shih-Ron Chen filed dissenting opinion.

判適用之法規依人民聲請而為解釋後，該聲請人據以依法請求再審期間之計算，尚不發生牴觸憲法問題。

本號解釋陳大法官世榮提出不同意見書。