

J. Y. Interpretation No.201 (January 3, 1986) *

ISSUE: The Administrative Court in its precedent held that the imposition of administrative sanctions on public functionaries, incommensurable with the damages incurred by civilians, is not subject to administrative appeals or litigations. Does the said precedent contravene the people's rights of litigation protected by the Constitution?

RELEVANT LAWS:

J.Y. Interpretation No.187 (司法院釋字第一八七號解釋) ; Interpretation Yuan-Tze No. 339 and 1285 (司法院院字第三三九號及第一二八五號解釋) ; Supreme Administrative Court's Precedent P.T. No.98 (Supreme Administrative Court 1961) (行政法院五十年判字第九八號判例) ; Supreme Administrative Court's Precedent P.T. No.229 (Supreme Administrative Court 1964) (行政法院五十三年判字第二二九號判例) .

KEYWORDS:

public functionaries (公務人員) , retirement pension (退休金) , appeal (訴願) , administrative litigations (行政訴訟) .**

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

HOLDING: It has already been explained in this Yuan's Interpretation No. 187 that public functionaries may initiate appeals or administrative litigations when making applications for retirement and pensions pursuant to the law. The assertion in the first paragraph of Precedent P.T. No.229 (Ad. Ct., 1964) that "the imposition of administrative acts on public functionaries is within the scope of administration, and is incommensurable with the losses incurred by civilians upon the imposition of punishment by the relevant authority" is too broad. Anything contained in the foregoing Precedent that is irreconcilable with the said Interpretation shall be forthwith invalidated upon declaration of the said Interpretation. References to applications for termination of service or retirement by soldiers in the said Precedent do not concern public functionaries' applications for retirement and pensions pursuant to the law -- they are irrelevant to the objective of application for this Interpretation and are beyond the scope of interpretation hereof.

REASONING: Applications by

解釋文：公務人員依法辦理退休請領退休金，非不得提起訴願或行政訴訟，經本院釋字第一八七號解釋予以闡釋在案。行政法院五十三年判字第二二九號判例前段所稱：「公務員以公務員身分受行政處分，純屬行政範圍，非以人民身分因官署處分受損害者可比，不能按照訴願程序提起訴願」等語，涵義過廣，與上開解釋意旨不符部分，於該解釋公布後，當然失其效力。至上開判例，有關軍人申請停役退伍事件部分，並未涉及公務人員依法辦理退休請領退休金，與本件聲請意旨無關，不在解釋範圍。

解釋理由書：按公務人員依法

public functionaries for retirement and pensions pursuant to the law are an exercise of legal rights in accordance with the law. Such rights shall be protected, and public functionaries may initiate appeals or administrative litigations where there is any dispute arising therefrom. The relevant parts in this Yuan's Interpretation Yuan-tze Nos. 339 and 1285 shall be amended accordingly; this Yuan's Interpretation No.187 has already stated that the sections in Precedent P.T. No.98 (Ad.Ct., 1961) that are inconsistent with the present Interpretation are no longer applicable. The assertion in the first paragraph of Precedent P. T. No.229 (Ad. Ct., 1964) that "the imposition of administrative acts on public functionaries is within the scope of administration, and is incommensurable with the losses incurred by civilians upon the imposition of punishment by the relevant authority" does not differentiate between the nature of administrative acts imposed on public functionaries. The assertion is too broad, thus anything contained in the foregoing Precedent that is irreconcilable with the said Interpretation shall be forthwith invalidated

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，如有爭議，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，應不再援用等事項，經本院釋字第一八七號解釋予以闡釋在案。行政法院五十三年判字第二二九號判例前段所稱：「公務員以公務員身分受行政處分，純屬行政範圍，非以人民身分因官署處分受損害者可比，不能按照訴願程序提起訴願」等語，未就因公務人員身分所受行政處分之內容分別論斷，涵義過廣，與上開解釋意旨不符部分，於該解釋公布後，依本院釋字第一八五號解釋，當然失其效力。至上開判例，有關軍人申請停役退伍事件部分，並未涉及公務人員依法辦理退休請領退休金，與本件聲請意旨無關，不在解釋範圍。

upon declaration of and in accordance with this Yuan's Interpretation No.185. References to applications for termination of service or retirement by soldiers in the said Precedent do not concern public functionaries' applications for retirement and pensions pursuant to the law — they are irrelevant to the objective of application for this Interpretation and are beyond the scope of interpretation hereof.