

J. Y. Interpretation No.209 (September 12, 1986) *

ISSUE: Where a party in a civil action institutes a proceeding of new retrial or files a motion for new trial on the ground that the court has erred in the application of a law or regulation in its irrevocable final adjudication, or the opinion expressed by the court on the said law or regulation in its irrevocable final judgment had been interpreted by this Court as contrary to the intent of the said law or regulation, is the institution of such proceeding or the filing of such motion subject to the statutory peremptory period of limitation?

RELEVANT LAWS:

Article 78 of the Constitution (憲法第七十八條) ; Article 496, Paragraph 1, Subparagraph 1 and Article 500, proviso to Paragraph 2, and Paragraph 3 of the Code of Civil Procedure (民事訴訟法第四百九十六條第一項第一款, 第五百條第二項但書、第三項) ; J. Y. Interpretations No. 188 and 208 (司法院釋字第一八八號、第二〇八號解釋) .

KEYWORDS:

motion for retrial (聲請再審) , statutory peremptory period (法定不變期間) .**

* Translated by Raymond T. Chu.

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

HOLDING: Where the application of a law or regulation in an irrevocable final adjudication or the opinion given in a court order is held by our interpretation to be inconsistent with the intention of a law or regulation, with the result that a proceeding of retrial is instituted or a motion for retrial is filed by the party pursuant to civil procedural law by invoking such interpretation as an authority, the statutory peremptory period for instituting a proceeding of retrial or filing a motion for retrial shall, by making reference to the proviso to the second paragraph of Article 500 of the Code of Civil Procedure, commence from the date such interpretation is issued. In the event that a civil adjudication has become irrevocable for exceeding five years or more, however, no proceeding of or motion for retrial may be instituted under Paragraph 3 of the aforesaid Article on the ground that the court has erred in application of a law or regulation. This is to supplement our previous Interpretation No. 188.

REASONING: Article 78 of the Constitution provides that the Judiciary

解釋文：確定終局裁判適用法律或命令所持見解，經本院解釋認為違背法令之本旨時，當事人如據以為民事訴訟再審之理由者，其提起再審之訴或聲請再審之法定不變期間，參照民事訴訟法第五百條第二項但書規定，應自該解釋公布當日起算，惟民事裁判確定已逾五年者，依同條第三項規定，仍不得以其適用法規顯有錯誤而提起再審之訴或聲請再審，本院釋字第一八八號解釋應予補充。

解釋理由書：司法院有解釋憲法並有統一解釋法律及命令之權，為憲

shall have the power to interpret the Constitution and to unify the interpretation of laws and orders. By this provision, the Judiciary branch of the government is vested with the power and authority to resolve any doubts and controversies as may arise out of, or in connection with, the Constitution and to explicate the true meaning of any statute and order. Where a unified interpretation has been given by this Yuan upon application by reason of a difference in opinions between central or local agencies on the application of any statute or order in connection with their duties and functions, but the view expressed in respect of the application of a law or order in an irrevocable final adjudication of the case giving rise to such difference in opinions is held by our interpretation to be inconsistent with the intention of the law or order, the interpretation may of course be invoked to support retrial or an extraordinary appeal. If it is held by an interpretation of this Court, however, that it was a matter of judicial opinion of the court on the literal meaning of the text of a statute and that there was no obvious error in the application of law

法第七十八條所明定。此項規定，乃賦與本院解決憲法上之疑義或爭議，並闡釋法律及命令正確意義之職權。中央或地方機關就其職權上適用同一法律或命令發生見解歧異，本院依其聲請所為之統一解釋，就引起歧見之該案件，如經確定終局裁判，而其適用法令所表示之見解，經本院解釋為違背法令之本旨時，是項解釋自得據為再審或非常上訴之理由。但如經本院解釋，認法院就法條文義所持裁判上見解，非屬適用法規顯有錯誤者，仍不得據為再審理由，經本院釋字第一八八號及釋字第二〇八號解釋末段釋明在案。

or order, the interpretation may not be invoked as a ground for retrial. This has been clearly expounded in our Interpretation No. 188 and in the last paragraph of our Interpretation No. 208.

Where the application of law in an irrevocable final adjudication or the opinion given in a court order is held by our interpretation to be inconsistent with the intention of a law or regulation, with the result that a proceeding of retrial is instituted or a motion for retrial is filed by the party under the Code of Civil Procedure, Article 496, Paragraph 1, Subparagraph 1, the statutory peremptory period for instituting such proceeding of retrial or for filing a motion for retrial shall, by making reference to the proviso to the second paragraph of Article 500 of the Code of Civil Procedure, commence from the date such interpretation is issued, so that the right of the people may be adequately protected. An error in the application of law or regulation in the irrevocable final adjudication, however, is a defect in the original adjudication. Therefore, in the event that such a civil adjudication has become

確定終局裁判適用法律或命令所持見解，經本院解釋為違背法令之本旨時，當事人如認有民事訴訟法第四百九十六條第一項第一款之再審理由，提起再審之訴或聲請再審者，其起訴或聲請之法定不變期間，參照同法第五百條第二項但書規定，應自該解釋公布當日起算，始足保障人民之權利。惟確定終局裁判適用法規錯誤，係原確定裁判所生之瑕疵，故民事裁判確定已逾五年者，依同法第五百條第三項規定，仍不得以其適用法規顯有錯誤而提起再審之訴或聲請再審，俾兼顧法律秩序之安定性，本院釋字第一八八號解釋應予補充。

irrevocable for exceeding five years or more, no action of, or motion for, retrial may be instituted under Paragraph 3 of the aforesaid Article on the ground that the court has erred in the application of law or regulation. This is to supplement our Interpretation No. 188.