

## J. Y. Interpretation No.215 (April 29, 1987) \*

**ISSUE:** Does the handling process for obstacle constructions, which originally existed within the sphere of land used for public roads prescribed in Article 11 of the Urban Roads Act, contradict Articles 15 and 143 of the Constitution?

### **RELEVANT LAWS:**

Articles 15 and 143 of the Constitution (憲法第十五條、第一百四十三條) ; Article 215 of the Land Act (土地法第二百十五條) ; Articles 10 and 11 of the Urban Roads Act (市區道路條例第十條、第十一條) .

### **KEYWORDS:**

urban roads (市區道路) , taking (徵收) , public interest (公共利益) , compensation (補償) , remedial process (救濟程序) .\*\*

**HOLDING:** The Urban Roads Act is enacted for improving traffic conditions on urban roads and advancing the public interest. According to Article 10 of the Act, the land needed for urban roads shall be taken if a private person owns that land. Article 11 of the same Act

**解釋文：**市區道路條例係為改善市區道路交通，增進公共利益而制定。市區道路所需土地，如為私人所有，依該條例第十條，得依法徵收。同條例第十一條對於用地範圍內之原有障礙建築物，已特別明定其處理程序，並無應予徵收之規定，關於其補償及爭議

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

specifically prescribes the handling process for obstacle constructions that are within the sphere of land for this kind of specific use. There is no description regarding how taking ought to be done in that article. In respect of the remedial process for compensation and dispute, as the article just mentioned does not exclude the application of certain related legislations, it is sufficient to protect people's rights as well. Thus, the Article does not contradict Articles 15 and 143 of the Constitution.

**REASONING:** The Urban Roads Act is enacted for constructing, improving, maintaining, using, managing and raising of expenditure of urban roads. It is a necessity for the advancement of the public interest. According to Article 10 of the Act, the land needed for urban roads shall be taken if a private person owns that land. Article 11, Paragraph 1, of the same Act prescribes that: "When drafting a construction plan for each road, the matters regarding razing and removing of, and compensating for, obstacle constructions that are within the sphere of land

之救濟程序，既未排除相關法令之適用，足以兼顧人民權利之保障，與憲法第十五條及第一百四十三條並無牴觸。

**解釋理由書：**按市區道路條例係為市區道路之修築、改善、養護、使用、管理及其經費之籌措而制定，乃增進公共利益所必要。市區道路所需土地，如為私人所有，依該條第十條，得依法徵收之。同條例第十一條第一項規定：「市區道路用地範圍內原有障礙建築物之拆除、遷讓、補償事項，應於擬訂各該道路修築計畫時，一併規劃列入。」同條第二項、第三項又規定：「修築計畫確定公告後，通知所有權人限期拆除或遷讓，必要時並得代為執行。」「前項限期，不得少於三個月。」依上開規定，對於妨礙建築道路

used for urban roads shall be drawn up into the plan as well.” Paragraphs 2 and 3 of the same Article also state that: “After confirming and publishing the construction plan, [the competent authority] shall inform the owner to raze or remove [the obstacles] within a definite time, and, if necessary, may execute it as the deputy of the owner.” “The definite time mentioned in the former Paragraph may not be less than 3 months.” According to these provisions, in respect of the obstacle constructions hampering the construction of roads, first of all, they provide that the matters regarding razing, removing and the matter of compensation so incurred shall be included in the plan as well; then, after confirming and publishing the construction plan which includes the compensating matter, inform the owner to raze or remove the obstacle within a definite time, and if necessary, may execute the procedure as the deputy of the owner. This handling process is specifically enacted for promptly completing road construction plans. They can be deemed as specific rules for Article 215 of the Land Act. However, to be reasonable and appropri-

之建築物，首先規定應將有關拆除遷讓及因此而須負擔之補償事項，一併規劃列入修築計畫，俟包括補償事項在內之修築計畫確定公告後，再通知所有權人，限期拆除或遷讓，必要時並得代為執行，旨在使道路修築計畫得以迅速完成，而特別明定其處理程序，乃為土地法第二百十五條之特別規定。惟仍明定應給予補償，此項補償，應依有關法令辦理，求其合理相當，且對拆除遷讓之通知及補償行為，依法均許利害關係人提起訴願及行政訴訟，以求救濟，足以兼顧人民權利之保障，與憲法第十五條及第一百四十三條並無牴觸。

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ate, the compensation they clearly provide shall be administered by related regulations, and in respect of the razing and removing notice and the compensating action, the Act allows the person involved to make administrative appeals and suits by law for a remedy. It is sufficient to protect the people's rights as well. The Article does not contradict Articles 15 and 143 of the Constitution.