

J. Y. Interpretation No.229 (July 29, 1988) *

ISSUE: (1) Is the restriction imposed by the proviso to Article 107 of the Code of Civil Procedure on the one who applies for procedural relief under the system of litigation *in forma pauperis* contrary to Article 16 of the Constitution?

(2) Is the provision of Paragraph 3 of Article 380 of the Code of Civil Procedure requiring that a motion for further proceedings after the conclusion of a settlement in a lawsuit be filed within a specified time limit contrary to Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條), Article 107, proviso, and Article 380 of the Code of Civil Procedure (民事訴訟法第一百零七條但書、第三百八十條), J. Y. Interpretation No. 225 (司法院釋字第二二五號解釋) .

KEYWORDS:

litigation *in forma pauperis* (訴訟救助), court costs and expenses (訴訟費用), settlement (和解), further proceedings (繼續審判), irrevocable judgment (確定判決) .**

HOLDING: 1. The purpose of the system of litigation *in forma pauperis* provided in the Code of Civil Procedure

解釋文：一、民事訴訟法規定之訴訟救助制度，乃在使有伸張或防衛權利必要而無資力支出訴訟費用之人，

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to enable those who want to have their rights affirmed or defended but are destitute of means to pay the court costs and expenses to exercise their right of instituting legal proceedings. However, to avoid the possibility of abuse of this system by the institution of meaningless proceedings and thus unnecessarily increasing the workload of courts, the Act provides in the proviso to Article 107 that “this shall not apply where there is apparently no prospect for the person to win the case.” The restriction is essential to the public interest and is not contrary to Article 16 of the Constitution.

2. While a settlement reached in a lawsuit has the same effect as an irrevocable judgment, a motion for further proceedings filed after a settlement was concluded will result in the resumption of a proceeding that has already ended, and must therefore be subject to a limitation of a period to maintain the order of law. Article 380 of the Code of Civil Procedure, which provides in Paragraph 3 thereof that the provision in respect of the peremptory period for the institution of a petition for

仍得依法行使其訴訟權。又恐當事人濫用此項制度，進行無益之訴訟程序，徒增訟累，故於該法第一百零七條但書規定「但顯無勝訴之望者，不在此限。」此為增進公共利益所必要，與憲法第十六條並無牴觸。

二、訴訟上和解與確定判決有同一之效力，和解成立後請求繼續審判，將使已終結之訴訟程序回復，為維持法律秩序之安定，自應有期間之限制，民事訴訟法第三百八十條第三項，就同條第二項之請求繼續審判，準用第五百條提起再審之訴不變期間之規定，與憲法第十六條亦無牴觸。

retrial as set forth in Article 500 of the Code shall apply mutatis mutandis to a motion for further proceedings under Paragraph 2 of said Article, is not contrary to Article 16 of the Constitution.

REASONING: 1. Civil litigation is a proceeding whereby parties request the judicial authority to determine their private rights for their personal interest. To be fair, all court costs and expenses incurred should of course be borne by the litigant parties. This is the reason that the Code of Civil Procedure has adopted the non-gratis principle, which has been clearly expounded in our Interpretation No. 225. For persons who are destitute of means of payment for the court costs and expenses, however, the Act permits proceedings in forma pauperis to enable the indigent to claim or defend their rights through the exercise of their right of instituting legal proceedings. Nonetheless, to avoid a possible increase in the workload of courts in consequence of the institution of meaningless proceedings that take advantage of this system, appropriate restrictions are necessary if, prima facie, there

解釋理由書：一、民事訴訟係當事人為自己之利益，請求司法機關確定其私權之程序，自應由當事人負擔因此所生之費用，方稱公平，故我民事訴訟法採有償主義，前經本院釋字第二二五號解釋之解釋理由書釋明在案。對於無資力支出訴訟費用之當事人，則設有訴訟救助制度，使其仍得為伸張或防衛權利而行使其訴訟權。惟依當事人之主張，就形式上觀察，為顯無勝訴可能之訴訟事件，如亦藉此制度進行無益之訴訟程序，則徒增訟累，自應有適當之限制，故民事訴訟法第一百零七條但書規定「但顯無勝訴之望者，不在此限」。此為增進公共利益所必要，與憲法第十六條並無牴觸。

is no prospect of success for the claimant in the litigation. It is therefore set forth in the proviso to Article 107 of the Code that “this shall not apply where there is apparently no prospect for the person to win the case,” and such restriction is essential to the public interest and is not contrary to Article 16 of the Constitution.

2. The conclusion of a settlement in a lawsuit has the same effect as an irrevocable judgment under Paragraph 1 of Article 380 of the Code of Civil Procedure as well as putting the proceedings to an end. Where there is a ground for nullification or revocation of the settlement, however, a motion for further proceedings may be filed, and a well-grounded motion for further proceedings will result in the resumption of a proceeding that has already been closed. The settlement which had the same effect as an irrevocable judgment will then become ineffective as soon as a new judgment is entered on the original action and becomes irrevocable. Such a motion must therefore be subject to the limitation of a period to maintain the order of law and ensure the safety of trans-

二、訴訟上和解成立，不僅終結訴訟，且依民事訴訟法第三百八十條第一項規定，與確定判決有同一之效力。惟和解有無效或得撤銷之原因者，得依同條第二項規定請求繼續審判，繼續審判之請求有理由時，將使已終結之訴訟程序回復，並於法院就原訴訟事件另為裁判確定後，原與確定判決有同一效力之和解，亦隨之喪失其效力，為維持法律秩序之安定，確保社會交易之安全，自應有期間之限制。民事訴訟法第三百八十條第三項，就同條第二項之請求繼續審判，準用第五百條提起再審之訴不變期間之規定，即係本此意旨，與憲法第十六條亦無牴觸。

actions in society. For this reason, Article 380 of the Code of Civil Procedure, which provides in Paragraph 3 thereof that the provision in respect of the peremptory period for the institution of a petition for retrial as set forth in Article 500 of the Act shall apply *mutatis mutandis* to a motion for further proceedings under Paragraph 2 of said Article, is not contrary to Article 16 of the Constitution.

Justice Zu-Zan Yang filed dissenting opinion in part.

本號解釋楊大法官日然提出一部不同意見書。