
J.Y. Interpretation No. 400 (April 12, 1996)*

**Public Easements on and Taking of
Privately-Owned Existing Roads Case**

Issue

Do the Executive Yuan Letters, which allow public easements on privately-owned existing roads without taking such lands, constitute an infringement upon said owners' property rights as protected by Article 15 of the Constitution?

Holding

The purpose of Article 15 of the Constitution, which provides that the people's right to property shall be guaranteed, is to protect each individual's freedom to exercise his/her rights to use, profit, and disposal for the duration of property ownership and to prevent infringements by the public authority and other parties in order to allow the individual to realize his/her freedoms, to develop his/her personality, and to maintain his/her dignity. To be consistent with this constitutional protection of the right to property, state authorities, for the necessity of public use or other public interests, may take an individual's property according to law, but shall make just compensation in return. In cases of privately-owned existing roads on which public easements have been established due to some specific criteria, the owners of those roads have been deprived of their freedom to use and make profits from the lands in question, and their interests on the property have been specifically sacrificed for public interests. The State shall take such lands and make compensation according to law. If the central or local governments, due to financial difficulties, are unable to take all such lands and

* Translation and Note by Tze-Shiou CHIEN

make compensation accordingly, the authorities concerned shall set a deadline for making compensation to be paid by annual installments or other means. It is obviously against the principle of equality if the State is not required to conduct expropriation and make compensation for those lands on which public easements have already been established and maintained by regulations when this situation is compared with that of other privately-owned lands within the same road project that have been expropriated and for which compensation has been provided. Those parts of the Executive Yuan Letters Tai-67-Nei-6310 of July 14, 1978, and Tai-69-Nei-2072 of February 23, 1980, to the extent they are inconsistent with the principles described above, shall no longer apply.

Reasoning

[1] The final judgment in this petition was made on the premise that the Executive Yuan Letters Tai-67-Ne-6310 of July 14, 1978, and Tai-69-Ne-2072 of February 23, 1980, were not in conflict with Article 14 of the Land Act. The petitioner specifically argued the two Letters were in violation of the Constitution. Hence, the petition challenging the two Letters has satisfied the requirements provided in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and was accordingly granted review. It is so explained here.

[2] The purpose of Article 15 of the Constitution, which provides that the people's right to property shall be guaranteed, is to protect each individual's freedom to exercise his/her rights to use, profit, and disposal for the duration of property ownership and to prevent infringements by the public authority and other parties in order to allow the individual to realize his/her freedoms, to develop his/her personality, and to maintain his/her dignity. However, individuals' freedom to exercise their property rights is bounded by their social responsibilities and responsibilities toward the environment and ecology according to law. Those individuals whose property rights have been restricted due to the above-

mentioned responsibilities and who have particularly sacrificed for public interests shall have the right to be adequately compensated. Although the State may take privately-owned lands according to law for the purposes of establishing public enterprises or implementing national economic policies (*see* Articles 208 and 209 of the Land Act), adequate compensation must be made so as to satisfy the requirements of the constitutional protection of property rights described above.

[3] A public easement, distinguished from an easement of the Civil Code, is a legal relationship in which privately-owned lands are used for a public nature. The idea of a public easement has long been established in our legal system (*see* J.Y. Interpretation No. 255; Administrative Court Precedent¹ 45-Pan-8 and Precedent 61-Pan-435). To determine whether the owner of a privately-owned existing road has to assume the burden of a public easement, the following requirements should be met. First, it must be a necessary crossing for the unspecified general public, not merely a crossing for the sake of convenience or to save time. Second, the owner must have failed to prevent the general public from crossing from the initial outset of the crossing practice. Third, this situation must have continued uninterrupted for a long period of time. There is no specified length for the long period of time. However, it must be long enough so that most

¹ Editor's Note: Taiwan, a civil law country, does not adopt the doctrine of *stare decisis*. In a formal sense, judges in Taiwan are not bound to the court precedents as are common law judges. In order to unify different opinions of the lower courts and promote the consistency of statutory constructions, Taiwan has established a unique "Precedent" system. The Supreme Court or the Supreme Administrative Court may select any of its own decisions on an important legal issue and designate its legal reasoning in that decision, after modifications if necessary, as Precedent. Such Precedents are detached from the facts of their original cases and written in the form of abstract legal doctrines. Technically speaking, Precedents are only *de facto*, but not *de jure*, binding on the lower courts. If a Precedent is applied in a court decision, the losing party of that decision, once final, may petition the Constitutional Court to review the constitutionality of the Precedent at issue pursuant to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act.

people do not have a specific recollection regarding the exact time when the situation began and merely have some vague and general understanding of the situation (*e.g.*, beginning in the Japanese Occupation Era or around the time of the flood of August 7, 1959). Concerning those lands provided as roads for public transportation based either on any construction law or the Civil Code, they are different from those privately-owned existing roads arising from being used by the general public as a crossing for an extended length of time. Apparently, the burden of such latter type of lands is not the public easement mentioned in this Interpretation. In the circumstances where the owners of private lands are burdened by public easement due to the above-mentioned criteria, the authorities concerned shall, according to law, conduct expropriation to acquire the lands and, based on the government's financial resources, make just compensation. If the central or local governments, due to financial difficulties, are unable to expropriate all such lands and make compensation accordingly, they shall take into account the principles mentioned in the Executive Yuan Letter Tai-84-Nei-38493 of October 28, 1995, and the Ministry of the Interior Letter Tai-84-Nei-Ing-8480481 of October 11, 1995, and set forth a feasible plan to gather financial resources so as to make compensation by annual installments or other means, such as issuing bonds maturing at various dates, setting up user-pay systems, providing tax reductions, or giving publicly-owned lands in lieu of monetary compensation. It is obviously against the principle of equality if the State is not required to conduct expropriation and make compensation for those lands on which public easements have already been established and maintained by regulations when this situation is compared with that of other privately-owned lands within the same road project that have been expropriated and for which compensation has been provided. Furthermore, once geographic or social environments have changed to such an extent that the necessity for a privately-owned existing road to serve as a crossing no longer exists, the public easement should be immediately reviewed and repealed. The Executive Yuan Letter Tai-

67-Ne-6310 of July 14, 1978, states:

After governments take actions to broaden or lengthen roads and change the types of roads according to urban planning, those privately-owned lands within the scope of the road project, except for those existing roads from the Japanese Occupation Era which are still used and were registered in the “road” category in the land registration book remaining burdened by public easement as mentioned before, shall be expropriated and granted compensation.

The Executive Yuan Letter Tai-69-Ne-2072 of February 23, 1980, further clarifies:

The Executive Yuan Letter Tai-67-Ne-6310 of July 14, 1978, stated that privately-owned existing roads from the Japanese Occupation Era could still be used based on public easement. Such statement was made taking into account governments’ financial difficulties in providing large sums of compensation. This does not mean to indefinitely refuse to conduct expropriation to acquire those lands. Accordingly, considering that Article 14 of the Land Act provides that “public roads for transportation should not be privately owned ... those roads which are privately owned lands may be expropriated according to law,” the Letter should be modified as follows. “Local governments, once relieved of financial difficulties, subsidized by higher level governments for the specific road project, or having levied a benefit tax or user's fee, shall compensate those owners of private lands used as existing roads within the road project according to law.”

Those parts of these two Letters, to the extent inconsistent with the principles described in this Interpretation, shall no longer apply.

Background Note by the Translator

Five petitioners indicated that their lands had become an existing road for public passage. Hence, they asked the Chiayi City Government to complete the process of expropriation and to make corresponding compensation. However, their requests were rejected. They filed a petition with the Constitutional Court in June 1994 after exhausting ordinary judicial remedies. They alleged that both of the Executive Yuan Letters Tai-67-Nei-6310 of July 14, 1978, and Tai-69-Nei-2072 of February 23, 1980, were in breach of Articles 15, 23, 143, and 172 of the Constitution.