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**J.Y. Interpretation No. 553 (December 20, 2002)\***

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**Judicial Review and the Local Government Act Case**

**Issue**

Is the decision of the Taipei City Government to postpone the election of its chiefs of villages legal?

**Holding**

[1] The Taipei City Government filed a petition in accordance with Article 75, Paragraph 2 of the Local Government Act, alleging that the governing authority of the central government, the Ministry of the Interior and subsequently the Executive Yuan, erroneously relied on Article 75, Paragraph 1 of the above Act by revoking the municipality's decision to postpone the election of its chiefs of villages for the reason that such a decision was in violation of Article 83 of the same Act. Because the city of Taipei is a protected local self-government entity under Article 118 of the Constitution and in light of the fact that the focus of the present petition is the delineation of jurisdictional boundaries and the dispute resolution mechanism between the central and local governments, it is not a controversy merely involving the interpretation of statutes among different government agencies. To the contrary, it gives rise to a question at the constitutional level as to connections between democratic principles and the autonomy of local governments. Consequently, a constitutional interpretation is warranted.

[2] Article 83, Paragraph 1 of the Local Government Act stipulates, "In the

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\* Translation by Ching-Yi LIU, based upon the previous translation by Andy Y. SUN

event an election is needed to fill the office of municipality councilmen, municipality mayors, county councilmen, county magistrates, township representatives, township mayors, and chiefs of villages due to term expiration or vacancy created, such an election may be postponed in light of special circumstances.” Conceptually, the so-called “special circumstances” cannot possibly be completely illustrated by listing every potential specific event, and shall be generally considered to be unforeseeable and extraordinary events that lead to the result that an election is not held at the legally mandated time. It also refers to situations where sufficient evidence suggests that an incorrect outcome or clear and present danger may ensue, or that may be contrary to reasonable and necessary administrative purposes for the realization of autonomy of local governments, if and when the election is to be held on time. Furthermore, “special circumstances” are not limited to situations that have national impacts or that have impacts on the entire jurisdiction within a county or city, that is, specific events occurring within a specific electoral district that fit into consideration of the proportionality principle are also included. The indeterminate legal concept employed in the Provision at issue leaves a certain degree of discretion to the authorized governing agency, since matters of local self-government are different from matters being delegated from the governing agency. In the former situation, the agency’s supervisory authority is confined only to the issue of legality, which is similar to the court’s exercise of its investigatory power in an administrative lawsuit (*see* Article 79, Paragraph 3 of the Administrative Appeal Act). In the latter situation, in addition to the question of legality, the governing agency may exercise a comprehensive supervisory power over whether an administrative practice is in conformity with its objectives. Since the present petition is related both to matters of local self-government and the indeterminacy of legal concepts, the governing agency should, in accordance with the law, respect the judgment of legality made by the

local governing entity while retaining its power to revoke or modify that judgment or decision made by the local governing entity, if it is rendered arbitrarily or capriciously or on other unlawful grounds.

[3] One of the purposes of the Constitution in establishing this constitutional interpretation system is to authorize the constitutional interpretation body with the power of statutory review (*see* Article 78 of the Constitution). Except for those matters involving the potential dissolution of a political party due to its unconstitutional acts, whose decision is to be rendered by the Constitutional Court consisting of all the Justices (*see* Article 5, Paragraph 4 of the Additional Articles of the Constitution), such power does not include the review of the constitutionality or legality of a specific administrative disposition. In this petition, since the Executive Yuan's decision to override the holding to postpone the election of chiefs of villages by the Taipei City Government touches on the fact findings of a specific case and statutory interpretation on the applicability of a national statute over local self-governance, it is considered a disposition that carries legal consequences, or an administrative disposition. This is, therefore, a public law dispute between the central government and a local government. Because this petition indeed concerns the review of lawfulness of an administrative disposition, and has been initiated for the sake of preserving the self-governance function of local governing entities, the resolution of such a dispute certainly should follow administrative dispute resolution proceedings. As a result, when the Taipei City Government considers that the Executive Yuan's revocation decision has encroached upon its self-governance power or other public law interests, it should file a grievance petition in accordance with Article 1, Paragraph 2 of the Administrative Appeal Act and Article 4 of the Administrative Procedure Act, as well as request the agency and the Administrative Court having jurisdiction over the matter to render a final ruling on the legality of such an administrative disposition.

## **Reasoning**

[1] The Taipei City Government filed the present petition in accordance with Article 75, Paragraph 2 of the Local Government Act, alleging that the central governing authority, the Ministry of the Interior and subsequently the Executive Yuan, erroneously relied on Article 75, Paragraph 1 of that Act by revoking the municipality's decision to postpone the election of chiefs of villages for the reason that such a decision was in violation of Article 83 of the Act. Because the city of Taipei is a protected local self-government entity under Article 118 of the Constitution and in light of the fact that the focus of this petition is the delineation of jurisdictional boundaries and the dispute resolution mechanism between the central and local governments, this petition is not a controversy involving the interpretation of statutes among different government agencies. To the contrary, it gives rise to a question at the constitutional level as to connections between democratic principles and the autonomy of local governments. As a result, an interpretation is warranted. This petition concerns a local self-government dispute between the central government and a local government over the interpretation of the applicable national statutes, which does not fall within the scope of J.Y. Interpretation No. 527 and has no bearing on that interpretation. The petition is hereby granted in accordance with Article 75, Paragraph 8 of the Local Government Act.

[2] Under Article 83, Paragraph 1 of the Local Government Act, the so-called "special circumstances" cannot possibly be completely illustrated by listing every potential specific event, and shall be generally referred to as unforeseeable and extraordinary events that lead to the result of an election not being held at a legally mandated time. It also refers to situations where sufficient evidence suggests that an incorrect outcome or clear and present danger may ensue, or that may be contrary to reasonable and necessary administrative purposes for the realization of autonomy of local governments, if and when the election is to be

held on time. Furthermore, “special circumstances” are not limited to situations that have national impacts or that have impacts on the entire jurisdictions within a county or city. Specific events occurring within a specific electoral district that fit into consideration of the proportionality principle are also included. The indeterminate legal concept employed in the Provision at issue leaves a certain degree of discretion to the authorized governing agency, since matters of local self-government are different from matters being delegated from the governing agency. In the former situation, the agency’s supervisory authority is confined only to the issue of legality, which is similar to the court’s exercise of its investigatory power in an administrative litigation (*see* Article 79, Paragraph 3 of the Administrative Appeal Act). In the latter situation, in addition to the question of legality, the governing agency may exercise a comprehensive supervisory power over whether an administrative practice is in conformity with its objectives. Since the present petition is related both to matters of local self-government and indeterminacy of legal concepts, the governing agency should, in accordance with the law, respect the judgment of legality made by the local governing entity while retaining its power to revoke or modify that judgment or decision made by the local governing entity, if it is rendered arbitrarily or capriciously or on other unlawful grounds. Theoretically, several factors may be helpful in the determination of the level of scrutiny for this type of case: 1. The nature of the issue determines the level of scrutiny. The degree of deference to the original judgment on the interpretation of solely indeterminate legal concepts can be different from those simultaneously involving science and technology, environmental protection, medical pharmacology, capability or aptitude tests. A higher level of scrutiny must be adopted if the original judgment concerns the fundamental rights of the people. 2. Whether the head of the administrative agency is solely in charge of the original decision-making process or it is a resolution reached by a professional and independent committee. 3. Whether

there is a required legal process of decision-making and whether the decision is made in compliance with the required legal process the decision maker. 4. Whether there is any error of subsumption when the legal concept involves a matter of fact. 5. Whether the interpretation of the legal concept clearly contradicts the rules of interpretation or norms of a higher hierarchy. 6. Whether the decision is made while failing to take into consideration other important factors. While there is a design for the election of chiefs of villages under exceptional circumstances such as the selection process stipulated in Article 59, Paragraph 2 of the Local Government Act, the usual procedure for the investiture of chiefs of villages should not preclude the application of the fundamental democratic principles of the Constitution. At the same time, whether this controversy is sufficient to be a “special circumstance” for a postponed election shall be taken into account so that the balance between democracy and the protection of autonomy of local governments can be maintained. As the application of an indeterminate legal concepts here is inseparable from the administrative disposition revoked by the governing agency, the Administrative Court should grant the petition for review and render its judgment in accordance with the result of this interpretation while taking into consideration the totality of the circumstances, if and when an administrative action is brought before the Administrative Court.

[3] This petition is a controversy of public law between the governing agency of the central government and the Taipei City Government, who challenged the decision made by the Executive Yuan, which, in accordance with Article 75, Paragraph 2 of the Local Government Act, revoked its decision to postpone the election of chiefs of villages. This petition is permitted in accordance with Article 75, Paragraph 8 of the Local Government Act. However, the entire focus of this petition is about the constitutionality or legality of a reversal of a decision made by a central supervisory agency, and the purpose of the Constitution in

establishing a constitutional interpretation system is to authorize the constitutional interpretation body with the power of statutory review (*see* Article 78 of the Constitution). Except for those matters involving the potential dissolution of a political party due to its unconstitutional acts, whose decision is to be rendered by the Constitutional Court consisting of all the Justices (*see* Article 5, Paragraph 4 of the Additional Articles of the Constitution), such power does not include the review of the constitutionality or legality of a specific administrative disposition (*see* the Reasoning of J.Y. Interpretation No. 527). In this petition, since the Executive Yuan's decision to interfere with the exercise of local self-government and override the Taipei City Government's decision to postpone the election of chiefs of villages touches on the specific fact findings and statutory interpretations on the applicability of a national statute over the exercise of local self-government, it is considered a disposition that carries legal consequences, or an administrative disposition, instead of merely an exchange of viewpoints between administrative agencies, or a supervisory agency giving an order to one of its subordinate agencies. As such, the proper dispute resolution process for the local government is to engage in an administrative litigation on the subject matter of legality over whether it is legal for the supervisory agency to give an order to one of its subordinate agencies. The subject matter of the litigation is the controversy between the central government and the local government over the question of legality arising from the exercise of autonomy of the local government. Furthermore, the local government has a vested legal interest in whether the supervisory action, taken with the view of legality, of the central supervisory agency is legal. In this petition, the Mayor of the Taipei City Government shall represent the local government to present an administrative litigation challenging the legality of the supervisory agency's action and requesting the removal of that action in accordance with Article 1, Paragraph 2 and Article 4 of the Administrative Procedure Act. The proper agency and

administrative court having jurisdiction over the petition shall receive the case and render judgment accordingly. The present petition may be considered as an objection to the original administrative disposition and the statute of limitations for administrative petition has not been tolled (Cf. Yuan Tzu Interpretation No. 422 and Article 61 of the Administrative Appeal Act). The statute of limitations shall begin to run as of the date this Interpretation is publicly issued. However, even though the Local Government Act has indeed provided some supervisory means, the lack of mechanisms for communication and coordination between local governments and their supervisory agencies in the institutional design of the Local Government Act leads to the failure of the functions of the autonomy of the local government. For the sake of the institutional protection offered by the Constitution over the autonomy of the local government, the legislature ought to strengthen appropriate mechanisms in accordance with the meaning and purpose of the Constitution.

[4] With regard to the petitioner's assertion that Article 75, Paragraph 2 of the Local Government Act is likely to be unconstitutional, its review is denied as this portion of the petition is not in conformity with Article 5, Paragraph 1 of Constitutional Court Procedure Act. At the same time, the petition for uniform interpretation is related to those already being interpreted and shall not be further reviewed by this Court.

### **Background Note** by Ching-Yi LIU

The Taipei City Government filed a petition alleging that the governing authority of the central government, the Ministry of the Interior and subsequently the Executive Yuan, erroneously revoked its decision to postpone the election of its chiefs of villages. The city of Taipei is a protected local self-government entity under Article 118 of the Constitution, and the focus of the petition is the delineation of jurisdictional boundaries and the dispute resolution mechanism

between the central and local governments. Therefore, it is not a controversy merely involving the interpretation of statutes among different government agencies. To the contrary, it gives rise to a question at the constitutional level as to connections between democratic principles and autonomy of local governments.

J.Y. Interpretation No. 553 addresses a controversy of local self-government between the central and local governments over the interpretation of the applicable national statutes. The petition, filed in regard to an issue relating to the so-called “special circumstances” stipulated by Article 83, Paragraph 1 of the Local Government Act, is related both to matters of local self-government and indeterminate legal concepts. The proper dispute resolution process for this case is an administrative litigation on the subject matter of legality over whether it is legal for the supervisory agency to give an order to one of its subordinate agencies. However, even though the Local Government Act did indeed provide some supervisory means, the lack of mechanisms for communication and coordination between local governments and their supervisory agencies in the institutional design of the Local Government Act led to the failure of the functions of the autonomy of the local government. In addition, the Constitutional Court emphasized that in order to fulfill the institutional protection for the autonomy of the local government, the legislature ought to strengthen appropriate mechanisms in accordance with the meaning and purpose of the Constitution.

It is noteworthy to also mention that J.Y. Interpretation No. 467, one of the important constitutional interpretations on matters regarding local self-government and clarifying the status of the provincial level of government after the 1997 Amendments to the Constitution came into effect. J.Y. Interpretation No. 467 affirmed that even after the 1997 constitutional reform, provincial governments were still local governments. However, it is equally noticeable that

the provincial level of government no longer has jurisdiction over matters regarding local self-government and has been deprived of the organic right of self-government; it is not recognized as a public legal person of local self-government. However, if in the future the Legislative Yuan, in accordance with the spirit and purpose of the Amendments to the Constitution, empowers the provincial government to exercise exclusive power of local self-government and to have certain legal rights and responsibilities, it certainly may acquire the status of a public legal person.