

## Summary of J.Y. Interpretation No. 763

Note: This summary constitutes no part of the Interpretation but is prepared by the Clerk's Office of the Constitutional Court, only for the readers' reference.

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Case No.: Huei-Tai-13469 filed by Chin-Te Liu and Wei-Hsiang Liu  
Decided and Announced on May 4, 2018

### Background Note

Petitioners Chin-Te Liu and Wei-Hsiang Liu applied to the Kaohsiung City Government for redemption of the land at issue in the original amount of expropriation compensation under Article 219 of the Land Act and Article 9 of the Land Expropriation Act on December 20, 2011 on the ground that Kaohsiung County Government (merged as Kaohsiung City Government after December 25, 2010) had publicly announced the expropriation of their land located in Renwu Township of Kaohsiung County (hereinafter “the land”) from March 2, 1989 to March 31 of the same year, while the land was not used within the limited period of time in accordance with the expropriation plan and not used for the undertaking which had received approval for the expropriation. After getting approval from the Ministry of the Interior, the Kaohsiung City Government rejected the petitioners' application on the ground that the petitioners' application was filed beyond the statutory period of time for redemption application and is inconsistent with Article 219, Paragraph 1 of the Land Act (hereinafter “the Provision”) and Article 83 of the Urban Planning Law. The petitioners disagreed with the decision. After exhausting all the judicial remedies, the petitioners brought their case to this Court for constitutional interpretation on May 16, 2017. The petitioners asserted that the Provision applied in the final and binding judgment was not consistent with Articles 15 of the Constitution and due process of law because it did not stipulate that the competent authority shall notify the original landowners the status of use of the expropriated land in a timely manner and proactively notify the original landowners to apply for redemption when they are entitled.

### Holding

1. Article 219, Paragraph 1 of the Land Act provides that “the day following one year after the completion of the payment of expropriation compensation” shall be the starting point of prescription for the redemption right. The provision

does not require that the competent authority of the governing municipality or county (city) periodically notifies the original landowner or publicly announces the status of subsequent use of the expropriated land and, as a consequence, renders the original landowner unable to obtain sufficient information in a timely manner to determine whether to exercise the right of redemption. Thus, the provision is inconsistent with the due process in administrative procedure required by the Constitution. In this regard, it contravenes the intention and purpose of the Article 15 of the Constitution which guarantees the people's right to property and shall be reviewed and revised within two years from the date of publication of this Interpretation.

2. From the date of publication of this Interpretation, if the prescription for the original landowner's redemption right is not complete, the prescription is suspended; after the competent authority of the governing municipality or county (city) sends notifications or make public announcements in accordance with the meaning and intention of this Interpretation, the incomplete prescription will continue. After the promulgation of the amended law, the new law shall apply.

### **Reasoning**

1. The State may expropriate the people's property in accordance with the procedures prescribed by law when it is necessary for the purpose of public use or other public interests. However, the expropriation of land is the most severe means of infringement on the people's rights to property. Pursuant to the due process requirement under the Constitution, the State shall implement the most rigorous procedure. The procedural protection shall be provided not only before an expropriation, but also when an expropriation is carried out.
2. As to whether due process is also applied after the completion of land expropriation depends on whether the original landowners can still claim the protection of the constitutional right to property after the completion of expropriation. Therefore, after an expropriation, if the expropriated land is not used according to the approved plan or within the time limit, the expropriation loses its legitimacy, and the reason that people endure special sacrifice for public interests no longer exist. Based on the intention and purpose of the protection of the people's property rights under the Constitution, in principle, the original landowners may apply for the redemption of the expropriated land to protect their rights and interests. This right of redemption is an extension of the protection of constitutional property rights. It is landowners' right of claim under public law derived

from the legal relationship of land expropriation and is protected under the constitutional property right. In order to ensure the realization of the redemption right, the State still has certain obligations to provide procedural protection after an expropriation.

3. Based on the due process in administrative procedure required by the Constitution, within certain period of time from the completion of expropriation, the competent authorities of the governing municipality or county (city) shall periodically notify the original landowners, allowing them to be aware of the status of subsequent use of the expropriated land in a timely manner. If any of the original landowners cannot be notified, the competent authority shall make a public announcement in accordance with law, so that they can apply for the redemption of the expropriated land in time.
4. Article 219, Paragraph 1 of the Land Act clearly provides that “[a]fter an expropriation of a private land, the original landowner of the expropriated land may, within five years from the day following one year after the completion of the payment of expropriation compensation, apply to the land administration agency of the governing municipal or county (city) for the redemption in the original amount of expropriation compensation, if any one of the following conditions applies: (1) The expropriated land is not used according to the expropriation plan one year after the completion of the payment of compensation. (2) The expropriated land is not used for the undertaking which had received approval for the expropriation.” Although the Provision is the embodiment of the people’s redemption right under the Constitution, it simply takes “the day following one year after the completion of the payment of expropriation compensation” as the starting point of prescription and does not require that the State periodically notifies the original landowner or publicly announces the status of subsequent use of the expropriated land and, as a consequence, renders the people unable to obtain sufficient information in a timely manner to determine whether to exercise the right of redemption. Thus, the Provision is inconsistent with the due process in administrative procedure required by the Constitution. In this regard, it contravenes the intention and purpose of the Article 15 of the Constitution which guarantees the people’s right to property. Concerned authorities shall review and revise the Provision based on the meaning and intention of this Interpretation within two years from the date of publication of this Interpretation.

5. From the date of publication of this Interpretation, if the prescription for the original landowner's redemption right is not complete, the prescription is suspended; after the competent authority of the governing municipality or county (city) sends notifications or make public announcements in accordance with the meaning and intention of this Interpretation, the incomplete prescription will continue. After the promulgation of the amended law, the new law shall apply.
6. The right of redemption involves the stability of legal relationship of expropriated land and the protection of the original landowner's rights and interests. To ensure that the original landowner receive sufficient information to determine whether to exercise the right of redemption, the competent authority shall also examine other laws related to land expropriation with respect to how to periodically notifies the original landowner or publicly announces the status of subsequent use of the expropriated land based on the meaning and intention of this Interpretation.

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Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Sheng-Lin JAN filed a concurring opinion, in which Justice Jiun-Yi LIN, joined.

Justice Ming-Cheng TSAI filed an opinion concurring in part and dissenting in part, in Part II and III of which Justice Chong-Wen CHANG, joined.

Justice Horng-Shya HUANG filed a dissenting opinion.

Justice Chen-Huan WU filed a dissenting opinion.