

J. Y. Interpretation No.416 (December 6, 1996) *

ISSUE: Does the Supreme Court's precedent which states the details to be followed in appealing against the judgment of the court of second instance in accordance with Article 468 of the Code of Civil Procedure on the ground that the judgment did not apply the law or applied the law wrongly impose additional limitations not being provided for by the said Code, thus contradicting Article 16 of the Constitution which guarantees the people's right of instituting legal proceedings?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) ; Articles 467, 468, 469, 470, 471 and 476 of the Code of Civil Procedure (民事訴訟法第四百六十七條、第四百六十八條、第四百六十九條、第四百七十條、第四百七十一條、第四百七十六條) .

KEYWORDS:

law not applied to or wrongly applied to judgment (判決不適用法規或適用不當) , petition and statement of reasons for appeal (其上訴狀或理由書) , concrete indications of the violation of law (對違背法令有具體之指摘) .**

HOLDING: The Precedent T.S.T. No. 314 (Sup. Ct., 1982) states that

解釋文：最高法院七十一年台上字第三一四號判例所稱：「當事人依

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

“when appealing against the judgment of the court of the second instance in accordance with Article 468 of the Code of Civil Procedure on the ground that the judgment did not apply the law or applied the law wrongly, the Appellant shall specify concretely and provide the article or content of such law in a petition or statement of reasons for appeal. If it is a legal principle rather than codified laws, the purposes and the points of such principles should be identified. If it is a Judicial Yuan Interpretation or Precedent of the Supreme Court, the number and content of such Interpretation or Precedent shall be indicated. If appealing to the court of the third instance with the reasons provided for in the various items of Article 469 of the Code of Civil Procedure, the Appellant should identify the fact(s) corresponding to the itemized reason(s) in the petition or statement of reasons for appeal. If the petition or statement of reasons for appeal does not conform to the aforesaid methods, such petition or statement shall not be considered to have concretely indicated the violation of law by the judgment of the court of the second

民事訴訟法第四百六十八條規定以第二審判決有不適用法規或適用法規不當為上訴理由時，其上訴狀或理由書應有具體之指摘，並揭示該法規之條項或其內容，若係成文法以外之法則，應揭示該法則之旨趣，倘為司法院解釋或本院之判例，則應揭示該判解之字號或其內容，如依民事訴訟法第四百六十九條所列各款事由提起第三審上訴者，其上訴狀或理由書應揭示合於該條款之事實，上訴狀或理由書如未依此項方法表明者，即難認為已對第二審判決之違背法令有具體之指摘，其上訴自難認為合法。」係基於民事訴訟法第四百七十條第二項、第四百七十六條規定之意旨，就條文之適用，所為文義之闡析及就判決違背法令具體表明方法之說明，並未增加法律所未規定之限制，無礙人民訴訟權之正當行使，與憲法尚無牴觸。

instance, and thus the appeal shall not be deemed lawful.” Such Precedent engages in the literal interpretation of the application of articles and explains the methods to present the judgment’s violation of law in the light of the meanings of Article 470, Paragraph 2, and Article 476 of the Code of Civil Procedure, without imposing any additional limitation than what the law provides for. Thus, the people’s exercise of their rights to litigation is not hindered and such Precedent does not contradict Article 16 of the Constitution.

REASONING: The people’s rights to litigation under Article 16 of the Constitution refer to the people’s beneficial rights to judicature, where the people have the rights to file lawsuits when their rights are infringed upon and the courts are obligated to provide a lawful trial. Judicial Yuan Interpretation Nos. 154, 160 and 179 have already elucidated this issue. Because it is not provided for in the Constitution as to how such right shall be exercised, the Legislative Branch can make reasonable enactments in consideration of the nature of the lawsuits. Accord-

解釋理由書：按憲法第十六條所謂人民有訴訟之權，乃人民司法上之受益權，指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言，迭經本院釋字第一五四號、第一六〇號、第一七九號解釋理由釋明在案。惟此項權利應如何行使，憲法並未設有明文，自得由立法機關衡量訴訟事件之性質，為合理之規定。民事訴訟法第四百六十七條就第三審法院之審判，定為法律審，規定對於第二審判決上訴，非以其違背法令為理由不得為之。同法第四百七十條第一項及第二項復規定提起上訴，應以上訴狀提出於原

ing to Article 467 of the Code of Civil Procedure, the procedure of the court of the third instance shall be the one for legal review and no appeal against the judgment of the court of the second instance shall be filed without asserting its violation of laws as the reason for appeal. Article 470, Paragraphs 1 and 2, of the Code of Civil Procedure further provides that the appeal shall be made by submitting the petition for appeal to the original court of the second instance and such petition shall specify the reason for appeal. Article 471, Paragraph 1, of the Code of Civil Procedure also provides that “the Appellant must, within twenty days from the filing of the appeal, submit a statement of reasons to the original court of the second instance if the reasons for appeal were not provided in the petition for appeal; if the Appellant fails to do so, such appeal shall be dismissed by a ruling of the original court of the second instance without ordering the Appellant to correct such failure.” Since the principle of mandatory submission of the statement of reasons is adopted in such provision, the court of the third instance may review the appeal

第二審法院為之，上訴狀內應表明上訴理由。同法第四百七十一條第一項並規定：「上訴狀內未表明上訴理由者，上訴人應於提起上訴後二十日內，提出理由書於原第二審法院；未提出者，毋庸命其補正，由原第二審法院以裁定駁回之」，即採所謂第三審上訴理由書提出強制主義，俾第三審法院得據以審理，並防止當事人之濫行上訴。至上訴理由應如何記載始符上開規定，同法未設有規定，最高法院七十一年台上字第三一四號判例所稱：「當事人依民事訴訟法第四百六十八條規定以第二審判決有不適用法規或適用法規不當為上訴理由時，其上訴狀或理由書應有具體之指摘，並揭示該法規之條項或其內容，若係成文法以外之法則，應揭示該法則之旨趣，倘為司法院解釋或本院之判例，則應揭示該判解之字號或其內容，如依民事訴訟法第四百六十九條所列各款事由提起第三審上訴者，其上訴狀或理由書應揭示合於該條款之事實，上訴狀或理由書如未依此項方法表明者，即難認為已對第二審判決之違背法令有具體之指摘，其上訴自難認為合法。」係為上開法律之適用，所為文義之闡析及就判決違背法令具體表明方法之說明，並未增加法律所未規定之限制，無礙人民訴

based on the asserted grounds, and the abuse of the right to appeal can be prevented. However, this is not provided in the Code of Civil Procedure regarding the lawful elaboration of reasons for appeal. The Precedent T.S.T. No. 314 (Sup. Ct., 1982) states that “when appealing against the judgment of the court of the second instance in accordance with Article 468 of the Code of Civil Procedure on the ground that the judgment did not apply the law or applied the law wrongly, the Appellant shall specify concretely and provide the article or content of such law in a petition or statement of reasons for appeal. If it is a legal principle rather than codified laws, the purposes and the points of such principles should be identified. If it is a Judicial Yuan Interpretation or Precedent of the Supreme Court, the number and content of such Interpretation or Precedent shall be indicated. If appealing to the court of the third instance with the reasons provided for in the various items of Article 469 of the Code of Civil Procedure, the Appellant should identify the fact(s) corresponding to the itemized reason(s) in the petition or statement of reasons for

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appeal. If the petition or statement of reasons for appeal does not conform to the aforesaid methods, such petition or statement shall not be considered to have concretely indicated the violation of law by the judgment of the court of the second instance, and thus the appeal shall not be deemed lawful.” Such Precedent engages in the literal interpretation of the application of the said articles and explains the methods to present the judgment’s violation of law. No additional limitation than what the law provides for was imposed. Thus, the people’s exercise of their rights to litigation is not hindered and such Precedent does not contradict Article 16 of the Constitution.