

J. Y. Interpretation No.240 (May 12, 1989) *

ISSUE: Is Article 162 of the Code of Civil Procedure constitutional in providing that, in calculating the statutory period, the time needed for traveling to the court by a party residing outside the venue of the court, said time shall be deducted from such period unless the party has an agent *ad litem* inside the venue of the court?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution (憲法第十六條、第二十三條) ; Article 70, Paragraph 1, Proviso, Article 162, Paragraph 1 and Article 440 of the Code of Civil Procedure (民事訴訟法第七十條第一項但書、第一百六十二條第一項、第四百四十條) .

KEYWORDS:

time for journey to the court (在途期間) , statutory period (法定期間) , venue of the court (法院所在地) , agent *ad litem* (訴訟代理人) , right to the benefit of justice (司法上受益權) , proviso (但書) .**

HOLDING: The Code of Civil Procedure provides in Article 162, Paragraph 1, that “where a party resides out

解釋文：民事訴訟法第一百六十二條第一項規定：「當事人不在法院所在地住居者，計算法定期間，應扣除

* Translated by Raymond T. Chu.

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

side the venue of the court, the time for his journey to promulgated on July 7, 1953. Even with the upgrading of Kaohsiung City to a the court shall be deducted from the statutory period when calculating such period provided, however, that this does not apply where the party has an agent *ad litem* residing inside the venue of the court capable of carrying out all the litigation acts required to be done within such period.” The proviso is intended to make the statutory period practically the same length for all parties to carry out the litigation acts so that there will be no adverse effect on the exercise of the people’s right of instituting legal proceedings. It is thus not in conflict with Articles 16 and 23 of the Constitution..

REASONING: The right of instituting legal proceedings of the people as provided in Article 16 of the Constitution is the people’s right to the benefit of justice. In other words, people have the right to bring suit to seek remedy when they suffer injury to their right, and the court, on the other hand, has the duty to try under law. Under Article 23 of the

其在途之期間。但有訴訟代理人住居法院所在地，得為期間內應為之訴訟行為者，不在此限」。其但書部分，乃為求當事人為訴訟行為之法定期間實際相同，於人民訴訟權之行使不生影響，與憲法第十六條、第二十三條並無牴觸。

解釋理由書：憲法第十六條所定人民之訴訟權，乃人民司法上之受益權，即人民於其權利受侵害時，有訴請救濟之權利，法院亦有依法審判之職責，惟此項權利，依憲法第二十三條之規定，為防止妨礙他人自由，避免緊急危難，維持社會秩序或增進公共利益所必要者，得以法律限制之。就民事訴訟法第四百四十條所定上訴期間之限制而

Constitution, however, this right is subject to restrictions by law as may be necessary for the purpose of preventing infringement upon the freedom of others, averting an imminent crisis, maintaining social order, or furthering public interest. Thus, the restriction imposed by Article 440 of the Code of Civil Procedure on the period for appeal is meant to define the rights and duties of the parties where the period for appeal has expired and no legal appeal has been brought. Similarly, the Act provides in Article 162, Paragraph 1, that “where a party resides outside the venue of the court, the time for his journey to the court shall be deducted from the statutory period when calculating such period provided, however, that this does not apply where the party has an agent *ad litem* residing inside the venue of the court, capable of carrying out all the litigation acts required to be done within such period.” The law is so made as to take into consideration the factor that, although the party is residing outside the venue of the court, he has appointed an agent *ad litem* residing inside the venue of the court with special authorization given under the proviso

言，乃在使當事人間權利義務關係得於上訴期間屆滿而無合法之上訴時確定。同法第一百六十二條第一項：「當事人不在法院所在地住居者，計算法定期間，應扣除其在途之期間。但有訴訟代理人住居法院所在地，得為期間內應為之訴訟行為者，不在此限」。係以當事人雖不在法院所在地住居，但有訴訟代理人住居法院所在地，且已依民事訴訟法第七十條第一項但書受有為當事人提起上訴之特別委任者，則其於收受判決後，既有權斟酌應否於法定之不變期間內為當事人提起上訴，自不應扣除在途期間，立法意旨在使距離法院路程、交通情形不盡相同之當事人，及其在法院所在地有無得為訴訟行為之人，為訴訟行為之法定期間實際相同。乃為增進公共利益所必要，且於人民訴訟權之行使不生影響，自難謂與憲法第十六條、第二十三條有何牴觸。

to Paragraph 1 of Article 70 of the Act to file an appeal on his behalf, who is empowered to use his discretion to decide upon receiving the court decision whether or not to file an appeal for the party within the statutory peremptory period. Thus, the time needed for the party to travel to the place of the court must not be deducted from the statutory period. The purpose of the law is to make the statutory period practically the same length for all parties to carry out the litigation acts, notwithstanding the difference in the distances and traffic conditions for the parties to make the journey to the court and whether or not they have any other person to carry out litigation acts for them at the place of the court. We hold that the law is essential to the furtherance of the public interest and will cause no adverse effect on the exercise of the people's right of instituting legal proceedings. It is thus not in conflict with Articles 16 and 23 of the Constitution.