

J. Y. Interpretation No.271 (December 20, 1990) *

ISSUE: When the appellate court erroneously overrules a legitimate appeal against the defendant's interest on the wrong grounds, can the trial court restart the trial of the defendant automatically?

RELEVANT LAWS:

Article 8, Paragraph 1, of the Constitution (憲法第八條第一項); Article 1, Paragraph 1, of the Code of Criminal Procedure (刑事訴訟法第一條第一項); J. Y. Interpretation No.135 (司法院釋字第一三五號解釋); J. Y. Interpretation Yuan-je Tzu No.790 (司法院院解字第七九〇號解釋); Supreme Court Precedent No.3231 (1936) (最高法院二十五年上字第三二三一號判例).

KEYWORDS:

procedural decision (程序判決), an appeal against the defendant's interest (不利於被告之上訴), serious violation of the law (重大違背法令), extraordinary-appeal procedure (非常上訴程序), restart the trial (回復訴訟程序).**

HOLDING: A final procedural decision made by the appellate court overruling a legitimate appeal against the de-

解釋文：刑事訴訟程序中不利於被告之合法上訴，上訴法院誤為不合法，而從程序上為駁回上訴之判決確

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fendant's interest in a criminal procedure on the wrong grounds that it was illegitimate, is indeed a decision in serious violation of the law. Since it is a court-ruled decision, it may only be invalidated by extraordinary-appeal procedure before the trial court restarts the trial of the defendant concerning the legitimately appealed part. Otherwise, it will contradict the rule stated in Article 8, Paragraph 1, of the Constitution that "no person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law." The Supreme Court Precedent No.3231 (1936) shall no longer be cited insofar as it is inconsistent with this Interpretation.

REASONING: Article 8, Paragraph 1, of the Constitution states that, "Physical freedom shall be guaranteed to the people. Except in case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance

定者，其判決固屬重大違背法令，惟既具有判決之形式，仍應先依非常上訴程序將該確定判決撤銷後，始得回復原訴訟程序，就合法上訴部分進行審判。否則即與憲法第八條第一項規定人民非依法定程序不得審問處罰之意旨不符。最高法院二十五年上字第三二三一號判例，於上開解釋範圍內，應不再援用。

解釋理由書：憲法第八條第一項規定：「人民身體之自由應予保障，除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序，不得逮捕拘禁。非由法院依法定程序，不得審問處罰」。又刑事訴訟法第一條第一項規定：「犯罪，非依本法或其他法律所定之訴訟程序，不得追訴、處罰」。刑事訴訟程序因判決確定而終結者，不論為實體上之判決或程序上之判決，均生法

with the procedure prescribed by law.” Moreover, Article 1, Paragraph 1, of the Code of Criminal Procedure states that, “No crimes shall be prosecuted or punished except according to the procedures regulated by this law or other laws.” Those criminal procedures that have been concluded with final decisions, either procedural or substantial ones, are legally binding. Although, according to Interpretation No.135, the procedures that are in serious violation of the law are invalid, based on the principles announced by Interpretation Yuan-je Tzu No.790, a final procedural decision overruling legitimate appeal against the defendant’s interest is still binding, and the trial court shall not restart the trial to question or punish the defendant until that decision is invalidated by the legal process.

The implementation out of the criminal procedure should protect the parties’ legitimate right to sue and strike a balance between the trust of the defendant in the court decision and the upright performance of the nation’s power of criminal punishment. A final procedure-decision

律上之羈束力，其有重大違背法令之情形者，依本院釋字第一三五號解釋，雖不生效力，惟就不利益於被告之合法上訴所為駁回上訴之程序上判決，依本院院字第七九〇號解釋意旨，在未經法定程序撤銷其判決前，自不得回復原訴訟程序，逕行審問處罰。

刑事訴訟程序之實施，應保障當事人之合法訴訟權，並兼顧被告對於裁判效力之信賴及國家刑罰權之正確行使。刑事訴訟程序中不利益於被告之合法上訴，上訴法院誤為不合法，而從程序上為駁回上訴之判決確定者，其判決固屬重大違背法令，惟既具有判決之形

made by the appellate court overruling legitimate appeal against the defendant's interest on the wrong grounds that it was illegitimate, is indeed a decision in serious violation of the law. Since its form of court decision makes the defendant trust in its binding effect, as stated above, it must be invalidated by extraordinary appeal procedure before the trial court restarts the trial of the defendant concerning the legitimately appealed part. Otherwise, it will contradict the rule declared in Article 8, Paragraph 1, of the Constitution that "no person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law." The Supreme Court Precedent No.3231, holding that those procedure-decisions overruling the appeals have no substantial effect and that trials can continue until substantial decisions are reached, shall no longer be cited insofar as it is inconsistent with this Interpretation.

Justice Geng Wu filed dissenting opinion. Justice Cheng-Tao Chang filed dissenting opinion in part, in which Justice Shau-Hsien Chai joined.

式，足使被告信賴其羈束力，依上開說明，仍應先依非常上訴程序將該確定判決撤銷後，始得回復原訴訟程序，就合法上訴部分進行審判。否則即與憲法第八條第一項規定人民非依法定程序不得審問處罰之意旨不符。最高法院二十五年上字第三二三一號判例，認此種駁回上訴之程序上判決，不發生實質上之確定力，得再逕行為實體上裁判，於上開解釋範圍內，應不再援用。

本號解釋吳大法官庚提出不同意見書；張大法官承韜與翟大法官紹先共同提出一部不同意見書。