J. Y. Interpretation No.297（April 24, 1992）*

ISSUE: What are the circumstances in which a person injured by a criminal act may institute private prosecution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 228, Paragraph 1, Article 251, Paragraph 1 and Article 319 of the Code of Criminal Procedure（刑事訴訟法第二百二十八條第一項、第二百五十一條第一項、第三百十九條）; J. Y. Interpretation No. 170（司法院釋字第一七〇號解釋）; Supreme Court's Precedent T.S.T. No. 1799 (Sup. Ct. 1981)（最高法院七十年臺上字第一七九九號判例）.

KEYWORDS:

person injured by an act of offense（犯罪之被害人）, public prosecution（公訴）, private prosecution（自訴）, power of criminal punishment（刑罰權）. **

HOLDING: While the people shall have the right of instituting legal proceedings under Article 16 of the Constitution, the manner of conducting the litigation shall be specifically prescribed by law. This concept has been clearly

解釋文：人民有訴訟之權，憲法第十六條固定有明文，惟訴訟如何進行，應另由法律定之，業經本院釋字第一七〇號解釋於解釋理由書闡明在案。刑事訴訟乃實現國家刑罰權之程序，刑事訴訟法既建立公訴制度，由檢察官追

* Translated by Raymond T. Chu.

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expounded in our Interpretation No. 170. A criminal proceeding is a procedure by which the power of criminal punishment of the State may be enforced. The Code of Criminal Procedure has established a public prosecution system, whereby prosecution against criminals is the responsibility of public prosecutors, and the Act further provides in Article 319 that "a person injured by an act of offense may institute a private prosecution." In the absence of a precise statutory definition of "a person injured by an act of offense", the court taking cognizance of the case may use its discretion to determine based on the facts of the particular act of crime. Thus, the views expressed by the Supreme Court in its decision No. Tai-shang Tze 1799 (1981) should not be considered contradictory to the Constitution.

訴犯罪，又於同法第三百十九條規定：「犯罪之被害人得提起自訴」，其所稱「犯罪之被害人」，法律並未明確界定其範圍，自得由審判法院依具體個別犯罪事實認定之，最高法院七十年台上字第一七九九號判例所表示之法律上見解，尚難認與憲法有何牴觸。

REASONING: While the people shall have the right of instituting legal proceedings under Article 16 of the Constitution, the manner of conducting the litigation shall be specifically prescribed by law. This concept has been clearly expounded in our Interpretation No. 170. A

解釋理由書：人民有訴訟之權，憲法第十六條固定有明文，惟訴訟如何進行，應另由法律定之，業經本院釋字第一七〇號解釋於解釋理由書闡明在案。刑事訴訟乃實現國家刑罰權之程序，刑事訴訟法第二百二十八條第一項規定：「檢察官因告訴、告發、自首或

criminal proceeding is a procedure by which the power of criminal punishment of the State may be enforced. The Code of Criminal Procedure provides in Article 228, Paragraph 1, that "if a prosecutor, because of complaint, information, voluntary surrender, or other reasons, knows there is suspicion of an offense having been committed, he shall immediately begin an investigation." Additionally, Article 251, Paragraph 1, of the Code provides that "if a prosecutor obtains during investigation sufficient evidence to make him believe that an accused is suspected of having committed an offense, he shall institute a public prosecution." By these provisions the Act has thus established the public prosecution system, whereby the prosecutor is charged with the duty to prosecute criminal offenses, and a person injured by an act of offense may file a complaint with the prosecutor to enable him to conduct an investigation and institute prosecution by due process of law. The Act further allows private prosecution by providing in Article 319 that "a person injured by an act of offense may institute a private prosecution." In the article cited

其他情事知有犯罪嫌疑者，應即開始偵查。」第二百五十一條第一項規定：「檢察官依偵查所得之證據，足認被告有犯罪嫌疑者，應提起公訴。」既建立公訴制度由檢察官追訴犯罪，犯罪之被害人原得向檢察官告訴，由檢察官依法定程序偵查起訴，而同法第三百十九條又規定：「犯罪之被害人得提起自訴」，其所稱「犯罪之被害人」，係指犯罪之直接被害人而言，但在侵害國家法益或社會法益兼有侵害個人法益之犯罪，何種情形下，個人為直接被害人，法律並未明確界定其範圍，自得由審判法院依具體個別犯罪事實認定之，其不得適用自訴之規定者，當然仍應適用公訴之規定，既無礙於國家刑罰權之實現，亦無訴訟權受限制之問題，最高法院七十年台上字第一七九九號判例稱：「上訴人自訴被告涉嫌刑法上公務員圖利罪，其所保護之法益，為公務員對國家服務之忠信規律及國家之利益，縱其犯罪結果，於私人權益不無影響，但其直接被害者仍為國家法益，而非私人權益。雖因被告之行為致上訴人受有損害，亦屬間接之被害，而非直接被害，依照上開說明，即不得提起自訴」，其所表示之見解，尚難認與憲法有何牴觸。惟犯罪被害人得提起自訴之範圍，

above, "a person injured by an act of offense" refers to a person who is directly injured by a criminal act. However, in a case where the national or social interest and the personal interest are injured by a criminal act, the law does not define the condition in which an individual victim will be considered a person within the meaning of being directly injured. The issue is then left to the discretion of the court taking cognizance of the case to determine based on the facts of the particular criminal act. Where the provisions in respect to private prosecution are found inapplicable, the case will naturally be subject to public prosecution under provisions applicable thereto. In this way, the enforcement of the State's power of criminal punishment is not harmed, nor does it give rise to the problem of the right of instituting legal proceedings being limited. Thus, the Supreme Court decision No. Tai-shang Tze 1799 (1981) is not inconsistent with the Constitution in holding that "in the present case where the Appellant brought a private prosecution against the accused who was suspected of having committed the offense under the Criminal

應妥為檢討，明確規定，併此指明。

Code of a public official seeking to profit from his function, the interest protected by law includes the loyalty of public functionaries in serving the nation and the national interest. Although the crime does result in a certain impact on personal rights and interests, the party directly injured is the State rather than any individual. Although the Appellant has suffered injury from the act of the accused, the injury is indirect, not direct. Accordingly, no private prosecution is allowed." Nevertheless, we have to point out here that the circumstances in which a person injured by a criminal act may institute private prosecution must be carefully reviewed and clearly specified.

Justice Cheng-Tao Chang filed dissenting opinion in part, in which Justice Herbert Han-Pao Ma and Justice Teh-Sheng Chang joined.

Justice Zu-Zan Yang filed dissenting opinion in part.

本號解釋張大法官承韜、馬大法官漢寶與張大法官特生共同提出一部不同意見書；楊大法官日然提出理由一部不同意見書。