

J. Y. Interpretation No.302 (August 14, 1992) *

ISSUE: Does the Code of Criminal Procedures, in limiting the appeal to the court of the third instance to the judgment contrary to law, violate the Constitution?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution (憲法第十六條及第二十三條) ; Article 377 of the Code of Criminal Procedure (刑事訴訟法第三百七十七條) .

KEYWORDS:

court of the third instance (第三審法院) , legislative discretion (立法裁量) , legal review (法律審查) .**

HOLDING: Article 377 of the Code of Criminal Procedure provides, “An appeal may not be made to a court of the third instance except for the reason that the judgment is contrary to law.” Such provision is enacted for the purpose of reasonable use of legal proceedings in order to increase the public interest. It neither transgresses the scope of legislative discretion nor contradicts Article 16 of the Constitution.

解釋文：刑事訴訟法第三百七十七條規定：「上訴於第三審法院，非以判決違背法令為理由，不得為之」，旨在合理利用訴訟程序，以增進公共利益，尚未逾越立法裁量範圍，與憲法第十六條並無牴觸。

* Translated by John C. Chen.

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REASONING: Article 16 of the Constitution provides that the people shall have the right to initiate legal proceedings. However, the legislature shall have the discretion in deciding what proceedings shall be available for the exercise of such right, the division of the court of instances, and whether the court of the third instance shall be restricted to performing legal review, and such matters shall be prescribed into law by the legislature. Article 377 of the Code of Criminal Procedure provides that an appeal may not be made to a court of the third instance except for the reason that the judgment is contrary to law. The limitation on the reasons to appeal to the court of the third instance is made under the aforesaid principle and is necessary to increase the public interest. It does not transgress the scope of legislative discretion and thus is permitted under the provision of Article 23 of the Constitution. As such, Article 377 of the Code of Criminal Procedure does not contradict the principle of the protection of the people's litigation rights under Article 16 of the Constitution.

解釋理由書：憲法第十六條固規定人民有訴訟之權，惟此項權利應依如何之程序行使，審級如何劃分，應否將第三審法院定為法律審，使司法訴訟程序之利用臻於合理，屬立法裁量問題，應由立法機關以法律妥為規定。刑事訴訟法第三百七十七條規定：「上訴於第三審法院，非以判決違背法令為理由，不得為之」。其限制第三審上訴之理由，即係基於上述意旨，為增進公共利益所必要，並未逾越立法裁量範圍，為憲法第二十三條之所許，與憲法第十六條保障人民訴訟權之本旨並無牴觸。