

J. Y. Interpretation No.378 (April 14, 1995) *

ISSUE: Should the decisions rendered by the Committee on the Review of the Discipline of Lawyers be deemed equivalent to the final and binding judgment of the court in light of Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) ; Articles 40, 41,43 and 52 of the Lawyer's Act (律師法第四十條、第四十一條、第四十三條、第五十二條) .

KEYWORDS:

right to bring lawsuits (訴訟權) , lawyer's discipline (律師懲戒) , final and last judgment (確定終局判決) . **

HOLDING: The Committee on the Discipline of Lawyers and the Committee on the Review of the Discipline of Lawyers, established according to Articles 41 and 43 of the Lawyer's Act, serve as the first trial and final appeal tribunals of professional discipline within the organizations of the High Court and Supreme Court, and are different from the Commit-

解釋文：依律師法第四十一條及第四十三條所設之律師懲戒委員會及律師懲戒覆審委員會，性質上相當於設在高等法院及最高法院之初審與終審職業懲戒法庭，與會計師懲戒委員會等其他專門職業人員懲戒組織係隸屬於行政機關者不同。律師懲戒覆審委員會之決議即屬法院之終審裁判，並非行政處分或訴願決定，自不得再行提起行政爭

* Translated by Su-po Kao.

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tee on the Discipline of Accountants and other professional disciplinary organizations which are within the organizations of the Executive branch. The resolution of the Committee on the Review of the Discipline of Lawyers is therefore equivalent to the final and binding judgment of the court which is not an administrative act or a decision of administrative appeal and cannot be appealed through administrative litigation. Interpretation No. 295 of this Yuan should thus be further supplemented.

REASONING: Article 16 of the Constitution prescribes the people's right of instituting legal proceedings, which means the people in accordance with legal proceeding, have the right to request the court to adjudicate on their respective legal disputes, and such right has already been interpreted by this Yuan (See Interpretations Nos. 220 and 368). The so-called "court" will certainly include the adjudicating institution composed of judges. However, some adjudicating institutions, established within the judiciary and composed of both judges and profess-

訟，本院釋字第二九五號解釋應予補充。

解釋理由書：憲法第十六條規定人民有訴訟權，係指人民有依法定程序，就其權利義務之爭議，請求法院救濟之權利，業經本院闡釋在案（參照釋字第二二〇號、第三六八號解釋）。其中所謂法院固係指由法官所組成之審判機關而言，惟若因事件性質在司法機關之中設置由法官與專業人員共同參與審理之法庭或類似組織，而其成員均屬獨立行使職權不受任何干涉，且審理程序所適用之法則，亦與法院訴訟程序所適用者類同，則應認其與法院相當。人民依法律之規定就其爭議事項，接受此等法庭或類似組織之審理，即難謂憲法上

sionals, should be deemed to be equivalent to the “court,” in the case where the members of such institutions exercise their authority independently from interference, and the procedural rules applied are similar to the court proceeding. Then the people’s right of instituting legal proceedings is not violated should their respective disputes be adjudicated by such institutions in accordance with law.

In regard to the matters of violation of professional obligations and discipline of the professionals, the disciplinary institutions are mostly in the form of committees composed of the members of the respective professions, officials of relevant authority, and relevant experts according to the organic charter promulgated by the governing authority authorized by law, e.g., the disciplinary institutions of accountants and architects. As for lawyers whose mission is to protect human rights, uphold social justice and to promote democracy and the rule of law (See Article 1 of the Lawyer’s Act amended and promulgated on Nov. 16, 1992), their practice is naturally mutually supportive and

之訴訟權遭受侵害。

關於專門職業人員違背其職業上應遵守之義務，而須受懲戒者，基於職業團體自治原則及各種專門職業之特性，掌理懲戒事項之組織，多由法律授權主管機關以訂定組織規程方式，組成包括各該職業團體成員、行政主管人員及有關專家之委員會，如會計師及建築師等之懲戒組織是。至於律師依法負有保障人權、實現社會正義及促進民主法治之使命（見中華民國八十一年十一月十六日修正公布之律師法第一條），其執行業務與法院之審判事務相輔相成，關係密切，法律對其懲戒機構之設立，遂有不同於其他專門職業人員之規定。依律師法第四十一條：「律師懲戒委員會由高等法院法官三人、高等法院檢察署檢察官一人及律師五人組織之；委員

highly related to the adjudication of the court. Therefore, the legal rules regarding the establishment of the disciplinary institutions are different from those regarding other professions. According to Article 41 of the Lawyer's Act: "The Committee on the Discipline of Lawyers shall be composed of three judges of the High Court, one prosecutor from the prosecutor's office in the High Court, and five lawyers; one of the members of the above committee shall be elected Chief Commissioner." Article 43 of the same Act also reads: "The Committee on the Review of the Discipline of Lawyers shall be composed of four justices of the Supreme Court, one prosecutor from the prosecutor's office in the Supreme Court, five lawyers and two scholars; one of the members of the above committee shall be elected Chief Commissioner." In regard to the proceeding of disciplinary matters, Article 40 of the same Act adopts the principle of prosecution, that is, the disciplinary procedure is initiated by a government organ other than the Discipline Committee or by the bar association. Also according to the Regulation on the Discipline of Lawyers, author-

長由委員互選之。」同法第四十三條：「律師懲戒覆審委員會由最高法院法官四人、最高法院檢察署檢察官二人、律師五人及學者二人組織之；委員長由委員互選之。」關於懲戒事件之審理，則依同法第四十條規定採彈劾主義，亦即懲戒程序之發動，係由懲戒委員會以外之機關或律師公會移送。又依同法第五十二條第二項授權訂定之律師懲戒規則，在組織結構上將上述懲戒委員會分別設在高等法院及最高法院，其成員於行使職權時實質上亦與各該法院法官享有同等之獨立性。此外，有關人員迴避，案件分配，證據調查（並得囑託法院予以調查），筆錄製作，作成評議及書類等，或準用刑事訴訟法之規定，或與法院審理訴訟案件之程序類同，各該委員會性質上屬於法院所設之職業懲戒法庭，與其他專門職業人員懲戒委員會係隸屬於行政機關者有別。雖各該懲戒委員會之成員除法官及檢察官外，尚有律師或學者，此乃職業懲戒組織之通例，於其行使職業懲戒權法庭之特性並無影響。受懲戒之律師對於律師懲戒委員會之決議不服者，得請求覆審，律師懲戒覆審委員會所為之決議，即屬法院之終審裁判，並非行政處分或訴願決定，自不得再行提起行政爭訟，本院釋

ized and promulgated pursuant to Article 52, Paragraph 2, of the same Act, the abovementioned Committees are established within the High Court and Supreme Court, respectively, in the structural sense and their members practically enjoy the same degree of independence as other judges of the same institutions do in the exercise of authority. In addition, as regards the rules of official withdrawal, case allocation, evidence investigation (may request the court to investigate), affidavit recording, verdict and documentation, etc., either the relevant rules of the Code of Criminal Procedure shall also be applied or, they are similar to the procedure of adjudication. The respective committees are the professional disciplinary tribunals of the courts in terms of their characteristics and are different from other committees of professional discipline established under the Executive branch. Though the members of the respective committees include lawyers and scholars in addition to judges and prosecutors, this is the common practice for the organization of professional discipline and does not affect its character as the tribunal ex-

字第二九五號解釋應予補充。又律師懲戒委員會既具職業懲戒法庭之性質，為使其名實相符並增進司法化之運作，宜於修正相關法律時改為法庭名稱，併予指明。

exercising the authority of professional discipline. The disciplined lawyer may appeal the resolution of the Committee on the Discipline of Lawyers and request for review. The resolution of the Committee on the Review of the Discipline of Lawyers is the final and binding judgment of the court in its character which is not an administrative act or a decision of administrative appeal and cannot be appealed through administrative litigation. Interpretation No. 295 of this Yuan should thus be further supplemented. And since the Committee on the Discipline of Lawyers bears the character of a professional disciplinary tribunal, it should be further pointed out that its official name should be changed to tribunal, when the relevant laws are revised, in order that its name accords with practice and to strengthen its judicial character.

Justice Sen-Yen Sun filed dissenting opinion.

本號解釋孫大法官森焱提出理由部分不同意見書。