

J. Y. Interpretation No.60 (April 2, 1956) *

ISSUE: Under what circumstances may a case concerning any of the offenses listed in Article 61 of the Criminal Code be appealable to the court of third instance?

RELEVANT LAWS:

Article 61 of the Criminal Code (刑法第六十一條) ; Articles 368 and 387 of the Code of Criminal Procedure (as amended on December 26, 1945) (刑事訴訟法第三百六十八條及第三百八十七條) ; Article 4 of the Regulation Governing the Adjudication of the Grand Justices Council (司法院大法官會議規則第四條) .

KEYWORDS:

groundless judgment (無根據之判決) , relative relationship (牽連關係) , prerequisite of justice on processes (審級之先決問題) , appeal (上訴) , third instance (第三審) , oral argument (言詞辯論) .**

HOLDING: If the court of the second instance considers that an appeal of a decision made by the Supreme Court is groundless, it shall dismiss such appeal by a judgment. However, the present case,

解釋文：最高法院所為之確定判決有拘束訴訟當事人之效力，縱有違誤，亦僅得按照法定途徑聲請救濟。惟本件關於可否得以上訴於第三審法院，在程序上涉及審級之先決問題，既有歧

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which may or may not be appealed to the court of the third instance, involves a pre-requisite point of justice on process. Since this is a mere difference in legal interpretation, it shall be resolved in conformity with Article 4 of the Regulation Governing the Adjudication of Grand Justices Council. Article 368 of the Code of Criminal Procedure has stipulated explicitly that cases which are judged by the court of the second instance under Article 61 of the Criminal Code may not be appealed to the court of the third instance. In the present case, the prosecutor did not dispute the articles adapted in the original court ruling but filed an appeal after judgment by the court of the second instance. In addition, this case has no relative relationship to other cases which may be appealed to the court of the third instance because it is not pursuant to Article 387 of the Code of Criminal Procedure, which provides that overruling a judgment is not in conformity with the legal process. As the litigants still dispute their respective degree of guilt under Article 61 of the Criminal Code, the court shall investigate whether the litigants had raised

異見解，應認為合於本會議規則第四條之規定予以解答。查刑法第六十一條所列各罪之案件，經第二審判決者，不得上訴於第三審法院，刑事訴訟法第三百六十八條定有明文，倘第二審法院判決後檢察官原未對原審法院所適用之法條有所爭執而仍上訴，該案件與其他得上訴於第三審之案件亦無牽連關係。第三審法院不依同法第三百八十七條予以駁回，即與法律上之程式未符。至案件是否屬於刑法第六十一條所列各罪之範圍，尚有爭執者，應視當事人在第二審言詞辯論終結前是否業已提出，如當事人本已主張非刑法第六十一條所列各罪，第二審仍為認係該條各罪之判決者，始得上訴於第三審法院。

this issue before oral arguments in the court of the second instance were closed. If the litigants had argued during the oral argument that Article 61 of the Criminal Code did not apply to their case, yet the court of the second instance held the opposite opinion and rendered judgment, then the litigants may appeal the case to the court of the third instance.