

J. Y. Interpretation No.134 (December 1, 1972) \*

**ISSUE:** Where the court failed to serve a copy of the private prosecution upon the accused, who nevertheless appeared in court and participated in oral argument, could the accused still claim that the judgment is illegal due to failure of service of process?

**RELEVANT LAWS:**

Article 320, Paragraph 3, and Article 328 of the Code of Criminal Procedure (刑事訴訟法第三百二十條第三項、第三百二十八條) .

**KEYWORDS:**

private prosecution (自訴), oral arguments (言詞辯論) .\*\*

**HOLDING:** A plaintiff who brings a private prosecution against numerous defendants shall provide the court with copies of the complaint for all the defendants. If a plaintiff fails to provide the required number of copies of the complaint to the court, the court shall order the plaintiff to provide the missing copies within a specific time period if the circumstances permit. The aforementioned

**解釋文：**自訴狀應按被告人數提出繕本，其未提出而情形可以補正者，法院應以裁定限期補正，此係以書狀提起自訴之法定程序，如故延不遵，應諭知不受理之判決。惟法院未將其繕本送達於被告，而被告已受法院告知自訴內容，經為合法之言詞辯論時，即不得以自訴狀繕本之未送達而認為判決違法。本院院字第一三二〇號解釋之(二)應予補充釋明。

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\* Translated by Li-Chih Lin, Esq., J.D.

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rule is a part of the statutory procedure for bringing a private prosecution with a written complaint. If the plaintiff fails to comply with the court order, the court shall dismiss the plaintiff's complaint. However, if the court fails to serve a copy of the complaint to the defendant but the defendant has already been informed of the contents of the complaint, and the judgment of the case has been rendered after oral arguments, the defendant may not argue that the judgment is illegal for the reason that the court has failed to serve him or her a copy of the complaint. Interpretation Yuan-Je-Tze No. 1320 shall therefore be supplemented and clarified accordingly.

**REASONING:** A plaintiff who brings a private prosecution against numerous defendants shall provide the court with copies of the complaint for all the defendants. Article 320, Paragraph 3, of the Code of Criminal Procedure specifies that if a plaintiff fails to provide the required number of copies of the complaint to the court, the court shall order the plaintiff to provide the missing copies

**解釋理由書：**按自訴狀應按被告人數提出繕本，刑事訴訟法第三百二十條第三項（舊條文第三百十二條第三項）定有明文。其未提出而情形可以補正者，法院應以裁定限期命其補正，此為以書狀提起自訴之法定程序，如故延不遵，自應諭知不受理之判決（參照同法第三百四十三條準用第二百七十三條）亦為本院院字第一三二〇號解釋之（二）所明示。至自訴狀繕本之送達，屬

within a specific time period if the circumstances permit. The aforementioned rule is a part of the statutory procedure for bringing a private prosecution with a written complaint. If the plaintiff fails to comply with the court order, Interpretation Yuan-Je-Tze No. 1320 holds that the court shall dismiss the plaintiff's complaint (See Article 343 of the Code of Criminal Procedure, applicable *mutatis mutandis* to Article 273 of the Code of Criminal Procedure). It is the court's obligation to serve a copy of the complaint to each defendant. Thus, Article 328 of the Code of Criminal Procedure provides that, except when the court has summoned or detained the defendant, the court shall promptly serve a copy of the complaint to each defendant. In addition, if the defendant has already been informed of the content of the complaint, and the judgment of the case has been rendered after oral arguments, the defendant may not argue that the judgment is illegal for the reason that the court has failed to serve him or her a copy of the complaint. Interpretation Yuan-Je-Tze No. 1320 shall therefore be supplemented and clarified accordingly.

於法院之職責，法院固應速將繕本送達於被告，惟如有先行傳喚或拘提之必要者，同法第三百二十八條但書有例外之明文。且如被告已受告知被訴之內容，案經合法之言詞辯論而為判決時，自亦難以繕本之未送達而認判決為違法。從而本院院字第一三二〇號解釋之(二)應予補充釋明。

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Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之侖、金大法官世鼎分別提出不同意見書。