

J. Y. Interpretation No.146 ( July 23, 1976 ) \*

**ISSUE:** What remedy should be sought where, after a criminal judgment becomes final and conclusive, the facts turned out to be inconsistent with the evidence presented?

**RELEVANT LAWS:**

J.Y. Interpretation No. 43 ( 司法院釋字第四十三號解釋 ) ;  
Article 445, Paragraph 2, of the Code of Criminal Procedure  
( 刑事訴訟法第四百四十五條第二項 ) .

**KEYWORDS:**

extraordinary appeal ( 非常上訴 ) , motion for retrial ( 再審 ) .\*\*

**HOLDING:** After the final ruling of a criminal case has been rendered in a trial court, if the facts of the case are found to be contrary to the evidence admitted in the court, the criminal trial at issue is considered to have violated the law and the defendant may file an extraordinary appeal. If the defendant can provide a sufficient reason for retrial, the defendant will be permitted to file a motion for retrial pursuant to the retrial procedures.

**解釋文：**刑事判決確定後，發見該案件認定犯罪事實與所採用證據顯屬不符，自屬審判違背法令，得提起非常上訴；如具有再審原因者，仍可依再審程序聲請再審。

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

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

**REASONING:** Except for typos or clerical errors, which are not prejudicial to the facts or ruling of a case and are permitted to be corrected under J.Y Interpretation No. 43, after the final ruling of a criminal case has been rendered in a trial court, if the facts of the case are found to be contrary to the evidence admitted in the court, the criminal trial at issue is considered to have violated the law and the defendant may file an extraordinary appeal. The presiding judges in the extraordinary appeal may, pursuant to Article 445, Paragraph 2, of the Code of Criminal Procedure, correct the legal errors based on the facts determined by the trial court. However, if the defendant can provide a sufficient reason for retrial by proving that the facts of the case were wrongfully determined by the trial court in violation of the law, the defendant will be permitted to file a motion for retrial pursuant to the retrial procedures.

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

**解釋理由書：**刑事判決確定後，發見該案件認定犯罪事實與其所採用之證據顯屬不符，如係文字誤寫，而不影響於全案情節與判決之本旨者，得依本院釋字第四十三號解釋予以更正外，均屬審判違背法令，得提起非常上訴，由非常上訴審依刑事訴訟法第四百四十五條第二項準用第三百九十四條之規定，就原確定判決所確認之事實，以糾正其法律錯誤，如因審判違背法令，致影響於事實之確定，具有再審原因者，仍可依再審程序聲請再審。

本號解釋王大法官之侑、陳大法官世榮與金大法官世鼎分別提出不同意見書。