

J. Y. Interpretation No.159 (September 21, 1979) *

ISSUE: How should the publication of a written criminal judgment in a newspaper be enforced?

RELEVANT LAWS:

Articles 315, 220, 470 and 471 of the Code of Criminal Procedure (刑事訴訟法第三百十五條、第二百二十條、第四百七十條及第四百七十一條) .

KEYWORDS:

criminal perjury (刑法偽證罪), false accusation (誣告罪), defamation (妨害名譽罪), fraud offense (信用罪), the entire or partial judgment (判決書全部或一部), separate ruling (裁定), the final judgment of the case (確定判決) .**

HOLDING: Article 315 of the Code of Criminal Procedure provides that a defendant who is liable to publish the entire or partial judgment in the newspaper shall also pay for the cost. The court must make a separate ruling to impose this sanction on the defendant. If the defendant fails to comply with the court's

解釋文：刑事訴訟法第三百十五條所定：「將判決書全部或一部登報，其費用由被告負擔」之處分，法院應以裁定行之。如被告延不遵行，由檢察官準用同法第四百七十條及第四百七十一條之規定執行。本院院字第一七四四號解釋，應予補充。

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

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ruling, the prosecutor may execute the court's ruling pursuant to Articles 470 and 471 of the Code of Criminal Procedure. J.Y. Interpretation No. 1744 is therefore supplemented accordingly.

REASONING: Article 315 of the Code of Criminal Procedure provides that a defendant who is convicted of criminal perjury and false accusation or is convicted of defamation and fraud offense, is liable to publish the entire or partial judgment in the newspaper and shall also pay for the cost. The judgment referred to in Article 315 of the Code of Criminal Procedure means the final judgment of the case. If a victim or a person who has standing files a motion to demand that the defendant publish the entire or partial judgment in the newspaper, the court shall make a separate ruling on whether to grant or deny the motion pursuant to Article 220 of the Code of Criminal Procedure. If the court grants the motion but the defendant fails to comply with the court's ruling, the prosecutor may execute the court's ruling pursuant to Articles 470 and 471 of the Code of Criminal Pro-

解釋理由書：按犯刑法偽證及誣告罪章或犯妨害名譽及信用罪章之罪者，因被害人或其他有告訴權人之聲請，得將判決書全部或一部登報，其費用由被告負擔，刑事訴訟法第三百十五條（舊刑事訴訟法第三百零七條）設有規定。此項判決，係指確定判決而言。如經被害人或其他有告訴權人聲請將該判決書登報，法院就其聲請所為之處分，刑事訴訟法既未規定須經判決，依同法第二百二十條規定，應由法院以裁定行之。被告如延不遵行，由檢察官準用同法第四百七十條及第四百七十一條之規定執行，本院院字第一七四四號解釋，應予補充。

cedure. J. Y. Interpretation No. 1744 is therefore supplemented accordingly.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。