J. Y. Interpretation No.168（May 8, 1981）*

ISSUE: Should a judgment on the merits of a re-litigated case be dismissed if that final and binding judgment is rendered prior to an earlier judgment of the same case being finalized?

RELEVANT LAWS:

Article 302, Subparagraph 1 and Article 303, Subparagraph 2 of the Code of Criminal Procedure（刑事訴訟法第三百零二條第一款、第三百零三條第二款）.

KEYWORDS：

extraordinary appeal（非常上訴）, dismissal judgment（不受理判決）, public prosecution（公訴）, private prosecution（自訴）.**

HOLDING: Article 303, Subparagraph 2, of the Code of Criminal Procedure expressly provides that a dismissal judgment should be entered for cases already being litigated by public or private prosecution and then relitigated before the same court. When the judgment of a prior litigation is not finalized after the judgment of the later litigation is rendered but

解釋文：已經提起公訴或自訴之案件，在同一法院重行起訴者，應諭知不受理之判決，刑事訴訟法第三百零三條第二款，定有明文。縱先起訴之判決，確定在後，如判決時，後起訴之判決，尚未確定，仍應就後起訴之判決，依非常上訴程序，予以撤銷，諭知不受理。

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before the later judgment is finalized, the judgment of the later litigation shall be dismissed in accordance with the process of extraordinary appeal.

REASONING: *Res judicata* is a fundamental principle of our Code of Criminal Procedure.[1] Article 303, Subparagraph 2, of the Code of Criminal Procedure expressly provides that a dismissal judgment should be entered for cases already being litigated by public or private prosecution and then relitigated before the same court. As long as the same case has been legally prosecuted by public or private prosecution, it cannot be relitigated

解釋理由書：按一事不再理，為我刑事訴訟法之基本原則。已經提起公訴或自訴之案件，在同一法院重行起訴者，應諭知不受理之判決，為同法第三百零三條第二款所明定。蓋同一案件，既經合法提起公訴或自訴，自不容在同一法院重複起訴，為免一案兩判，對於後之起訴，應以形式裁判終結之。而同法第三百零二條第一款所定，案件曾經判決確定者，應諭知免訴之判決，必係法院判決時，其同一案件，已經實

[1]. Recognizing the subtle differences between the terms "一事不再理" in civil law and "*res judicata*" in common law system in that the former does not necessarily cover the claims or issues already being fully and finally adjudicated, this is nevertheless and possibly the closest resemblance of concepts. *Res judicata* is the principle that a final judgment of a competent court is conclusive upon the parties in any subsequent litigation involving the same cause of action. Note that the legal system of the Republic of China does not distinguish claims preclusion (*res judicata*) from issues preclusion (*collateral estoppel*). According to the U.S. Supreme Court (as declared by the late Justice Potter Stewart), "[u]nder *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. As this Court and other courts have often recognized, *res judicata* and *collateral estoppel* relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *See* Allen

in the same court. A procedural judgment should then be entered to terminate the latter action. Article 302, Subparagraph 1, of the same Act provides that a dismissal judgment shall be entered on a case whose final and binding judgment has already been rendered. Considering that this provision expressly provides that a "final and binding judgment has already been rendered," doubtless it is applicable only when a final and binding judgment on the merits has been rendered on the case. Consequently, although a judgment on the merits of the later litigation is finalized prior to the earlier judgment of the former litigation, since that later litigation judgment is not yet finalized at the time the earlier judgment is rendered, that earlier judgment, therefore, is not legally bound by the later judgment as there is not yet the effect of stare decisis. As a result, there is no ground for the application of Article 302, Subparagraph 1, by issuing a dismissal judgment, and the earlier judgment on the merits does not become unlawful either even when the later judgment becomes finalized first. Thus, the later litigation, in accordance with Article

體判決確定，始有該條款之適用，此由該條款明定：「曾經判決確定者」觀之，洵無庸疑。故法院對於後之起訴，縱已為實體判決，並於先之起訴判決後，先行確定，但後起訴之判決，於先起訴判決時，既未確定，即無既判力，先起訴之判決，依法不受其拘束，無從依同法第三百零二條第一款之規定為免訴之諭知，其所為實體判決，自不能因後起訴之判決先確定，而成為不合法。從而，後之起訴，依上開第三百零三條第二款之規定，本不應受理，倘為實體判決，難謂合法，如已確定，應依非常上訴程序，予以撤銷，諭知不受理。

303, Subparagraph 2, of the same Act, should not have been accepted; its judgment on the merit may hardly be considered lawful, and a writ of dismissal should be issued in accordance with the process of extraordinary appeal if that judgment is indeed finalized.