

J. Y. Interpretation No.179 (February 25, 1983) *

ISSUE: Under Article 9 of the Enforcement Act of the Code of Civil Procedure, if an appellant represented by an attorney as his agent ad litem fails to pay court costs, the court may determine not to order that the defect be amended within a fixed time limit and dismiss an action for retrial on the ground that the action is not brought in the proper form prescribed by law. Does this Act interfere with the exercise of the right of litigation and the equality of legal standing of the people, and is it thus unconstitutional?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條); Article 9 of the Enforcement Act of the Code of Civil Procedure (民事訴訟法施行法第九條); Supreme Court's Precedent T.S.T. 1128 (Sup. Ct. 1981) (最高法院七十年台上字第一一二八號判例).

KEYWORDS:

agent ad litem (訴訟代理人), amendment (補正), equality of legal standing (法律上地位平等), applicable mutatis mutandis (準用), irrevocable judgment (確定判決), delay of the proceedings (延滯訴訟), right of instituting legal proceedings (訴訟權), first appeal (第二審), final appeal (第三審).**

* Translated by Raymond T. Chu.

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

HOLDING: The purpose of Article 9 of the Enforcement Act of the Code of Civil Procedure, which provides that where an appellant represented by an attorney as his agent ad litem fails to pay court costs the court may determine not to order that an amendment be made within a fixed time limit, is to avoid delay of the proceeding. The provision thus does not interfere with the exercise of the right of instituting legal proceedings and the equality of legal standing of the people. Whether the statute should be made applicable mutatis mutandis to an action of retrial brought against an irrevocable judgment delivered by a court of first appeal or of the final appeal is a question of the application of law in adjudication, and for that reason the provision cannot be said to be contrary to the Constitution.

REASONING: The petitioner in the instant case states in essence that he brought an action for retrial through the representation of an attorney as his agent ad litem against the Supreme Court's Precedent T.S.T. 1128 (Supreme Court, 1981), and that by its ruling T.T.T. 131

解釋文：民事訴訟法施行法第九條所定上訴人有律師為訴訟代理人，而未繳納裁判費者，法院得不定期間命其補正，乃在避免延滯訴訟，與人民訴訟權之行使及人民在法律上地位之平等，尚無妨礙。對於第三審或第二審確定判決提起再審之訴，應否準用上開規定，係裁判上適用法律之問題，要難認為牴觸憲法。

解釋理由書：本件聲請意旨略稱：聲請人委任律師為訴訟代理人，對最高法院七十年台上字第一一二八號判決，提起再審之訴，因未繳納裁判費，經最高法院適用民事訴訟法施行法第九條規定，不命補正，逕認其再審之訴為不合法，而以七十年台再字第一三一號

(1981), the Supreme Court, applying Article 9 of the Enforcement Act of the Code of Civil Procedure but without ordering an amendment, dismissed the action on the ground that the action for retrial was not brought in the proper form required by law because the petitioner failed to pay court costs. The petitioner thus applies for interpretation to be made by this Yuan on the ground that said Act invoked by the Supreme Court in the irrevocable final ruling at issue is arguably unconstitutional.

It must be noted that while the so-called people's right of instituting legal proceedings under Article 16 of the Constitution means that the people shall have the right of instituting legal proceedings when their right has been injured, it also means that the court has the duty to adjudicate in accordance with law. The exercise of the right of instituting legal proceedings, however, must follow the formality prescribed by law. In view of the fact that not all litigants have knowledge of the procedural law, the law allows amendment to be made in case of any

裁定駁回之，聲請人認為該確定終局裁定所適用之上開法條，有牴觸憲法之疑義，聲請解釋。

按憲法第十六條所謂人民有訴訟之權，固指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言。惟訴訟權之行使，應循法定程式，而有欠缺者，為顧及當事人未必具備訴訟法上之知識，故設補正之規定，以保障其權益。但當事人如已委任律師為訴訟代理人提起上訴，須繳納裁判費，乃法定程式，應為其訴訟代理人所熟知；為避免延滯訴訟，民事訴訟法施行法第九條授與法院斟酌應否命補正之權，所為得不命補正之規定，於人民訴訟權之行使，尚無妨礙。

defect in formality. If a party has appointed an attorney as his agent ad litem for the institution of an appeal, however, the legal requirement in respect of payment of court costs is a formality with which the attorney should be familiar. Hence, to avoid delay of the proceeding, Article 9 of the Enforcement Act of the Code of Civil Procedure gives the court the power to decide at its discretion whether or not to order an amendment. The provision that the court may decide not to order an amendment does not interfere with the exercise of the people's right of instituting legal proceedings.

Moreover, while the Constitution provides in Article 7 that all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law, it does not prohibit reasonably differential statutory prescriptions based on age, occupation, and economic situations of and the special relations between people. Accordingly, Article 9 of the Enforcement Act of the Code of Civil Procedure does not interfere with the constitutional protection with

次按憲法第七條所稱中華民國人民無分男女、宗教、種族、階級、黨派，在法律上一律平等，並非不許法律基於人民之年齡、職業、經濟狀況及彼此間之特別關係等情事，而為合理之不同規定。故民事訴訟法施行法第九條，亦無礙於憲法對於人民平等權之保障。

respect to the equality of the people.

Finally, whether the provision of Article 9 of the Enforcement Act of the Code of Civil Procedure in respect of the institution of appeals should be made applicable *mutatis mutandis* to an action of retrial brought against an irrevocable judgment delivered by a court of first appeal or of the final appeal is a question of the application of law in adjudication. Although the provision has a bearing on the protection of the people's rights and interest, and the court, when invoking said article, must employ prudence in the exercise of its discretion, the statute cannot be said to be contrary to the Constitution.

Justice Yi-Po Cheng filed dissenting opinion.

民事訴訟法施行法第九條有關上訴之規定，對於第三審或第二審確定判決，提起再審之訴應否準用，係裁判上適用法律之問題。雖該條規定，關係人民權益之保護，法院引用時，應慎予裁量，要難認為牴觸憲法。

本號解釋鄭大法官玉波提出不同意見書。