

J. Y. Interpretation No.181 (July 1, 1983) *

ISSUE: Where evidence is not properly investigated during adjudication, thus leading to be clearly erroneous in the application of law, which has an observable impact on the final and binding judgment, should the said judgment be classified as a judgment that is illegal in substance to which Article 447 of the Code of Criminal Procedure governing extraordinary appeals applies?

RELEVANT LAWS:

Article 447 of the Code of Criminal Procedure (刑事訴訟法第四百四十七條) .

KEYWORDS:

Extraordinary appeal (非常上訴) , final judgment (確定判決) , judgment that is illegal in substance (判決違法) , power to criminal punishment (刑罰權) .**

HOLDING: Extraordinary appeals are a means of relief to correct final and binding judgments that have infringed upon the laws. Judges should investigate the evidence, should the law require, during the period of adjudication. If the lack of investigation leads to be clearly errone-

解釋文：非常上訴，乃對於審判違背法令之確定判決所設之救濟方法。依法應於審判期日調查之證據，未予調查，致適用法令違誤，而顯然於判決有影響者，該項確定判決，即屬判決違背法令，應有刑事訴訟法第四百四十七條第一項第一款規定之適用。

* Translated by THY Taiwan International Law Offices.

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ous in the application of law that has an observable impact on the final and binding judgment, then it is a judgment that is illegal in substance to which Article 447, Paragraph 1, Subparagraph 1, of the Code of Criminal Procedure applies.

REASONING: Criminal proceedings are procedures put in place to ensure the State's specific power to criminal punishment, with the objectives to discover the truth and to safeguard the proper exercise of the power to criminal punishment. Extraordinary appeals are a means of relief to correct final and binding judgments that have infringed upon the laws. Judgments that have infringed upon the laws can be classified into judgments that are illegal in substance and judgments that are reached through illegal procedures, and they are treated differently by the laws of procedure. With regard to the former judgments, the laws of procedure permit, taking into consideration the defendant's interests, redetermination of judgments following revocation of the original judgments and have force in substance. With respect to the latter, the

解釋理由書：按刑事訴訟為確定國家具體刑罰權之程序，以發見真實，使刑罰權得以正確行使為宗旨。非常上訴，乃對審判違背法令之確定判決予以救濟之方法。所謂審判違背法令，可分為判決違法與訴訟程序違法，在訴訟法上各有其處理方式；前者為兼顧被告之利益，得將原判決撤銷另行判決，具有實質上之效力，後者則僅撤銷其程序而已。惟二者理論上雖可分立，實際上時相牽連，故依法應於審判期日調查之證據，未予調查，致適用法令違誤，而顯然於判決之結果有影響者，倘不予以救濟，則無以維持國家刑罰權之正確行使，該項確定之判決即屬判決違背法令，非僅訴訟程序違背法令，應有刑事訴訟法第四百四十七條第一項第一款規定之適用。

laws merely dismiss the procedures. Although the two may be distinguished theoretically, in practice, they are correlative. Therefore, where the evidence that should be investigated during the periods of adjudication is not so investigated thus leading to be clearly erroneous in the application of law, which has an observable impact on the final and binding judgment, then the appropriate exercise of the State's power to criminal punishment cannot be assured if no relief is granted. The said final and binding judgment shall be classified as a judgment that is illegal in substance, not merely illegal in its procedures, to which Article 447, Paragraph 1, Subparagraph 1, of the Code of Criminal Procedure applies.

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。