

J. Y. Interpretation No.192 (December 14, 1984) *

ISSUE: Is a court ruling to order payment of costs non-appealable under the Code of Civil Procedure and does it thus constitute a hindrance to the exercise of the people's right of litigation as protected by the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) ; Articles 438 and 483 of the Code of Civil Procedure (民事訴訟法第四百三十八條、第四百八十三條) ; Supreme Court's Precedent K. T. No.127 (Sup. Ct.1940) (最高法院二十九年抗字第一二七號判例) .

KEYWORDS:

non-appealable (不得抗告) , court costs (裁判費) .**

HOLDING: A ruling of the court to require a party to make good the payment of the court costs is an order given in the course of proceedings, and is non-appealable as provided by Article 483 of the Code of Civil Procedure. The provision is intended to prevent delay in the process of the litigation and constitutes no

解釋文：法院命補繳裁判費，係訴訟程序進行中所為之裁定，依民事訴訟法第四百八十三條規定不得抗告之判例，乃在避免訴訟程序進行之延滯，無礙人民訴訟權之適當行使，與憲法第十六條並無牴觸。

* Translated by Raymond T. Chu.

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

hindrance to the exercise of the people's right of instituting legal proceedings, and is therefore not in conflict with Article 16 of the Constitution.

REASONING: Every citizen shall have the right of instituting legal proceedings if his right has been injured, and the court shall have the duty to try by process of law. This has been clearly expounded in our Interpretations Yuan-tze Nos. 154 and 160. And the right of instituting legal proceedings must of course be exercised in such a way that the procedure prescribed by law is followed. Article 483 of the Code of Civil Procedure, in providing that "unless otherwise prescribed by law, a ruling given in the course of a proceeding is not appealable," is intended to simplify the procedure and to prevent delay in the process of the litigation. Such a ruling, insofar as it affects the judgment disposing of the case, and if a motion of objection thereto has been filed, is, by making reference to Article 438 of the Act, subject to the adjudication of the court of appeal. While a ruling to order that the party make good the payment of

解釋理由書：按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，前經本院大法官會議釋字第一五四號、第一六〇號解釋理由書釋明在案。訴訟權之行使，必須循法定程序為之，民事訴訟法第四百八十三條規定：「訴訟程序進行中所為之裁定，除別有規定外，不得抗告」，乃在簡化程序，避免延滯。此種裁定，如牽涉終結本案之裁判者，於對該裁判聲明不服時，參照民事訴訟法第四百三十八條規定，可並受上級法院之裁判，法院命補繳裁判費之裁定，最高法院二十九年抗字第一二七號判例，雖認為不得抗告，但法院如以未繳裁判費，認原告起訴不合法，為駁回其訴之裁定，原告以裁判費數額有爭執為抗告理由時，抗告法院仍須就該項事實及命補繳裁判費之裁定當否一併審究，於人民訴訟權之行使並無影響。從而法院命補繳裁判費，係訴訟程序進行中所為之裁定，依民事訴訟法第四百八十三條規定不得抗告之上開判例，乃在避免訴訟程序進行之延

the court costs is held to be non-appealable by Precedent of the Supreme Court K.T. No. 127 (1940), the plaintiff may, where the case was dismissed by a ruling of the court on the ground that the institution of the action was not in accordance with law because the plaintiff failed to pay the court costs, file an appeal on the ground of disagreement on the amount of court costs. In such a case, the court of appeal will have to consider and determine the question of facts involved as well as whether the ruling to require payment of the court costs is reasonable. Thus, the right of the people to sue is by no means affected. We conclude that a ruling of the court to require making good the payment of the court costs is an order given in the course of proceedings, and is non-appealable as provided by Article 483 of the Code of Civil Procedure, and that the provision is intended to prevent delay in the process of the litigation and constitutes no hindrance to the exercise of the people's right of instituting legal proceedings, and is therefore not in conflict with Article 16 of the Constitution.

滯，無礙人民訴訟權之適當行使，與憲法第十六條並無抵觸。