
J.Y. Interpretation No. 752 (July 28, 2017)*

**A Defendant's Right to Appeal a Higher Court Guilty Decision
Reversing a Lower Court Not-Guilty Decision Case**

Issue

Are Article 376, Subparagraphs 1 and 2 of the Code of Criminal Procedure unconstitutional in forbidding certain cases from being appealed to a court of third instance?

Holding

[1] Article 376, Subparagraphs 1 and 2 of the Code of Criminal Procedure (hereinafter "CCP") provide:

Once judged by a court of second instance, cases involving the following offenses are not appealable to a court of third instance: (1) offenses with a maximum punishment of imprisonment for no more than three years, short-term imprisonment for no more than sixty days, or fine only; (2) offenses of larceny under Articles 320 and 321 of the Criminal Code.

In cases where a defendant is found guilty of the non-appealable offenses by a court of first instance, and a court of second instance then rejects his/her appeal or enters a conviction after vacating the conviction [by the lower court], whether to allow the defendant to appeal to a court of third instance is within the discretion of the legislative department. It does not violate the right to judicial remedy under

* Translation and Note by Szu-Chen KUO

Article 16 of the Constitution that Article 376, Subparagraphs 1 and 2 of the CCP do not allow the defendant in such cases to appeal to a court of third instance. However, in cases where a defendant is found not guilty of the non-appealable offenses by a court of first instance, but a court of second instance vacates his/her acquittal and enters a conviction, the provisions fail to provide the defendant at least one opportunity to appeal and are thus in violation of the right to judicial remedy as guaranteed in Article 16 of the Constitution. The part of the provisions prohibiting such cases from being appealed to a court of third instance shall become null and void from the date of announcement of this Interpretation.

[2] As for the cases involving defendants who had their acquittals vacated and were convicted of the non-appealable offenses by a court of second instance, the defendants and persons who may appeal on behalf of the interests of the defendants may appeal according to law provided that these cases are still within the time period to appeal on the day this Interpretation is announced. The courts of second instance in such cases shall notify the defendants by court order that they may appeal to a court of third instance within ten days from the next day of being served the order. In regard to the cases where the defendants have already filed an appeal before the date of announcement of this Interpretation within the prescribed time period to appeal and the relevant courts have not rendered any decisions, the courts shall not reject the appeals on the basis of Article 376, Subparagraphs 1 and 2 of the CCP.

Reasoning

[1] The petitioner, Tsung-Ren CHANG (hereinafter “Petitioner CHANG”), was prosecuted for several offenses of larceny by the Taiwan Yilan District Prosecutors Office. He was found guilty on some charges and not guilty on the others in the Taiwan Yilan District Court Criminal Judgment 104-Yi-125 (2015). Petitioner CHANG and the prosecutor respectively appealed. The Taiwan High

Court, in its Criminal Judgment 104-Shang-Yi-2187 (2015), affirmed the guilty part of the judgment. As to the not-guilty part of the judgment, the Taiwan High Court set aside the acquittals on five counts and convicted on the five counts in accordance with Article 321 of the Criminal Code. Petitioner CHANG appealed the judgment of conviction rendered by the court of second instance. However, the Taiwan High Court, in its Criminal Order 104-Shang-Yi-2187 (2015) (hereinafter “Petitioner CHANG’s final decision”), ruled that according to Article 376, Subparagraph 2 of the Code of Criminal Procedure (hereinafter “CCP”), Petitioner CHANG’s convictions of larceny under Article 321 of the Criminal Code were not appealable to a court of third instance, and the court therefore rejected his appeal. Petitioner CHANG petitioned this Court for interpretation. He argues that Article 376, Subparagraph 2 of the CCP, as applied to cases where a court of second instance affirms a conviction by a court of first instance or enters a conviction after vacating an acquittal made by a court of first instance, contravenes the equality principle under Article 7 and the proportionality principle under Article 23 of the Constitution. It therefore violates the right to liberty and security of person and the right to judicial remedy protected by the Constitution.

[2] The other petitioner, Yen-Hung CHEN (hereinafter “Petitioner CHEN”), was prosecuted for sexual harassment by the Kaohsiung District Prosecutors Office. The Taiwan Kaohsiung District Court, in its Criminal Judgment 98-Yi-1416 (2010), found him not guilty for insufficient evidence. Then, the prosecutor appealed; the Taiwan High Court Kaohsiung Branch Court, in its Criminal Judgment 99-Shang-Yi-476 (2010) (hereinafter “Petitioner CHEN’s final decision”), vacated the acquittal by the court of first instance and convicted Petitioner CHEN of the offense under Article 25, Paragraph 1 of the Act on Prevention of Sexual Harassment. Since the potential punishment of Petitioner CHEN’s conviction of the offense under Article 25, Paragraph 1 of the Act on

Prevention of Sexual Harassment was “imprisonment for no more than three years, short-term imprisonment for no more than sixty days, or fine only,” his conviction, pursuant to Article 376, Subparagraph 1 of the CCP, was not appealable to a court of third instance and thus was final. Petitioner CHEN petitioned this Court for constitutional interpretation. He claims that Article 376, Subparagraph 1 of the CCP is in violation of the right to equality guaranteed by Article 7 and the right to judicial remedy guaranteed by Article 16 of the Constitution.

[3] Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act stipulates that an individual whose constitutional rights are unlawfully violated may, after exhaustion of ordinary judicial remedies, petition this Court to review the constitutionality of the statutes or regulations applied by a final decision of a court of last resort. Article 376, Subparagraphs 1 and 2 of the CCP provide:

Once judged by a court of second instance, cases involving the following offenses are not appealable to a court of third instance: (1) offenses with a maximum punishment of imprisonment for no more than three years, short-term imprisonment for no more than sixty days, or fine only; (2) offenses of larceny under Articles 320 and 321 of the Criminal Code.

In Petitioner CHANG’s case, the court in Petitioner CHANG’s final decision rejected his appeal pursuant to Article 376, Subparagraph 2 of the CCP. Hence, his petition for reviewing the constitutionality of Article 376, Subparagraph 2 of the CCP satisfied the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and was granted review. As for Petitioner CHEN’s case, the court of Petitioner CHEN’s final decision did not refer to

Article 376, Subparagraph 1 of the CCP in the text of the final decision. Nevertheless, Petitioner CHEN's final decision was subject to Article 376, Subparagraph 1 of the CCP, which prohibited Petitioner CHEN from appealing to a court of third instance. Thus, Article 376, Subparagraph 1 of the CCP shall be deemed to have been applied in Petitioner CHANG's final decision beyond doubt. Therefore, this provision is to be considered a statute applied in a final decision by a court of last resort, as provided for in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. Had Petitioner CHEN appealed to the court of third instance, his appeal would certainly have been rejected pursuant to Article 376, Subparagraph 1 of the CCP. We do not find that Petitioner CHEN, in order to satisfy the requirements of the Constitutional Court Procedure Act, had to file an appeal to obtain a court order which directly applied Article 376, Subparagraph 1 of the CCP. In sum, the court of second instance vacated Petitioner CHEN's acquittal and entered a conviction, but he was prohibited from appealing to the court of third instance because of Article 376, Subparagraph 1 of the CCP. He then petitioned this Court, arguing Article 376, Subparagraph 1 of the CCP violated Article 16 of the Constitution. We considered this a valid petition, satisfying the requirements of Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and granted review accordingly.

[4] While the petitioners challenged the two different Subparagraphs of Article 376 of the CCP separately, the two Subparagraphs, namely Article 376, Subparagraphs 1 and 2 of the CCP (hereinafter "the disputed provisions") presented the same issue of constitutionality. We thus consolidated the two petitions and made this Interpretation on the basis of the following grounds:

[5] Article 16 of the Constitution guaranteeing people the right to judicial remedy means that a person shall have the right to judicial remedy when his/her right or legal interest has been infringed upon (*see* J.Y. Interpretation No. 418).

Based on the constitutional principle that where there is a right, there is a remedy, when a person's right or legal interest has been infringed upon, the State shall provide such person an opportunity to institute a court proceeding, to request a fair trial in accordance with the due process of law, and to obtain timely and effective remedy. This is the core of the right to judicial remedy as guaranteed by Article 16 of the Constitution (*see* J.Y. Interpretations Nos. 396, 574, and 653). A person who is convicted [on a charge] for the first time may also suffer disadvantages to his/her right to liberty and security of person and right to property. To effectively protect the people's right to judicial remedy and to prevent mistakes or wrongful convictions, a person who is convicted [on a charge] for the first time, based on the spirit of the aforementioned J.Y. Interpretations, shall be provided with at least one opportunity to appeal. [Availability of appellate remedy in such cases] is also the core of the right to judicial remedy as guaranteed by Article 16 of the Constitution. Aside from this, it is within the discretion of the legislature to decide whether and how, by statute and via reasonable means, to restrict the trial instances, proceedings, and other relevant requirements of judicial remedies. [In exercising its discretion,] the legislature shall take into account such factors as the types and the nature of cases, policy purposes and functions of judicial remedy, and effective utilization of judicial resources (*see* J.Y. Interpretations Nos. 396, 442, 512, 574, 639, and 665).

[6] The disputed provisions, which restrict the people from appealing to a court of third instance, are concerned with the people's right to judicial remedy guaranteed by Article 16 of the Constitution. The purpose of the disputed provisions is to reduce the workload on judges, so that judges can focus on those more important and complex cases and the judicial system may function properly (*see* Legislative Yuan Bill-Related Documents Yuan-Tzung-161-Government-4969 of June 22, 1994). Therefore, the legislative body, after taking into account such factors as types and the nature of cases, policy purposes and functions of

judicial remedy, and effective utilization of judicial resources, exercised its discretion and enacted the disputed provisions. In cases where a defendant is found guilty of the non-appealable offenses listed in the disputed provisions (hereinafter “non-appealable offenses”) by a court of first instance and a court of second instance then rejects his appeal or enters a conviction after vacating the conviction [by the lower court], it is constitutional that the disputed provisions do not allow the defendant to appeal to a court of third instance. Since the defendant already has had the opportunity to appeal the conviction by a court of first instance, we should defer to the legislative department as regards whether to allow the defendant to appeal to a court of third instance. We conclude that in such cases, the disputed provisions do not violate the spirit of the people's right to judicial remedy as guaranteed in Article 16 of the Constitution.

[7] Nonetheless, according to the disputed provisions, when a defendant is found not guilty of the non-appealable offenses by a court of first instance, but a court of second instance vacates his/her acquittal and enters a conviction, he/she is also prohibited from appealing to a court of third instance. In such cases, the defendant is found guilty [on a charge] by a court for the first time, with the conviction becoming final upon the rendition of the judgment. The defendant cannot request that a higher court review his case through ordinary criminal proceedings. While the defendant in such cases may still seek relief by filing a motion to a court for retrial or by filing a motion for extraordinary appeal to the Prosecutor General, the requirements of retrial as provided from Articles 420 through Article 440 and of extraordinary appeal as provided from Article 441 through Article 448 of the CCP are rather strict. Courts and the Prosecutor General also apply these requirements in a strict manner. That is, for a defendant who is found not guilty by a court of first instance and then guilty by a court of second instance, these special proceedings cannot replace ordinary appellate procedures. In cases where a court of second instance vacates the acquittal by a court of first

instance and enters a conviction, providing the defendant with appropriate opportunity to appeal falls into the core domain safeguarded by the right to judicial remedy. It is not an issue of trial instance which the legislative department may decide how to design or restrict after taking into account the above-mentioned factors. The disputed provisions, which prohibit the defendant who has his/her acquittal vacated and is convicted of the non-appealable offenses by a court of second instance from appealing to a court of third instance, fail to provide the defendant who is convicted [on a charge] by a court for the first time with at least one opportunity to appeal, so as to prevent mistakes or wrongful convictions. The part of the disputed provisions which prohibits such cases from being appealed to a court of third instance contradicts the spirit of Article 16 of the Constitution which guarantees the people's right to judicial remedy and shall become null and void from the date of announcement of this Interpretation.

[8] As for the cases involving defendants who had their acquittals vacated and were convicted of the non-appealable offenses by a court of second instance, the defendants and persons who may appeal on behalf of the interests of the defendants (*see* Article 344, Paragraph 4 as well as Articles 345 and 346 of the CCP) may appeal according to law provided that these cases are still within the time period to appeal (with the time for document delivery prescribed by law properly added) on the day this Interpretation is announced. The courts of second instance in such cases shall notify the defendants by court order that they may appeal to a court of third instance within ten days from the next day of being served the order. In regard to the cases where the defendants have already filed an appeal before the date of announcement of this Interpretation within the prescribed time period to appeal and the relevant courts have not rendered any decisions, the courts shall not reject the appeals on the basis of the disputed provisions.

[9] Petitioner CHANG made an appeal within the appeal period, and the court

of second instance rejected the appeal in Petitioner CHANG's final decision. This procedural decision shall not be considered final on the merits. The court of second instance in Petitioner CHANG's case shall submit the appeal regarding its vacating the acquittal and subsequent conviction to the court of third instance for review. Petitioner CHEN may, within ten days of being served this Interpretation, appeal his conviction to the court of third instance in accordance with the spirit of this Interpretation and relevant provisions of appeal as provided in the CCP.

Background Note by the Translator

Petitioner CHANG was found guilty on some charges and not guilty on others by the district court. Petitioner CHANG and the prosecutor respectively appealed. The appellate court affirmed the guilty part of judgment and vacated five non-guilty counts and entered convictions on the five counts. Petitioner CHANG further appealed, but his appeal was rejected pursuant to Article 376, Subparagraph 2 of the Code of Criminal Procedure (hereinafter "CCP"). He then petitioned the Constitutional Court and challenged the constitutionality of the said provision.

Petitioner CHEN was charged with sexual harassment, and the district court found him not guilty. Then, the prosecutor appealed; the appellate court vacated the acquittal and entered a conviction. His conviction was not appealable to a court of third instance according to Article 376, Subparagraph 1 of the CCP and thus was final. Petitioner CHEN brought his case to the Constitutional Court and challenged the constitutionality of the said provision.

While the petitioners challenged the two different Subparagraphs of Article 376 of the CCP separately, the Constitutional Court consolidated the two petitions on the grounds that these two Subparagraphs presented the same issue of constitutionality.

