

J, Y. Interpretation No.433 (July 25, 1997) *

ISSUE: (1) Are Articles 2 and 9 of the Public Functionaries Discipline Act, delineating how civil servants' actions or inactions constitute laches of duties or other misdemeanors and what corresponding disciplinary sanctions are associated, in contravention to the Constitution?

(2) Are Articles 11 and 12 of the same law stipulating disciplinary sanctions of dismissals from public service and from posts in contravention to the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Articles 1, 2, 9, 10, 11 and 12 of the Public Functionaries Discipline Act (公務員懲戒法第一條、第二條、第九條、第十條、第十一條、第十二條) ; Article 57 of the Criminal Code (刑法第五十七條) .

KEYWORDS:

public functionary (公務員) , authority to institute disciplinary sanction (懲戒權) , decision of sanction (懲戒處分) , element (構成要件) , laches of duties (廢弛職務) , misdemeanor (失職行為) , dismissal from public service (撤職) , dismissal from one's post (休職) , demotion (降級) , salary cut (減俸) , cap (上限) , retirement pension (退休

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金), demerit recorded (記過), disciplinary warning (申誡), *nullum crimen sine lege, nulla poena sine lege* (罪刑法定主義), delineate (列舉), power of criminal punishment (刑罰權).**

HOLDING: The State's authority to institute disciplinary sanctions against civil servants because there is a civil service public law relationship between civil servants and the State is not exactly the same as the State's power of criminal punishment against criminals for criminal violations. With respect to the former, the Legislature enjoys more discretion in formulating the elements of violations and their legal effects resulting in decisions of sanction when compared with the latter. Not in contravention to the Constitution, Articles 2 and 9 of the Public Functionaries Discipline Act are general provisions delineating how civil servants' actions or inactions constitute laches of duties or other misdemeanors, and what corresponding disciplinary sanctions are associated. Likewise, Articles 11 and 12 of the same Act stipulating disciplinary

解釋文：國家對於公務員懲戒權之行使，係基於公務員與國家間公法上之職務關係，與對犯罪行為科予刑罰之性質未盡相同，對懲戒處分之構成要件及其法律效果，立法機關自有較廣之形成自由。公務員懲戒法第二條及第九條雖就公務員如何之違法、廢弛職務或其他失職行為應受何種類之懲戒處分僅設概括之規定，與憲法尚無牴觸。至同法第十一條、第十二條關於撤職及休職處分期間之規定，旨在授權懲戒機關依同法第十條所定之標準，就具體個案為適當之處分，於憲法亦無違背。惟撤職停止任用期間及休職期間該法均無上限之規定，對公務員權益不無影響，應由有關機關檢討修正，俾其更能符合憲法保障公務員之意旨。

sanctions of dismissals from public service and from posts are enacted to authorize the Commission on Disciplinary Sanctions of Public Functionaries to render appropriate disciplinary sanctions in any given case following the standards set forth in Article 10, and are not in contravention to the Constitution. However, the abovementioned law does not stipulate caps on the periods of dismissals from public service and from posts, and may affect the rights of civil servants. As a consequence, the relevant authorities shall review and amend the said law to provide caps in order to be in conformity with the constitutional guarantee of protecting the rights of civil servants.

REASONING: The State is a public legal entity whose thoughts and actions are expressed or exercised through civil servants serving as the State's branches and sub-branches. The relationship between civil servants and the State is one of civil service public law. The State owes civil servants the duty to ensure their livelihood and to protect their rights by way of paying salaries, retire-

解釋理由書：國家為公法人，其意思及行為係經由充當國家機關之公務員為之。公務員與國家之間係為公法上職務關係，國家對公務員有給予俸給、退休金等照顧其生活及保障其權益之義務，公務員對國家亦負有忠誠、執行職務等義務。為維護公務員之紀律，國家於公務員有違法、廢弛職務或其他失職行為時，得予以懲戒。此一懲戒權之行使既係基於國家與公務員間公法上

ment pensions, etc.; on the other hand, civil servants owe the State the duties of loyalty and performing civil service. For the purposes of maintaining civil servants' discipline, the State has the authority to institute disciplinary sanctions against civil servants when there are laches of duties or other misdemeanors. The exercise of the authority to institute disciplinary sanctions is based upon the civil service's public law relationship between civil servants and the State, and is not exactly the same as the State's power of criminal punishment against criminals for criminal violations. Besides, the degree of strictness of legal conformation when exercising the authority of disciplinary sanctions is not completely consistent with that of its criminal counterpart which requires *nullum crimen sine lege*, *nulla poena sine lege* and expresses the delineation of legal elements and effects of each crime.

Article 1 of the Public Functionaries Discipline Act provides that civil servants are not subject to disciplinary sanctions unless under this law; such language is

之權利義務關係，與國家對人民犯罪行為所科處之刑罰不盡相同，而懲戒權行使要件及效果應受法律嚴格規範之要求，其程度與刑罰之適用罪刑法定主義，對各個罪名皆明定其構成要件及法律效果者，亦非完全一致。

公務員懲戒法第一條規定，公務員非依本法不受懲戒，係指公務員之權益非經法定程序不受剝奪之意。同法第二條就公務員有違法、廢弛職務或其他

adopted to ensure that civil servants cannot be deprived of their rights and interests unless there is a legal proceeding. Article 2 of the same Act prescribes that civil servants are subject to disciplinary sanctions when there are laches of duties or other misdemeanors; Article 9 sets forth kinds of disciplinary sanctions, including dismissals from public service, dismissals from posts, demotions, salary cuts, demerits recorded, and disciplinary warnings. Nevertheless, Articles 2 and 9 are both general provisions delineating how civil servants' actions or inactions associate with corresponding disciplinary sanctions; Articles 11 and 12 of the same Act also do not stipulate caps on the periods of dismissals from public service and from posts, but authorize the Commission on Disciplinary Sanctions of Public Functionaries to decide appropriate disciplinary sanctions in any given case. This is so because the degrees and categories of civil servants' actions or inactions in violation of their civil service duties are often different, and may require various degrees of disciplinary sanctions according to individual cases' disparities, and cannot

失職行為應受懲戒處分設有規定；第九條明定懲戒處分之種類為撤職、休職、降級、減俸、記過及申誡等。惟就公務員違反職務上義務之行為與其所應受懲戒處分間之關連，僅設概括之規定，第十一條及第十二條就撤職停止任用及休職處分之最高期間，亦未規定，旨在授權懲戒機關就具體個案為適當之裁量，此係因公務員違反職務上義務之行為態樣及程度均屬多端，依個案之差異情形，容有為不同程度處罰之必要，難以由法律預先加以列舉明定，且國家對公務員之懲戒，與國家刑罰權之行使須嚴格遵守罪刑法定主義，而就犯罪之構成要件與處罰範圍皆須予以明定之情形，有所不同，已如前述。公務員懲戒法於中華民國七十四年五月三日修正公布時，已參酌刑法第五十七條之立法意旨，於第十條規定要求懲戒機關辦理懲戒案件，應審酌一切情狀，尤應注意被付懲戒人行為之動機、目的、手段及行為所生之損害或影響等事項，視其違反情節與輕重而為妥適之懲戒，是公務員懲戒法第二條、第九條、第十一條及第十二條於憲法均無違背。惟撤職停止任用期間及休職處分期間該法均無上限之規定，對公務員權益不無影響，應由有關機關檢討修正，俾其更能符合憲法保

expressly be delineated in advance by law. Moreover, as stated above, the exercise of the authority of disciplinary sanctions is not completely consistent with that of its criminal counterpart which requires *nullum crimen sine lege*, *nulla poena sine lege* and expresses the delineation of legal elements and effects of each crime. When the Public Functionaries Discipline Act was amended and made public on May 3, 1985, its Article 10 was amended taking into account Article 57 of the Criminal Code to require the Commission on the Disciplinary Sanctions of Functionaries to consider all circumstances when trying disciplinary sanction cases and pay special attention to parties' motives, purposes, means, and the damages or effects caused and to decide appropriate disciplinary sanctions in accordance with the degrees of parties' violations. Articles 2, 9, 11 and 12 are not in contravention to the Constitution. However, the abovementioned law does not stipulate caps on the periods of dismissals from public service and from posts, and may affect the rights of civil servants. Therefore, the relevant authorities shall

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review and amend the said law to provide caps in order to be in conformity with the constitutional guarantee of protecting the rights of civil servants.