

J. Y. Interpretation No.262 (July 6, 1990) *

ISSUE: Should an impeachment case brought up by the Control Yuan against a serviceman be transferred to the Commission on the Disciplinary Sanctions of Public Functionaries for the latter's deliberation?

RELEVANT LAWS:

Articles 77, 90, 97, 99 and 100 of the Constitution (憲法第七十七條、第九十條、第九十七條、第九十九條及第一百條) ; Armed Forces Punishment Act (陸海空軍懲罰法) .

KEYWORDS:

impeachment (彈劾) , the Control Yuan (監察院) , military serviceman (軍人) , the Disciplinary Sanctions of Public Functionaries (公務員懲戒委員會) .**

HOLDING: After the Control Yuan institutes an impeachment proceeding against a military serviceman, the case shall be transferred to, and tried by, the Commission on the Disciplinary Sanctions of Public Functionaries. Wrongdoings by servicemen, other than those that lead to impeachment proceedings, are punishable under the Armed Forces Pun-

解釋文：監察院對軍人提出彈劾案時，應移送公務員懲戒委員會審議。至軍人之過犯，除上述彈劾案外，其懲罰仍依陸海空軍懲罰法行之。

* Translated by Eric Yao-kuo Chiang.

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

ishment Act.

REASONING: Article 77 of the Constitution states that “The Judicial Yuan shall be the highest judicial organ of the State and responsible for the trial of civil, criminal, and administrative cases and the disciplinary punishment of public employees.” The Commission on the Disciplinary Sanctions of Public Functionaries is organized under the Judicial Yuan and the competent authority regarding the discipline of public employees. This is obvious in the wording of Article 7 of the Organic Act of the Judicial Yuan.

In those democratic nations with separate executive, legislative and judicial branches, the impeachment power represents the democratic oversight of unlawful and neglectful conduct of high government officials by the parliament on behalf of the people. The scope of the impeachment power exercised by the Control Yuan under Article 90, Paragraph 2 of Article 97, and Articles 99 and 100 of our Constitution is greater than that. With respect to the general proceedings of im-

解釋理由書：司法院為國家最高司法機關，掌理民事、刑事、行政訴訟之審判及公務員之懲戒，憲法第七十七條定明文。司法院設公務員懲戒委員會，為公務員懲戒之主管機關，此觀司法院組織法第七條規定甚明。

彈劾權在採取三權分立之民主國家，係議會代表人民對政府高級官員之違法或失職，實施民主監督之制度。我國憲法第九十條、第九十七條第二項、第九十九條及第一百條規定之監察院彈劾權，其範圍較廣。而憲法除就總統、副總統之彈劾程序定有明文外，對於一般彈劾案之審議，並未就文職或武職公務員作不同之規定。因此，監察院如就軍人之違法或失職行為成立彈劾案時，自應將該彈劾案連同證據，移送公務員懲戒委員會審議，方符憲法第七十七條

peachment, no distinction is made in the Constitution between those against civil servants and military servicemen, except for those against the president and the vice president. Hence, if the Control Yuan institutes an impeachment proceeding against the unlawful and neglectful conduct of a serviceman, it shall transfer the case, along with evidence, to the Commission on the Disciplinary Sanctions of Public Functionaries. To comply with Article 77 of the Constitution, it should do so. Accordingly, Article 8 of the Control Act and Article 18 of the Public Functionaries Discipline Act were enacted.

To preserve the unity of power of command and discipline in the military and to ensure a full implementation of commands and military orders, wrongdoings by persons in active military service are punishable under the Armed Forces Punishment Act, except those that lead to impeachment and criminal proceedings.

Justice Chih-Peng Lee filed dissenting opinion.

Justice Chung-Sheng Lee filed dissenting opinion.

之意旨。監察法第八條及公務員懲戒法第十八條，即係依此意旨所為之規定。

至陸海空軍現役軍人之過犯，不涉及刑事範圍者，除彈劾案成立者外，為維護軍事指揮權與賞罰權之合一，確保統帥權及軍令之貫徹執行，其懲罰仍應依陸海空軍懲罰法行之。

本號解釋李大法官志鵬、李大法官鐘聲分別提出不同意見書。