# J. Y. Interpretation No.272（January 18, 1991）*

**ISSUE:** Is the provision of the National Security Act During the Period of National Mobilization for Suppression of the Communist Rebellion, prescribing that, even after the martial law id lifted, no appeal or motion to set aside a ruling may filed with a common court as to a final and conclusive judgment rendered by a court-martial during the period of martial law, constitutional?

**RELEVANT LAWS:**

Article 9 of the Constitution（憲法第九條）; Articles 8, 9 and 10 of the Martial Law（戒嚴法第八條、第九條及第十條）.

**KEYWORDS:**

final court decision（案件已確定者，即確定判決）, extraordinary appeal（非常上訴）, retrial（再審）.**

**HOLDING:** Article 9 of the Constitution clearly states that except for those who are in active military service, no person shall be subject to trial by a military tribunal; whereas Articles 8 and 9 of the Martial Law, which stipulate that those who are not in active military ser-

**解釋文：**人民除現役軍人外，不受軍事審判，憲法第九條定有明文。戒嚴法第八條、第九條規定，非現役軍人得由軍事機關審判，則為憲法承認戒嚴制度而生之例外情形。解嚴後，依同法第十條規定，對於上述軍事機關之判決，得於解嚴之翌日起依法上訴，符合

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vice may be subject to trial by a military tribunal, are, however, exceptions recognized by the Constitution. Subsequent to the abolishment of the Martial Law, pursuant to Article 10 of the very same Law, a judgment adjudicated by a military tribunal may be appealed from the day after the abolishment of Martial Law so as to conform to the first abovementioned provision of the Constitution. However, the ruling contained in the first sentence of Paragraph 2 of Article 9 of the National Security Act during the Period of National Mobilization for Suppression of the Communist Rebellion, which stipulates that those who are not in active military service may not appeal the final court decisions with respect to criminal cases adjudicated in the military tribunals during the period of the Martial Law to the competent court subsequent to the abolishment of the Martial Law, was set due to the exceptional circumstances arising during and in connection with the interval of more than thirty years from the time the law came into force until the abolishment of the Martial Law, and the intent was to maintain the stability of the courts' final

首開憲法規定之意旨。惟動員戡亂時期國家安全法第九條第二款前段規定，戒嚴時期戒嚴地域內經軍事審判機關審判之非現役軍人刑事案件已確定者，於解嚴後不得向該管法院上訴或抗告，係基於此次戒嚴與解嚴時間相隔三十餘年之特殊情況，並謀裁判之安定而設，亦為維持社會秩序所必要。且對有再審或非常上訴原因者，仍許依法聲請再審或非常上訴，已能兼顧人民權利，與憲法尚無牴觸。至戒嚴非屬於此次特殊情況者，無本解釋之適用，合併指明。

decisions and the social order. Furthermore, those who have cause for a retrial or an extraordinary appeal, may petition for remedy in conformity with the law; Consequently, the intent of the ruling mentioned above does not contradict the Constitution. This interpretation is, nevertheless, not applicable to cases which do not pertain to the above-mentioned circumstance.

**REASONING:** Article 9 of the Constitution clearly states that except for those who are in active military service, no person shall be subject to trial by a military tribunal. The Martial Law was implemented to deal with emergency circumstances such as wars or rebellion and to maintain national security and social stability and its implementation was, thus, a necessary means to meet the above circumstances. Consequently, cases that could not be adjudicated by ordinary courts during the Martial Law period and within the territories where the Martial Law was applicable, were uniformly adjudicated by a military tribunal. They were exceptions under the Martial Law

**解釋理由書：**人民除現役軍人外，不受軍事審判，憲法第九條定有明文。戒嚴為應付戰爭或叛亂等非常事變，維護國家安全、社會安定之不得已措施，在戒嚴時期接戰地域內普通法院不能處理之案件，均由軍事機關審判，此為憲法承認戒嚴制度而生之例外情形，亦為戒嚴法第八條、第九條之內容。惟恐軍事審判對人民權利之保障不週，故戒嚴法第十條規定，解嚴後許此等案件依法上訴於普通法院，符合首開憲法規定之意旨。政府為因應動員戡亂之需要，自中華民國三十七年十二月十日起，先後在全國各地區實施戒嚴（台灣地區自三十八年五月二十日起戒嚴），雖戒嚴法規定之事項，未全面實施，且政府為尊重司法審判權，先於四

system, which are recognized by the Constitution, and these are also contained in Articles 8 and 9 of the Martial Law. Nevertheless, lest there be insufficient protection for the people under a military adjudication, Article 10 of the Martial Law provides that after the abolishment of the Martial Law, such types of cases may be appealed to ordinary courts pursuant to the law, which provision conforms to the first abovementioned provision of the Constitution. To meet the requirements as per the Period of National Mobilization for Suppression of the Communist Rebellion, the government had, on December 10, 1948, put the Martial Law in force nationwide (whereas in Taiwan, it began on May 20, 1949); however, the law was, nevertheless, not uniformly enforced in all areas. To respect the jurisdictional authority, the government promulgated the "Regulation Demarcating Cases Adjudicated in the Military Tribunal or in the Ordinary Court in Taiwan during the Execution of Martial Law in 1952" gradually limiting the scope of military adjudication, and enacted the "Military Justice Act" in 1956 to replace "Trial Act for the

十一年發布「台灣地區戒嚴時期軍法機關自行審判及交法院審判案件劃分辦法」，並逐次縮小軍法機關自行審判之範圍，復於四十五年制定「軍事審判法」取代「陸海空軍審判法」及其有關軍事審判程序之法令，以求軍事審判之審慎。惟算至七十六年七月十五日宣告台灣地區解嚴時止，戒嚴期間達三十餘年，情況至為特殊。動員戡亂時期國家安全法第九條規定，戒嚴時期戒嚴地域內經軍事審判之非現役軍人刑事案件，於解嚴後，其審判程序尚未終結者及刑事裁判尚未執行或在執行中者，均分別移送該管檢察官或法院處理。其已確定之刑事案件，不得向該管法院上訴或抗告，則係基於此次長期戒嚴，因時過境遷，事證調查困難之特殊情況，為謀裁判之安定而設，亦為維持社會秩序所必要。且對有再審或非常上訴原因者，仍許依法聲請再審或非常上訴，已能兼顧人民權利，與憲法尚無牴觸。至戒嚴非屬於此次特殊情況者，無本解釋之適用，合併指明。

Armed Forces" and other decrees related to procedures of military trial in order to conduct military adjudication as circumspectly as possible. The Martial Law was in force for more than thirty (30) years from December 10, 1948, through its abolishment on July 15, 1987, and the situation was, indeed, one of emergency circumstances. Article 9 of the National Security Act during the Period of National Mobilization for Suppression of the Communist Rebellion stipulates that criminal cases relating to the non-military personnel, which were adjudicated in the military tribunals during the period of the Martial Law within the territories where the Martial Law was applicable, whose trials are not completed, or whose criminal sentence has not been executed or completed yet after the abolishment of said law, shall then be referred to the competent prosecutor or court, respectively. However, the reasons why the final court decisions with respect to criminal cases adjudicated in the military tribunals may not be appealed to the competent court, are due to the long-term enforcement of the Martial Law, the difficulty in

gathering and investigating evidence after such a long period of time has elapsed and circumstances have changed, and the need for maintaining the stability of judgments and social order. Furthermore, those who have just cause for a retrial or an extraordinary appeal, may petition for remedy in conformity with the law; Consequently the intent mentioned above does not contradict the Constitution. This interpretation is, nevertheless, not applicable to cases which do not pertain to the above-mentioned circumstance.