

J. Y. Interpretation No.283 (August 6, 1991) *

ISSUE: Does a pardon granted by the President have retroactive effect?

RELEVANT LAWS:

Article 40 of the Constitution (憲法第四十條) ; Article 3 of the Amnesty Act (赦免法第三條) .

KEYWORDS:

pardon (特赦) , retroactive (溯及既往) , deprivation of civil rights (褫奪公權) .**

HOLDING: The President's pardon, which declares the nullity of a pronounced offense and punishment, granted in accordance with Article 40 of the Constitution and the latter part of Article 3 of the Amnesty Act does not have retroactive effect on executed punishment. The civil rights of a person that have been pronounced to be deprived shall be restored from the effective date of the pardon order. With respect to public office lost due to a final conviction, the convicted person may apply to the competent authority

解釋文：總統依憲法第四十條及赦免法第三條後段規定所為罪刑宣告無效之特赦，對於已執行之刑，不生溯及既往之效力。其經宣告褫奪公權者，自赦免令生效之日起，回復其公權。至因有罪判決確定而喪失之公職，有向將來回復之可能者，得由當事人聲請主管機關，依有關法律處理之。

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requesting the disposition of this matter according to relevant laws, provided that the lost public office can be prospectively reinstated.

REASONING: The Constitution of the Republic of China provides in Article 40 that: “The President shall, in accordance with law, exercise the power of granting general pardons, pardons, commutation of sentences and restoration of civil rights.” Article 3 of the Amnesty Act states that: “After a pardon is granted to a person subject to a pronouncement of offense and punishment, the execution of the punishment is waived; under special circumstances the pronouncement of offense and punishment may be deemed a nullity.” In order to maintain the stability of legal order and the existing result of the execution [of a sentence] according to the law, the pardon granted by the President in accordance with the aforesaid Article 40 of the Constitution and the latter part of Article 3 of the Amnesty Act declaring the nullity of the pronounced offense and punishment shall not have retroactive effect. However, since the pronounced of-

解釋理由書：中華民國憲法第四十條規定：「總統依法行使大赦、特赦、減刑及復權之權」。赦免法第三條規定：「受罪刑宣告之人經特赦者，免除其刑之執行，其情節特殊者，得以其罪刑之宣告為無效」。總統依上述憲法第四十條及赦免法第三條後段規定所為罪刑宣告無效之特赦，為維持法律秩序之安定，及依法執行而生之既成效果，對於已執行之刑，應不生溯及既往之效力。惟罪刑之宣告，既自赦免令生效之日起為無效，其經宣告褫奪公權者，亦應自赦免令生效之日起，回復其公權。至因有罪判決確定而喪失之公職，有向將來回復之可能者，得由當事人聲請主管機關依本解釋意旨及有關法律處理之。

fense and punishment become invalid from the effective date of the pardon order, the person pronounced to be deprived of civil rights shall recover his civil rights from that effective date. With respect to public office lost due to a final conviction, the convicted person may apply to the competent authority requesting the disposition of this matter according to this Interpretative ruling and relevant laws, provided that the lost public office can be prospectively reinstated.