

J. Y. Interpretation No.48 (July 11, 1955) *

ISSUE: Where the complaint filed by the injured party is unlawful or the complaint should not be filed for a criminal action requiring a private cause of action, should the prosecutor issue a non-prosecutorial disposition? Is the principle of *res judicata* applicable?

RELEVANT LAWS:

Articles 234, Paragraph 1 and 239 of the Code of Criminal Procedure (刑事訴訟法第二百三十四條第一項及第二百三十九條) ; Interpretation Yuan-Tze No.2292 (司法院院字第二二九二號解釋) .

KEYWORDS:

private cause of action (告訴乃論) , non-prosecutorial disposition (不起訴處分) , unlawful complaint (告訴不合法) .**

HOLDING:

1. For criminal actions that require a private cause of action, the prosecutor shall issue a non-prosecutorial disposition in accordance with Article 234, Paragraph 1, of the Code of Criminal Procedure

解釋文：

一、告訴乃論之罪，其告訴不合法或依法不得告訴而告訴者，檢察官應依刑事訴訟法第二百三十四條第一項之規定為不起訴處分，如未經告訴自不生處分問題，院字第二二九二號解釋所謂

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when the complaint is unlawful or without cause of action. Such disposition issue naturally does not occur without the filing of a complaint. The part of the so-called “should be revised” as contained in Interpretation Yuan-Tze No.2292 is in reference to the situation when the complaint is unlawful or without cause of action.

2. For a case dismissed by non-prosecutorial disposition due to unlawful complaint, it can nevertheless be prosecuted if and when a rightful individual files a complaint in due course, and is not restricted by Article 239 of the Code of Criminal Procedure.

應予變更部分，自係指告訴不合法及依法不得告訴而告訴者而言。

二、告訴不合法之案件，經檢察官為不起訴處分後，如另有告訴權人合法告訴者，得更行起訴，不受刑事訴訟法第二百三十九條之限制。