

J. Y. Interpretation No.52 (August 20, 1955) *

ISSUE: Is the protection conferred by the Constitution regarding a commissioned prosecutor only applicable to a prosecutor who is able to perform his/her duty?

RELEVANT LAWS:

Article 81 of the Constitution (憲法第八十一條) ; Article 40 of the Court Organic Act (法院組織法第四十條) ; Article 10 of the Regulation Governing the Public Functionaries' Request for Leave (公務員請假規則第十條) .

KEYWORDS:

Security (保障) , leave (請假) , commissioned prosecutor (實任檢察官) .**

HOLDING: The office of commissioned prosecutors shall be accorded security unless there has been reappointment of the office, pursuant to Article 40, Paragraph 2, of the Court Organic Act and as interpreted by Interpretation No.13 of this Yuan. Notwithstanding, the security so accorded shall be extended to prosecutors capable of performing their duties. A

解釋文：實任檢察官依法院組織法第四十條第二項規定，除轉調外應受保障，並經本院釋字第十三號解釋有案。惟此項保障係適用於能執行職務之檢察官，其因病請假逾一定期間事實上不能執行職務者，在未經依據此項保障精神另定辦法前，自得依公務員請假規則第十條暫令退職。

* Translated by Melanie Nan of Lee and Li, Attorneys-at-Law.

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prosecutor who cannot perform his/her duties as a matter of fact as a result of having been on sick leave for over a certain period of time may be ordered to resign from his/her office pursuant to Article 10 of the Regulation Governing the Public Functionaries' Request for Leave before regulations are devised in accordance with the spirit of the aforementioned security to be afforded to such offices.