

J. Y. Interpretation No.80 (November 26, 1958) *

ISSUE: Which agency should be responsible for the determination as to whether participation in a rebellious organization in a district under martial law ever existed and whether such participation still exists?

RELEVANT LAWS:

J.Y. Interpretation No.68 (司法院釋字第六十八號解釋) ;
Article 10 of the Betrayers Punishment Act (懲治叛亂條例第十條) .

KEYWORDS:

insurrectional organization (叛亂組織), area of Martial (戒嚴地域), military institution (軍事機關), non-prosecutorial disposition (不起訴處分), gangster (匪徒), presumption (推定) .**

HOLDING:

Pursuant to Article 10 of the Betrayers Punishment Act, a person who is involved in an insurrectional organization in the period of martial law will be judged by a military institution, regardless of his status. Whether he is still involved in an insurrectional organization or is no longer

解釋文：

一、參加叛亂組織案件，在戒嚴地域犯之者，依懲治叛亂條例第十條後段之規定，既不論身分概由軍事機關審判，則有無參加叛亂組織及是否繼續之事實，均應由有權審判之軍事機關認定之。

* Translated by Lawrence L. C. Lee.

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involved will be determined by a military institution of jurisdiction.

J.Y. Interpretation No. 68 has ruled that a person who confesses that he is no longer involved in an insurrectional organization but can not prove that he has left such organization is guilty of treason. However, the military institution of jurisdiction considered that the case in question did not conform to the stipulations of the Betrayers Punishment Act. Therefore, J.Y. Interpretation No. 68 does not apply.

REASONING: Because the military institution of jurisdiction in this case considered that the accused person was involved in activities before the enforcement of the Betrayers Punishment Act [Hereinafter “the Act” and was not continuously involved in an insurrectional organization, it issued a non-prosecutorial disposition and determined that the criminal activity of the person did not conform to the crime of treason under the Act. However, J.Y. Interpretation No.68 provides that until a person who has been involved in an insurrectional organization

二、本院釋字第六十八號解釋係為曾參加叛亂組織，未經自首或無其他事實證明其確已脫離組織者而發。如已由有權審判之軍事機關認其不屬於懲治叛亂條例上之犯罪自不適用。

解釋理由書：本件係因同一案件軍事機關謂其參加匪偽活動係在懲治叛亂條例施行前，其後又無繼續為匪工作情事，故以不起訴處分認其不屬於懲治叛亂條例上之犯罪，而司法機關以本院釋字第六十八號解釋載有，凡曾參加叛亂組織者在未經自首或有其他事實證明其確已脫離組織以前，自應認為係繼續參加等語，謂該案仍有懲治叛亂條例上之罪嫌。為解決此爭議，自應先審究此項案件在法律上究應以何方認定為主，茲查參加叛亂組織案件在戒嚴地域犯之者，依懲治叛亂條第十條後段之規定既不論身分概由軍事機關審判之，則

confesses his crime or provides evidence to prove he is no longer involved in an insurrectional organization, he should still be considered to be involved in such an organization. Therefore, such case still conforms to the stipulations of the Act. In order to resolve the issue, we should determine which the case should legally adopt. Pursuant to the first part of Article 10 of the Act, the case where an insurrection occurs within a military institution will be judged under martial law, regardless of its status. As to the presumption which was made by the military institution of jurisdiction that this case does not conform to the stipulations of the Act, we cannot deny its decree, which was based on the then current law. J.Y. Interpretation No. 68 interprets the situation such that a person who has been involved in an insurrectional organization but has not confessed or has not provided evidence to prove he is no longer involved with such insurrectional organization is still guilty of treason. Since it has already been determined by the military institution of jurisdiction that the above case does not come under the Act, J.Y. Interpretation No.68

關於軍事機關所為不屬於懲治叛亂條例上犯罪之認定，在未經合法變更前即難否認其效力，至本院釋字第六十八號解釋所謂應認係繼續參加云云，係為曾參加叛亂組織未經自首或無其他事實證明其確已脫離組織者而發，如已由有權審判之軍事機關認其不屬於懲治叛亂條例上之犯罪，即不發生釋字第六十八號解釋上之問題。

does not apply.

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Shau-Shun Tseng and Justice Yien-Wou Huang joined.

本號解釋王大法官之儆、曾大法官邵勳與黃大法官演渥共同提出不同意見書。