

J. Y. Interpretation No.90 (April 26, 1961) *

ISSUE: What is the meaning of *flagrante delicto* as provided under the Constitution? Who may make the arrest therefor? Is any bribe received by an offender in corruption considered as spoils?

RELEVANT LAWS:

Article 8 of the Constitution (憲法第八條) ; Article 88 of the Code of Criminal Procedure (刑事訴訟法第八十八條) .

KEYWORDS:

a person in *flagrante delicto* (現行犯) , hot pursuit and arrest without a warrant (逕行逮捕) , in commission of an offense (犯罪在實施中) , undetected offenses (未曾發覺之犯罪) , investigative authority (偵查權) , destroy criminal evidence (湮滅罪證) , stolen property (贓物) , the offense of receiving stolen property (贓物罪) .**

HOLDING: (1) The term “a person in *flagrante delicto*” has the same meaning in the Constitution and in Article 88, Paragraphs 2 and 3, of the Code of Criminal Procedure.

解釋文：一、憲法上所謂現行犯係指刑事訴訟法第八十八條第二項之現行犯，及同條第三項以現行犯論者而言。

(2) Any private citizen may engage

二、遇有刑事訴訟法第八十八條

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in hot pursuit and arrest a person in *flagrante delicto* without a warrant if the circumstances prescribed in Article 88, Paragraph 2, of the Code of Criminal Procedure occur. The privilege granted to a private citizen to engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant is not limited to offenses undetected by an officer with investigative authority.

(3) A bribe accepted by a public official in violation of his official duties shall be considered stolen property as prescribed in Article 88, Paragraph 3, Subparagraph 2, of the Code of Criminal Procedure. By accepting a bribe sufficient to warrant a suspicion that he is an offender, a public official may be considered to be a person in *flagrante delicto* and subject to the provisions set forth in Article 88 of the Code of Criminal Procedure.

REASONING: (1) Article 8 of the Constitution specifically provides that the arrest of a person in *flagrante delicto* shall be prescribed in other laws. Article 88, Paragraph 1, of the Code of Criminal Pro

所定情形，不問何人均得逕行逮捕之，不以有偵查權人未曾發覺之犯罪為限。

三、犯瀆職罪收受之賄賂，應認為刑事訴訟法第八十八條第三項第二款所稱之贓物。賄賂如為通貨，依一般觀察可認為因犯罪所得，而其持有並顯可疑為犯罪人者，亦有上述條款之適用。

解釋理由書：(一)憲法第八條既有現行犯之逮捕由法律另定之明文，刑事訴訟法第八十八條第一項規定現行犯不問何人得逕行逮捕之，其第二項復謂犯罪在實施中或實施後即時發覺者為

cedure provides that a private citizen may engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant. Article 88, Paragraph 2, of the Code of Criminal Procedure also provides that a person in *flagrante delicto* is a person who is discovered during the commission of an offense or immediately thereafter. Article 88, Paragraph 3, of the Code of Criminal Procedure further provides that a person is considered to be in *flagrante delicto* if one of the following circumstances occurs: (a) He is pursued by people who say he is an offender; or (b) He is found in possession of a dangerous weapon, stolen property, or other items sufficient to warrant a suspicion that he is an offender, or his person or clothes show(s) traces of crime to warrant a suspicion that he is an offender. Therefore, a person in *flagrante delicto* referred to in Article 8 or other provisions of the Constitution includes a person considered to be in *flagrante delicto* under Article 88, Paragraph 3, of the Code of Criminal Procedure. A person in *flagrante delicto* referred to in the Constitution shall not be construed to exclude a person considered

現行犯，而其第三項並規定有下列情形之一者以現行犯論，一為被追呼為犯罪人者，二為因持有兇器、贓物或其他物件、或於身體、衣服等處露有犯罪痕跡，顯可疑為犯罪人者，是憲法第八條所稱之現行犯，係包括刑事訴訟法第八十八條第三項以現行犯論者在內，憲法其他各條所稱之現行犯其涵義亦同，殊難謂為應將以現行犯論者排除在外，蓋在憲法上要不容有兩種不同意義之現行犯並存。(二)案件在偵查中如發覺其他犯罪之人，固得依法傳拘，但遇有刑事訴訟法第八十八條所定情形，則不問何人均得逕行逮捕之，不以有偵查權人未曾發覺之犯罪為限，因該條規定旨在防止犯人逃亡、湮滅罪證，並未設有此項限制。(三)犯瀆職罪收受之賄賂，雖非刑法贓物罪之贓物，但係因犯罪所得應認為刑事訴訟法第八十八條第三項第二款所稱之贓物，賄賂如為通貨，原有代替物之性質，若依一般觀察可認為因犯罪所得而其持有並顯可疑為犯罪人者，自亦有上述條款之適用。

to be in *flagrante delicto* under Article 88, Paragraph 3, of the Code of Criminal Procedure because a person in *flagrante delicto* shall have one single meaning under the Constitution. (2) While a person who is suspected to be an offender during a criminal investigation may be arrested by an officer based on a warrant issued in accordance with the law, any private citizen may also engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant if the circumstances prescribed in Article 88, Paragraph 2, of the Code of Criminal Procedure occur. The privilege granted to a private citizen to engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant under Article 88, Paragraph 2, of the Code of Criminal Procedure is not limited to offenses undetected by an officer with investigative authority. The primary purpose of enacting Article 88, Paragraph 2, of the Code of Criminal Procedure is to prevent an offender from fleeing or destroying criminal evidence. No limitation is set forth in that provision as to what type of offender a private citizen may engage in hot pursuit of and arrest in *flagrante delicto* without a

warrant based on the privilege granted. (3) While a bribe accepted by a public official in violation of his official duties is not stolen property as referred to under the offense of receiving stolen property under the Criminal Code, the bribe nevertheless shall be considered stolen property as prescribed in Article 88, Paragraph 3, Subparagraph 2, of the Code of Criminal Procedure because it is illegally obtained. By accepting a bribe sufficient to warrant a suspicion that he is an offender, a public official may be considered to be a person in *flagrante delicto* and subject to the provisions set forth in Article 88 of the Code of Criminal Procedure.