

J. Y. Interpretation No.123 (July 10, 1968) *

ISSUE: Should the statute of limitations set for the prosecution of a crime on a suspect or the execution of punishment on a criminal, who is now under an order for arrest by law, be suspended?

RELEVANT LAWS:

Articles 84, 281, 469 and 480 of the Code of Criminal Procedure (刑事訴訟法第八十四條、第二百八十一條、第四百六十九條及第四百八十條) ; Articles 84 and 85 of the Criminal Code (刑法第八十四條及第八十五條) ; Interpretation Yuan-tze No. 1963 (司法院院字第一九六三號解釋) .

KEYWORDS:

power to execute punishment (行刑權) .**

HOLDING: The statute of limitations to prosecute a defendant on trial who is under an order for arrest by law should be suspended. The J. Y. Interpretation Yuan-tsu No. 1963 has not been changed. The statute of limitations to execute punishment of a criminal, who is under an order for arrest by law, should also

解釋文：審判中之被告經依法通緝者，其追訴權之時效，固應停止進行，本院院字第一九六三號解釋並未有變更。至於執行中之受刑人經依法通緝，不能開始或繼續執行時，其行刑權之時效亦應停止進行，但仍須注意刑法第八十五條第三項之規定。

* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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be suspended when the order cannot start or continue. At the same time, Article 85, Paragraph 3, of the Criminal Code should be taken into consideration.

REASONING: Except for special provisions, no trial should be completed when a defendant does not appear in court. An order for arrest can be made when a defendant goes into exile or hiding, according to Articles 281 (formerly Article 260) and 84 of the Code of Criminal Procedure. The trial procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who is under an order for arrest by law, goes into exile or hiding. Under such circumstances, the statute of limitations to prosecute should be suspended, and Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. J. Y. Interpretation Yuan-tze No. 1963 in regard to this part has not been changed. It is obviously clear that, according to Article 469 (formerly Article 473), Article 480 (formerly Article 484) and other provisions concerning the execution of a penalty of the Code of Crimi-

解釋理由書：按審判期日，除有特別規定外，被告不到庭者，不得審判。被告逃亡或藏匿者，得通緝之。此為刑事訴訟法第二百八十一條（舊法第二百六十條）及第八十四條所明定。審判中之被告因有到庭受審判之必要而逃亡或藏匿，經依法通緝者，審判之程序因而不能開始或繼續，則其追訴權之時效，自應停止進行，但須注意刑法第八十三條第三項之規定。本院院字第一九六三號第一項就此部分所為之解釋，迄今並未有所變更。又按刑之執行，為強制受刑人到場，得依法通緝之。此徵諸刑事訴訟法第四百六十九條（舊法第四百七十三條）及第四百八十條（舊法第四百八十四條）以及其他有關執行各條之規定，至為明顯。受刑人因有到場受執行之必要而逃亡或藏匿，經依法通緝，不能開始或繼續執行司法院大法官解釋彙編時，依刑法第八十五條第一項之規定，行刑權之時效，自亦應停止其進行。惟關於停止原因繼續存在之期間，仍須注意有同條第三項之適用。如

nal Procedure, in order to compel a criminal to appear in court and to implement a penalty, an order for arrest by law can be made. The implementation procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who is under an order for arrest by law, goes into exile or hiding. According to Article 85, Paragraph 1, of the Criminal Code, the statute of limitations to execute punishment on a criminal should therefore be suspended. Nevertheless, regarding the period of suspension, the application of Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. If it reaches one-fourth of the period listed in Article 84, Paragraph 1, of the Criminal Code, the reason for suspension will be deemed to have ended. When there is no further implementation and no other reason for suspension, the statute of limitations of power to execute punishment shall be restored.

Justice Shi-Ding Chin filed dissenting opinion, in which Justice Jin-Lan Chang, and Justice Fan-Kang Tseng joined.

達於第八十四條第一項各款所定期間四分之一者，其停止原因視為消滅。此時如仍未行使而另無停止之原因，即應恢復時效之進行。

本號解釋金大法官世鼎、張大法官金蘭與曾大法官繁康共同提出不同意見書。