

J. Y, Interpretation No.129 (October 30, 1970) *

ISSUE: Is Interpretation No. 68 applicable to a minor under the age of 14 who participated in a rebellion organization and has not voluntarily submitted himself to the authorities or has no evidence to prove his withdrawal from said organization upon reaching 14 years of age?

RELEVANT LAWS:

Articles 2 and 18 of the Criminal Code (刑法第二條、第十八條) .

KEYWORDS:

rebellion (叛亂) .**

HOLDING: A person who participated in a rebellion organization when he was under 14 years old is criminally liable when he becomes 14 years old or older provided that he has not voluntarily submitted himself to the authorities, or that there is no evidence to prove that he did withdraw from the organization. This Yuan's Interpretation No.68 shall apply in this circumstance.

解釋文：未滿十四歲人參加叛亂組織，於滿十四歲時，尚未經自首，亦無其他事實證明其確已脫離者，自應負刑事責任。本院釋字第六十八號解釋並應有其適用。

* Translated by Jaw-Pern Wang.

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REASONING: An act committed by a person under 14 years old is not punishable by law, which is explicitly provided in Article 18, Paragraph 1, of the Criminal Code. However, the act of participating in a rebellion organization has the nature of continuousness. A person who participated in a rebellion organization when he was under 14 years old is criminally liable when he becomes 14 years old or older provided that he has not voluntarily submitted himself to the authorities, or that there is no evidence to prove that he did withdraw from the organization, on the ground that his act is in the state of continuousness. This Yuan's Interpretation No.68 shall apply in this circumstance. As to the issue of commutation or remission, it is a matter of the facts and shall be decided by the relevant authorities, and does not fall into the scope of this Interpretation.

Justice Ji-Dong Lin filed dissenting opinion.

解釋理由書：未滿十四歲人之行為不罰，刑法第十八條第一項固有明文規定。但參加叛亂組織之行為具有繼續性，未滿十四歲人參加叛亂組織，於滿十四歲時，尚未經自首，亦無其他事實證明其確已脫離者，其行為既在繼續狀態中，自應負刑事責任。本院釋字第六十八號解釋並應有其適用。至於有無免減原因，係事實問題，應由有權機關認定之。不屬解釋範圍。

本號解釋林大法官紀東提出不同意見書。