

J. Y. Interpretation No.133 ( June 9, 1972 ) \*

**ISSUE:** What does the term “exemption of punishment” enunciated in this Yuan’s Interpretation Y.J.T. No. 3534 really connote?

**RELEVANT LAWS:**

Articles 47 of the Criminal Code ( 刑法第四十七條 ) ; Interpretation Yuan-je Tzu No. 3534 ( 司法院院解字第三五三四號解釋 ) .

**KEYWORDS:**

Exemption of punishment ( 免除其刑 ) , pardon ( 赦免 ) .\*\*

**HOLDING:** The term “exemption of punishment,” as indicated in this Yuan’s Interpretation Yuan-je Tze No. 3534, means the reduction or waiving of a given sentence as a result of the exercise of pardon right, which does not include other types of sentencing waivers.

**REASONING:** Article 47 of the Criminal Code expressly provides that a recidivist is the commission of a new offense within five years after the comple-

**解釋文：**本院院解字第三五三四號解釋所稱「免除其刑」係指因赦免權作用之減刑而免除其刑者而言，不包括其他之免除其刑在內。

**解釋理由書：**刑法第四十七條明定受有期徒刑之執行完畢，或受無期徒刑或有期徒刑一部之執行，而赦免後，五年以內再犯有期徒刑以上之罪者

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\* Translated by Professor Andy Y. Sun.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

tion of an imprisonment or a waiver of sentence after partial consummation of imprisonment if that offense is punishable by a limited term of imprisonment or above. In accordance with this Yuan's Interpretation Yuan-je Tze No. 3534, "pardon" means special pardon and exemption from carrying out a sentence, which does not include general pardon. The term "exemption of punishment" means the reduction or waiving of a given sentence as a result of the exercise of pardon right. Other types of sentence waivers are not included, since they are not based upon the effect of pardons, such as those indicated in Article 23, Article 24, Paragraph 1, and Articles 26 and 27 of the Criminal Code, as their operations require a judgment for exemption of punishment, which carries no execution of any sentence and is irrelevant to the definition of any recidivist. This is to further illustrate and supplement the above-indicated Interpretation.

Justice Ji-Jong Wang filed dissenting opinion.

Justice Jing-Yu Ouyang filed dissenting opinion.

為累犯，所謂赦免，經本院院解字第三五三四號解釋係指特赦及免除其刑者而言，不包括大赦在內。其所稱免除其刑，係指基於赦免權作用之減刑而免除其刑而言。其他如刑法第二十三條但書、第二十四條第一項但書、第二十六條但書、第二十七條等所規定之免除其刑，既非基於赦免權之作用而係應依刑事訴訟法諭知免刑之判決，並無徒刑之執行，與累犯之構成要件無關，自不包括在內。本院上開解釋應予補充釋明。

本號解釋王大法官之侖、歐陽大法官經字分別提出不同意見書。