

J. Y. Interpretation No.138 (May 10, 1974) \*

**ISSUE:** Is the power to prosecute in criminal law subject to the statute of limitations despite the fact that the case is on trial upon the institution of public or private prosecution?

**RELEVANT LAWS:**

Article 80, Paragraph 1 and Article 83 of the Criminal Code (刑法第八十條第一項, 第八十三條); Interpretation Yuan-tze No. 1963, first paragraph (司法院院字第一九六三號第一項解釋); J. Y. Interpretation No. 123 (司法院釋字第一二三號解釋).

**KEYWORDS:**

power to prosecute (追訴權), statute of limitations (時效).\*\*

**HOLDING:** Where a public or private prosecution has already been instituted and the case is on trial, the power to prosecute is thus duly exercised, and the situation gives rise to no issue of running out of the statute of limitations.

**解釋文：**案經提起公訴或自訴，且在審判進行中，此時追訴權既無不行使之情形，自不發生時效進行之問題。

**REASONING:** The Criminal

**解釋理由書：**按刑法時效章內

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\* Translated by Raymond T. Chu.

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

Code provides in Chapter XI, “Statute of Limitations”, of Article 80, Paragraph 1, that the power to prosecute is barred by the statute of limitations if not exercised within the periods therein specified. Thus, it is clear that the statutory element for the statute of limitations of the power to prosecute to run is that it is not exercised, and that insofar as the right is exercised the statute of limitations does not run out. Either the institution of public or private prosecution or an action of accusation by a public or private prosecutor during the process of trial in pursuance of the Code of Criminal Procedure constitutes a lawful exercise of the power to prosecute. In the document presented to this Court, the statement that a public or private prosecution has already been instituted and that the case is actually on trial shows that the power to prosecute is never barred by limitation and is currently being exercised. The fact that there exists no “failure to exercise” as stated above gives rise to no issue of running out of the statute of limitations.

關於追訴權時效之規定，首於第八十條第一項明定：追訴權，因左列期間內不行使而消滅。可見追訴權時效之進行，係以不行使為法定之原因，行使則無時效進行之可言，至為明顯。刑事訴訟程序中之提起公訴或自訴，以及於審判進行中之實行公訴或由自訴人所為追訴之行為，無不屬於追訴權之行使。詳核來文，所謂已提起公訴或自訴，且事實上在進行審判中者，亦即意指追訴權原未消滅，而現尚在依法行使中者而言。依照前開說明，此時既無不行使之情形，自不發生時效進行之問題。

As a rule, the statute of limitations shall run as long as the power to prosecute is not exercised. However, if such right cannot be exercised because of reasons prescribed by law, the provision of Article 83 of the Criminal Code with respect to interruption of the statute of limitations applies. The provision of said article was interpreted by our Interpretation Yuan-tze No. 1963 and restated in the first paragraph of our Interpretation No. 123, both of which have so far undergone no change or modification, although the issue of whether the period of statute of limitations shall run out during the exercise of the power to prosecute was considered beyond the scope of interpretation given therein.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

至於追訴權於不行使時，本應有時效之進行。惟如遇有法律上之原因而係不能行使時，刑法則於第八十三條另設停止進行之規定。本院院字第一九六三號第一項即係本於該條之規定而為解釋，釋字第一二三號解釋前段則重申前開解釋，並未有所變更。其於追訴權行使時，有無時效進行之問題，並不屬於各該號解釋之範圍，合併說明。

本號解釋陳大法官世榮、金大法官世鼎分別提出不同意見書。