

J. Y. Interpretation No.679 (July 16, 2010) *

ISSUE: Is the non-declaration of fine conversion standards in the court judgment involving merging of sentences for multiple offences both permissible and not permissible for fine conversion constitutional ?

RELEVANT LAWS:

Articles 8 and 23 of the Constitution (憲法第八條、第二十三條) ; Interpretation *Yuan Zi* No. 2702 of the Judicial Yuan (司法院院字第二七〇二號解釋) ; J.Y. Interpretation Nos. 144, 366, and 662 (司法院釋字第一四四號解釋、第三六六號解釋、第六六二號解釋) ; Article 41 of the Criminal Code (刑法第四十一條) .

KEYWORDS:

conversion to fine (易科罰金), merger of sentences for multiple offences (數罪併罰), imprisonment (自由刑), legislative discretion (立法裁量決定), declared sentence (宣告刑), set the enforceable sentence (定應執行刑), penal policy (刑事政策) .**

HOLDING: Interpretation *Yuan Zi* No. 2702 of this Yuan and J.Y. Interpretation No. 144 do not contravene

解釋文: 本院院字第二七〇二號及釋字第一四四號解釋與憲法第二十三條尚無抵觸，無變更之必要。

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

Article 23 of the Constitution and thus no revision thereof shall be required.

REASONING: Article 8 of the Constitution expressly stipulates that an individual's right to physical freedom shall be protected. The restriction of one's physical freedom by imprisonment is the last resort for the deterrence of unlawful acts, and as long as it is not beyond what is necessary, it does not contravene the principle of proportionality under Article 23 of the Constitution. The system of conversion to fine is to prevent the flaws of short prison terms and to alleviate the severity of imprisonment so that what was originally punishable by imprisonment may, under certain statutory qualifications, convert to pecuniary fines. The purpose of merger of penalties for multiple offences is to weigh in the totality of unlawfulness and the degree of culpabilities as well as the necessity of imposing corrective actions on the perpetrator so as to determine the final criminal penalties to be enforced and to meet the requirement of corresponding liabilities with culpabilities (See J.Y. Interpretation No. 662). In the

解釋理由書：人民身體之自由應予保障，為憲法第八條所明定，以徒刑拘束人民身體之自由，乃遏止不法行為之不得已手段，如未逾越必要之程度者，即與憲法第二十三條規定之比例原則無違。易科罰金制度係將原屬自由刑之刑期，於為達成防止短期自由刑之流弊，並藉以緩和自由刑之嚴厲性時，得在一定法定要件下，更易為罰金刑之執行。而數罪併罰合併定應執行刑，旨在綜合斟酌犯罪行為之不法與罪責程度，及對犯罪行為人施以矯正之必要性，而決定所犯數罪最終具體應實現之刑罰，以符罪責相當之要求（本院釋字第六六二號解釋參照）。至若數罪併罰，於各宣告刑中，有得易科罰金者，亦有不得易科罰金者，於定應執行刑時，其原得易科罰金之罪，得否准予易科罰金，立法者自得於符合憲法意旨之範圍內裁量決定之。

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event of a mixture of individual penalty that is convertible to fine with one that is not, whether the one that is convertible to fine may still be permitted to be as such in the final enforcement of declared sentence is subject to the legislative discretion within the scope of the Constitution.

Interpretation *Yuan Zi* No. 2702 of this Yuan holds that, for crimes involving permissible and non-permissible fine conversion, if the result of the merged penalty should not be convertible to fine, [the court] need not indicate the conversion standard in the announcement of the judgment. J.Y. Interpretation No. 144 further declares, “[i]n accordance with the Criminal Code, if a criminal penalty which may be convertible to fine is combined with another criminal penalty not convertible to fine and, as a result of the combination, the original convertible penalty becomes unconvertible, then the standard of conversion of the convertible penalty does not need to be stated in the judgment.” It is with the consideration that, in merging the penalties involving crimes convertible and non-convertible to fine, for those

本院院字第二七〇二號解釋認為得易科罰金之罪與不得易科罰金之罪，因併合處罰之結果，不得易科罰金，故於諭知判決時，無庸為易科折算標準之記載。本院釋字第一四四號解釋進而宣示「數罪併罰中之一罪，依刑法規定得易科罰金，若因與不得易科之他罪併合處罰結果而不得易科罰金時，原可易科部分所處之刑，自亦無庸為易科折算標準之記載。」係考量得易科罰金之罪與不得易科罰金之罪併合處罰，犯罪行為人因不得易科罰金之罪，本有受自由刑矯正之必要，而對犯罪行為人施以自由刑較能達到矯正犯罪之目的，故而認為得易科罰金之罪，如與不得易科罰金之罪併合處罰時，不許其易科罰金。上開解釋旨在藉由自由刑之執行矯正犯罪，目的洵屬正當，亦未選擇非必要而較嚴厲之刑罰手段，與數罪併罰定應執行刑制度之本旨無違，亦與憲法第二十三條

who, by the very nature of the crime committed, need to be subject to the correction of prison sentence in order to better achieve the objective of crime correction, fine conversion is not permitted in the merged penalty for both types of crimes. The purpose of the above Interpretation is to correct criminal behaviors through the imposition of imprisonment, and is justifiable. Neither does it opt for unnecessary and more severe penalties nor does it violate the objectives of the sentence merger system for multiple offences and the principle of proportionality under Article 23 of the Constitution, and therefore is unnecessary to be modified.

J.Y. Interpretation No. 144, however, focused on further illustration of Interpretation *Yuan Zi* No. 2702 of this Yuan due to diverse opinions regarding the application of law by different governing authorities, and was not decided in accordance with the principal of the Constitution to require that the merger of sentences involving crimes for both types shall be impermissible for fine conversion. The legislative body may naturally

規定之比例原則尚無牴觸，並無變更之必要。

惟本院釋字第一四四號解釋乃針對不同機關對法律適用之疑義，闡明本院院字第二七〇二號解釋意旨，並非依據憲法原則，要求得易科罰金之罪與不得易科罰金之罪併合處罰時，即必然不得准予易科罰金。立法機關自得基於刑事政策之考量，針對得易科罰金之罪與不得易科罰金之罪併合處罰時，就得易科罰金之罪是否仍得准予易科罰金，於符合憲法意旨之範圍內裁量決定之。

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consider on the basis of penal policy, and focus on the merging of sentences of crimes that may be converted to fine and those that may not be, and exercise its discretion within the scope of the meaning and purpose of the Constitution.

In addition, J.Y. Interpretation Nos. 366 and 662 concern with the permissibility of fine conversion in situations where the court declares the merged sentence to be more than six-month imprisonment on multiple offences, with each of which all subject to fine conversion. If fine conversion is not available to any of the offences committed, it does not fall within the scope of the above-mentioned Interpretations, making them inapplicable under such circumstances. It should also be pointed out that whether conversion to social services under Article 41 of the Criminal Code may be available is a matter within the authority of the criminal prosecutors.

Justice Ching-You Tsay filed concurring opinion.

Justice Mao-Zong Huang filed con-

另本院釋字第三六六號、第六六二號解釋乃法院宣告數罪併罰，且該數宣告刑均得易科罰金，而定應執行之刑逾六個月時，仍否准予得易科罰金之情形所為之解釋。如各罪中，有不得易科罰金者，即非上述二號解釋之範圍，而無上述二號解釋意旨之適用。至是否得依刑法第四十一條規定易服社會勞動，乃屬檢察官指揮刑事執行之職權範圍，均併此指明

本號解釋蔡大法官清遊提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官新民提出協同意見書；許大法

ccurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Chi-Ming Chih filed dissenting opinion.

Justice Tzong-Li Hsu filed dissenting opinion, in which Justice Tzu-Yi Lin and Justice Chen-Shan Li joined.

EDITOR'S NOTE:

Summary of facts: Defendant X committed the offences of concealing handguns without permission under Article 7, Paragraph 4 of the Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife and threatening to endanger personal safety under Article 305 of the Criminal Code. In the final criminal judgment (98) *Shang Su Zi* No. 1576 (2009), the Taiwan High Court sentenced X to five and a half years and two months of imprisonment for the respective offences, and set the enforceable sentence of imprisonment for five and a half years. Yet no fine conversion stan-

官玉秀提出協同意見書；池大法官啟明提出不同意見書；許大法官宗力、林大法官子儀及李大法官震山共同提出不同意見書。

編者註：

事實摘要：1. 被告因違反槍砲彈藥刀械管制條例第7條第4項未經許可寄藏手槍罪，及刑法第305條恐嚇危害安全罪，經臺灣高等法院以98年度上訴字第1576號判決，各判處有期徒刑5年6月、2月，定應執行刑為有期徒刑5年6月確定在案，惟恐嚇危害安全罪部分，該判決並未諭知易科罰金標準。

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dard was stated in the sentencing for the offence of threatening to endanger personal safety.

Subsequently, the Taiwan High Prosecutorial Office in its motion, (98) *Zhi Sheng Zhi* No. 1360 (2009), requested the Taiwan High Court for a ruling on the standards of calculation for fine conversion regarding the offence of threatening to endanger personal safety. Having reviewed the motion, the 17th Criminal Division was of the view that J.Y. Interpretation No. 144 (including Interpretation *Yuan Zi* No. 2702) is inconsistent with Article 23 of the Constitution and petitioned for interpretation.

2. 嗣臺灣高等法院檢察署以 98 年度執聲字第 1360 號，就受刑人所犯恐嚇危害安全罪部分，向臺灣高等法院聲請裁定易科罰金之標準，經本案聲請人，即該法院刑事第 17 庭審理結果，認司法院釋字第 144 號解釋（含院字第 2702 號解釋），有抵觸憲法第 23 條之疑義，爰裁定停止訴訟程序，聲請解釋。