

J. Y. Interpretation No.245 (July 28, 1989) *

ISSUE: Is it legally sound for a court to instruct directly on its own motion to convert an imprisonment penalty to a fine sanction in its decision revoking a prosecutorial order that disapproved the application for the conversion?

RELEVANT LAWS:

Article 41 of the Criminal Code (刑法第四十一條) ; Articles 384, 457, 480, 484 and 486 of the Code of Criminal Procedure (刑事訴訟法第三百八十四條、四百五十七條、第四百八十條、第四百八十四條、第四百八十六條) ; J. Y. Interpretations No. Yuan-jieh-tzi 2939 (司法院院解字第二九三九號解釋) ; J. Y. Interpretations No. Yuan-tzi 1387 (司法院院字第一三八七號解釋) .

KEYWORDS:

Penalty conversion (刑之易科) , to convert an imprisonment penalty to a fine sanction (易科罰金) , to file an objection (聲明異議) , a prosecutorial order ; an order rendered by a prosecutor (檢察官命令) . **

HOLDING: According to Article 384 of the Code of Criminal Procedure (hereinafter the “CCP”), an objection can

解釋文：受刑人或其他有異議權人對於檢察官不准易科罰金執行之指揮認為不當，依刑事訴訟法第四百八十

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be filed in the trial court that rendered a conviction and a sentence of imprisonment, by a prisoner or whoever is otherwise entitled to object to a prosecutorial order that had previously disapproved the application for converting an imprisonment penalty to a fine sanction. Two types of remedy are available for the court when an objection with sound reason is filed on the ground that the prosecutorial disapproval order is inappropriate. As the court finds merits in revoking the prosecutorial order, the public prosecutor will be informed to redeliver his/her order to effect the reversal decision asked for. As an alternative, the court may directly instruct on its own motion a conversion of penalty in its decision. Such case is distinct from the cases which invoked the J. Y. Interpretations Nos. Yuan-jieh-tzi 2939 and Yuan-tzi 1387.

REASONING: The discretion of approval for converting an imprisonment penalty into a fine sanction, which is provided by Article 41 of the Criminal Code, is in nature a prosecutorial power in the light of Article 457 of the CCP. How-

四條向諭知科刑裁判之法院聲明異議，法院認為有理由而為撤銷之裁定者，除依裁定意旨得由檢察官重行為適當之斟酌外，如有必要法院自非不得於裁定內同時諭知准予易科罰金，此與本院院解字第二九三九號及院字第一三八七號解釋所釋情形不同。

解釋理由書：刑法第四十一條易科罰金之換刑處分應否准許，依刑事訴訟法第四百五十七條之規定，固由檢察官指揮之，而屬於檢察官之職權。惟檢察官指揮執行如有不當，為保障受刑人之利益，刑事訴訟法第四百八十四

ever, if the prosecutorial discretion is exercised inappropriately, the law can intervene and offer remedies. Thus, Articles 480 and 486 of the CCP provide, respectively: “A prisoner, his legal representative or spouse may file an objection in the trial court, which rendered the conviction decision with sentence, on the ground that the prosecutorial discretion on penalty conversion had not been exercised appropriately.” ;and “The trial court should make a decision on the objection.” Since the law obligates the sentencing court to decide on the merits of the objection and no restriction is imposed on the court in terms of the approach in making its decision, more than one type of remedy may be available. When the court finds the objection is to be sustained, it must revoke the prosecutorial order that disapproved the application for penalty conversion. To serve the relief of the applicants requesting penalty conversion, the court may either reserve for the public prosecutor a chance to reconsider his/her discretion or instruct on its own motion of the penalty conversion in its decision. The rationale is the same as that in Article 416 of the

條、第四百八十六條分別規定：「受刑人或其法定代理人或配偶以檢察官執行之指揮為不當者，得向諭知該裁判之法院聲明異議」；「法院應就異議之聲明裁定之」。法律既規定此項異議歸由法院裁定，又未限制法院之裁定內容，則受刑人或其他有異議權人對於檢察官不准易科罰金執行之指揮聲明異議，經法院認為異議有理由而為撤銷檢察官指揮之裁定者，除依裁定意旨，得由檢察官重行為適當之斟酌外，如有必要法院自非不得於裁定內同時諭知准予易科罰金，以達救濟目的。此與同法第四百一十六條，關於法院得撤銷或變更檢察官處分之規定，具有同一之法律上理由。

CCP, which provides the judicial power for altering or revoking a prosecutorial order.

As for the interpretation: “If the trial judge ordered the accused to pay the converted fine and turned in a judicial certificate showing the payment of the fine right after his/her declaration of conviction with an imprisonment penalty, it would be difficult to consider the execution of decision a sound one. If the court indicated in the decision reasoning that the accused should be allowed the conversion of the penalty to a fine, the public prosecutor is not bound by such decision while executing the sentence” as held by Interpretation Yuan-jieh-tzi No.2939, it was made with a view to clarifying that the discretionary power over the execution of penalty is a discretion reserved by law for the public prosecutor, and that whether or not any execution difficulty is posed is a matter to be considered and decided by the public prosecutor, taking into account the factual surroundings at the time of execution. In addition, the interpretation: “As to the penalty conversion to fine provided by

至本院院解字第二九三九號解釋所謂：「此項易科罰金，如推事於宣示判決後，逕命被告繳納並黏貼司法印紙，自難認為合法之執行，至判決書僅於理由內說明被告應為易科罰金，檢察官執行時，自不受其拘束」，旨在釋示判決之執行為檢察官之職權，執行是否顯有困難，由檢察官就執行時之事實斟酌之。又本院院字第一三八七號解釋「刑法第四十一條之易科罰金，法院祇須依刑事訴訟法第三百零一條第二款於判決主文中諭知其折算標準，無庸就執行有無困難預為認定」，亦係釋示得否易科罰金，應就執行時之事實斟酌之。此與執行異議程序，法院為撤銷檢察官指揮之裁定，得同時准予易科罰金之情形不同。

Article 41 of the Criminal Code, the court has to instruct as to the conversion rate between different penalties, but it does not need to decide in advance whether there exists any difficulty with the penalty execution (as the pre-condition for a penalty conversion)” as held by Yuan-tzi Interpretation No.1387, means to clarify that the availability of fine conversion depends on the facts surrounding the penalty execution. Neither the Yuan-jieh-tzi Interpretation nor the Yuan-tzi Interpretation involves the case of an objection filed against penalty execution where the trial court may revoke the prosecutorial decision against fine conversion in the meantime permitting the application for penalty conversion.