

J. Y. Interpretation No.366 (September 30, 1994) \*

**ISSUE:** Does combining punishment of several offenses, thus precluding application of Article 41 of the Criminal Code, which permits punishment of not more than six months of detention to be commuted to a fine, conflict with the Constitution?

**RELEVANT LAWS:**

Article 23 of the Constitution (憲法第二十三條); Articles 41, 50 and 51 of the Criminal Code (刑法第四十一條、第五十條、第五十一條).

**KEYWORDS:**

imprisonment (有期徒刑), execution (執行刑), converted into fines (易科罰金), people's freedoms and rights (人民之自由權利), monetary fine (罰金). \*\*

**HOLDING:** Where prior to judicial decisions being finalized, if several offences have resulted in sentences to imprisonment of not more than six months each, then according to Article 41 of the Criminal Code, those sentences may each be converted into a fine. According to Article 51 of the same Code however,

**解釋文：**裁判確定前犯數罪，分別宣告之有期徒刑均未逾六個月，依刑法第四十一條規定各得易科罰金者，因依同法第五十一條併合處罰定其應執行之刑逾六個月，致其宣告刑不得易科罰金時，將造成對人民自由權利之不必要限制，與憲法第二十三條規定未盡相符，上開刑法規定應檢討修正。對於前

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those individual sentences for the offences prior to the above conviction being finalized shall be combined for the purpose of execution. Where the combined sentence to be executed exceeds six months in duration, then such sentence cannot be commuted into a fine. This would create unnecessary restrictions on the people's freedoms and rights, and therefore does not conform to the provisions of Article 23 of the Constitution. The above provisions of the Criminal Code should therefore be reviewed and revised accordingly. With regard to the abovementioned situation where several sentences of imprisonment combined for the purpose of execution exceed six months in duration, the portion of Article 41 of the Criminal Code concerning the restriction that the conversion of terms of imprisonment into fines be limited to imprisonment of less than six months only, shall become void within one year from the date of this Interpretation.

**REASONING:** Due to reasons of policy considerations in the Criminal Code, Article 50 of that Code provides for

述因併合處罰所定執行刑逾六個月之情形，刑法第四十一條關於易科罰金以六個月以下有期徒刑為限之規定部分，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

**解釋理由書：**刑法第五十條基於刑事政策之理由，就裁判確定前犯數罪者，設併合處罰之規定，並於其第五

the combination of several sentences for multiple offences, prior to the carrying out of the sentences for these offences being finalized. In addition, Article 51 of the same Code states that where several sentences are announced separately, a single sentence for the purpose of execution shall be imposed. If the individual sentences are imprisonment, then the combined sentence for the purpose of execution shall be greater in duration than the longest of duration of each of the individual sentences, and less than the sum of the durations of all of the individual sentences. The aim of this provision, thus, is clearly to avoid placing an offender at a disadvantage after the combination of the individual sentences. Where the maximum basic sentences prescribed for the various offences do not exceed three years of imprisonment each, and the actual sentences imposed for each offence do not exceed six months of imprisonment, and the execution of the imposed sentences is manifestly difficult due to physical, educational, occupational or family reasons, then according to Article 41 of the Criminal Code, those sentences may each be

十一條明定，分別宣告其罪之刑，而另定其應執行者。其分別宣告之各刑均為有期徒刑時，則於各刑中之最長期以上，各刑合併之刑期以下定其刑期，足見原無使受刑之宣告者，處於更不利之地位之意。如所犯數罪，其最重本刑均為三年以下有期徒刑之刑之罪，而分別宣告之有期徒刑亦均未逾六個月，因身體、教育、職業或家庭之關係，執行顯有困難者，依同法第四十一條規定，本均得易科罰金，而有以罰金代替自由刑之機會。惟由於併合處罰之結果，如就各該宣告刑所定之執行刑逾六個月者，不得易科罰金，致受該項刑之宣告者，原有得易科罰金之機會，得而復失，非受自由刑之執行不可，乃屬對於人民之自由權利所為之不必要限制，與憲法第二十三條之意旨，未盡相符。上開刑法規定，應連同相關問題，如數宣告刑中之一部已執行完畢，如何抵算等，一併檢討修正之。對於前述因併合處罰所定執行刑逾六個月之情形，刑法第四十一條關於易科罰金以六個月以下有期徒刑為限之規定部分，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

commuted into a fine. There thus exists an opportunity to commute imprisonment sentences restricting one's freedom into monetary fines. In the case of combining sentences, however, the various imprisonments as separately announced might be combined to produce a resulting sentence that exceeds six months in duration. The consequence thereof is that the combined sentence cannot be converted into a fine. The offender, who may have been able to convert his/her several sentences of imprisonment into fines prior to the combining of the sentences, has now lost such an opportunity and is forced to accept imprisonment restricting his/her freedom. This clearly creates unnecessary restrictions on people's freedoms and rights, and does not thus conform to the essence of Article 23 of the Constitution. The above mentioned provisions of the Criminal Code, as well as other related problems such as the question of how one already completed sentence, out of several sentences, is to be deducted from the duration of the combined sentence, shall be reviewed and revised accordingly. With regard to the abovementioned situation

where several sentences of imprisonment combined for the purpose of execution exceed six months in duration, the portion of Article 41 of the Criminal Code concerning the restriction that the conversion of terms of imprisonment into fines be limited to imprisonment of less than six months only, shall become void within one year from the date of this Interpretation.

Justice Shau-Hsien Chai filed dissenting opinion.

本號解釋翟大法官紹先提出不同意見書。