

J. Y. Interpretation No.144 (December 5, 1975) *

ISSUE: How should a court deal with the situation where a crime whose penalty is convertible into fines becomes inconvertible due to merger with another crime whose penalty is not convertible into fines for purpose of determining the punishment?

RELEVANT LAWS:

Articles 41 and 51 of the Criminal Code (刑法第四十一條、第五十一條); Article 309 of the Criminal Procedure Code (刑事訴訟法第三百零九條).

KEYWORDS:

several offences (數罪), combination of sentences for multiple offences (數罪併罰), be commuted to/into a fine (易科罰金), executed punishment (執行刑), not guilty (無罪), offence of punishment commutable to fine punishment (得易科罰金之罪).**

HOLDING: In accordance with the Criminal Code, if a criminal punishment which may be commuted to a fine is combined with other criminal punishments which can not be commuted to fines and, as a result of the combination,

解釋文：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。

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the originally commutable punishment becomes uncommutable, then the rate of commutation of the originally commutable punishment does not need to be stated in the judgment.

REASONING: According to Article 41 of the Criminal Code, criminal punishment of detention or imprisonment may be commuted to a fine only if the maximum basic punishment which may be imposed does not exceed an imprisonment of three years and the actual punishment imposed is an imprisonment for not more than six months. In the situation where sentences for multiple offences are combined, though one of them may be commuted to a fine, when such sentence is combined with other sentences which can not be commuted to fines, the court only have to combine the sentences of the several offences to fix the sentence to be executed. No commutation shall be made on the originally commutable punishment. Article 309, Subparagraph 2, of the Code of Criminal Procedure is not applicable to such situation. The interpretation of J. Y. Yuan-Tze No. 1702 which provides that

解釋理由書：按刑事判決關於有期徒刑或拘役易科罰金折算標準之記載，需以所犯最重本刑為三年以下有期徒刑以下之刑之罪，而受六月以下有期徒刑或拘役之宣告者，始得為之，刑法第四十一條定有明文。若所犯為數罪併罰，其中之一罪雖得易科罰金，但因與不得易科之他罪合併處罰之結果，於定執行刑時，祇須將各罪之刑合併裁量，不得易科罰金合併執行，應無刑事訴訟法第三百零九條第二款之適用，故本院院字第二七〇二號解釋明示無庸為易科罰金折算標準之記載，此非僅指定執行刑部分而言，即原可易科部分所處之刑，亦無庸為此記載。故有「法院竟於合併處罰判決確定後，又將其中之一部以裁定諭知易科罰金，其裁定應認為無效」之釋示。縱他罪因上訴改判無罪確定或經赦免者，所餘得易科罰金之罪，如因被告身體、教育、職業或家庭等關係執行顯有困難時，被告及檢察官均有聲請易科之權，本院院字第一三五六號

“the rate of commutation does not need to be stated in the judgment” applies not only to the punishment to be executed but also to the punishment which is originally commutable to fine. That is why the Interpretation also provides that “after the judgment becomes final, if the court further rules that part of the combined punishment shall be commuted to a fine, the ruling shall be deemed invalid”. Even if the guilty judgments of the uncommutable offences are reversed upon appeal or the punishments are waived because of amnesty and only the originally commutable punishment remains punishable in a combined punishment judgment, the defendant or the prosecutor has the right to apply for commutation into a fine for the remaining commutable punishment if he or she thinks that practical difficulty may arise in the execution of that punishment because of the physical, educational, professional or family status of the defendant. This has been interpreted by J.Y. Yuan Tze No. 1356. Therefore, the court should make a proper ruling according to the law under such situation.

解釋有案，法院自可於此時依法為適當之諭知。

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Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之侑、金大法官世鼎分別提出不同意見書。