J. Y. Interpretation No.202（February 14, 1986）*

ISSUE: Should imprisonment terms imposed for offences committed after a final and binding judgment run concurrently with the sentences for multiple offences meted out by the said final and binding judgment and be subject to the twenty-year limitation on imprisonment terms?

RELEVANT LAWS:

Articles 33, 50, and 51 of the Criminal Code（刑法第三十三條、第五十條及第五十一條）; J.Y. Interpretation No.98（司法院釋字第九八號解釋）; J. Y. Interpretation Yuan-Tze No.626（司法院院字第六二六號解釋）.

KEYWORDS:

Imprisonment（有期徒刑）, life imprisonment（無期徒刑）, combination of sentences for multiple offence（數罪併罰）, final court decision（裁判確定）.**

HOLDING: Offences committed after a final and binding judgment are not to be included in the combination of sentences for multiple offences provisions. The foregoing has been explained in this Yuan's Interpretation No. 98. Thus, if a

解釋文：裁判確定後另犯他罪，不在數罪併罰規定之列，業經本院釋字第九十八號解釋闡釋在案，故裁判確定後，復受有期徒刑之宣告者，前後之有期徒刑，應予合併執行，不受刑法第五十一條第五款但書關於有期徒刑

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defendant has been sentenced to imprisonment for offences committed after a final court decision, both sentences shall run concurrently, and shall not be subject to the proviso of a twenty-year maximum imprisonment term in Article 51, Paragraph 5, of the Criminal Code. As for the proviso under Article 33, Subparagraph 3, of the Criminal Code, it places a limit of twenty years' imprisonment for the aggravation of one conviction, whether in substance or by procedure. However, such limit is inapplicable to imprisonment terms imposed on offences that are committed after a final court decision, and they are to run concurrently with the initial conviction. Thus Part 5 of this Yuan's Interpretation Yuan-tze No. 626 is no longer applicable.

不得逾二十年之限制。至刑法第三十三條第三款但書乃係就實質上或處斷上一罪之法定刑加重所為不得逾二十年之規定，與裁判確定後另犯他罪應合併執行之刑期無關，本院院字第六二六號解釋有關第五部分，已無從適用。

Defendants who show real signs of remorse and exhibit good behavior during their services of the said combined execution of imprisonment terms are subject to a more lenient parole condition than those convicted of life imprisonment. This should be expressly regulated by laws.

受前項有期徒刑之合併執行而有悛悔實據者，其假釋條件不應較無期徒刑為嚴，宜以法律明定之。

REASONING: According to Article 51, Paragraph 5, of the Criminal Code: "Where the conviction of a defendant would be punishable by multiple imprisonment terms, then the sentence of imprisonment shall be more than the longest imprisonment term of which the defendant is convicted, and less than the combination of the total imprisonment terms of which the defendant is convicted, but shall not exceed twenty years." The foregoing seeks to explain that, when determining the sentences for combination of sentences for multiple offences, it must comply with Article 50 of the same Code, that is, a defendant's commission of multiple offences must have occurred prior to a final court decision. As to the scope of combination of concurrent sentences for multiple offences, some limit the scope to offences committed prior to any court decision, some limit it to offences committed prior to final court decisions, and others limit it to offences committed prior to the end of prison terms. Article 69 of the former Criminal Code (1928) adopts the first limitation while the present Criminal Code in its Article 50 adopts the second

解釋理由書：按刑法第五十一條第五款規定：「宣告多數有期徒刑者，於各刑中之最長期以上，各刑合併之刑期以下，定其刑期，但不得逾二十年。」此乃指數罪併罰，定其應執行之刑，必以合於同法第五十條之規定為前提，亦即須以一人所犯數罪均在裁判確定前者為條件。關於數罪併合處罰之範圍，有以裁判宣告前所犯之罪為限者，有以裁判確定前所犯之罪為限者，有以執行未完畢前所犯之罪為限者等立法例。民國十七年舊刑法第六十九條係採第一例，現行刑法第五十條改採第二例，既已擯棄第三例不予採用，自不能資為解釋法律之依據。

limitation. Since the third limitation has been abandoned for non-use, it cannot form the basis of statutory interpretation.

Offences committed after the rendering of final court decisions fall outside the scope of the combination of sentences for multiple offence provisions. The foregoing has been explained in this Yuan's Interpretation No.98. Thus, in the event a defendant, after being convicted by a final court decision, is sentenced to another term of imprisonment, since this cannot be reconciled with the said sentencing provisions, this imprisonment term shall run concurrently with sentences imposed under the aforementioned final and binding judgment and shall not be subject to the above-mentioned twenty-year maximum imprisonment term restriction. Otherwise, defendants will be exonerated from repeated criminal offences, punishable by imprisonment terms, committed after final court decisions which impose a twenty-year imprisonment term. This is contrary to the principle of one sentence per offence, does not serve to protect public and private interests or preserve the

裁判確定後另犯他罪，不在數罪併罰之列，業經本院釋字第九十八號解釋闡釋在案，若於裁判確定後，復因犯罪受有期徒刑之宣告者，既與前述定執行刑之規定不合，即應與前一確定裁判之刑，合併執行，自不受首開不得逾二十年之限制。否則，凡經裁判確定應執行徒刑二十年者，即令一再觸犯法定本刑為有期徒刑之罪，而猶得享無庸執行之寬典，有違一罪一刑之原則，對於公私法益之保障及社會秩序之維護，顯有未週，且與公平正義之旨相違背，殊非妥適。

social order, and is inconsistent with the objectives of fairness and justice.

The definition of imprisonment under Article 33, Subparagraph 3, of the Criminal Code is: "a period more than two months and less than fifteen years which may be shortened to less than two months or lengthened to a maximum of twenty years." The foregoing places a twenty-year limitation on the aggravation of one conviction, in substance or by procedure, and is inapplicable to sentences imposed on offences that are committed after a final and binding judgment and shall be executed in combination concurrently with the initial conviction.

In summary, Part 5 of this Yuan's Interpretation Yuan-tze No.626 is no longer applicable. Since imprisonment term is more lenient than life imprisonment, defendants who show real signs of remorse and exhibit good behavior during their services of combined imprisonment terms shall be subject to a more lenient parole condition, for rehabilitative purposes, than those convicted of life imprisonment.

至刑法第三十三條第三款規定有期徒刑為「二月以上，十五年以下。但遇有加減時，得減至二月未滿，或加至二十年。」乃係對於實質上或處斷上一罪之法定刑加重所為不得逾二十年之限制，與裁判確定後另犯他罪應合併執行之刑期無關。

綜上所述，本院院字第六二六號解釋有關第五部分，已無從適用。惟有期徒刑，本較無期徒刑為輕，受有期徒刑之合併執行而有悛悔實據者，為貫徹教育刑之目的，其假釋條件，自不應較無期徒刑為嚴，宜以法律明定之。

This should be expressly regulated by laws.

Justice Chung-Sheng Lee filed dissenting opinion, in which Justice Cheng-Tao Chang joined.

本號解釋李大法官鐘聲與張大法官承韜共同提出不同意見書。