

# On Judicial Application of Simultaneous Punishment System for Several Crimes

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**Abstract:** Simultaneous punishment for multiple crimes refers to a system in which people's courts, in accordance with the provisions of the Criminal Law and according to the rules of sentencing, jointly punish multiple individuals for multiple crimes. Although the system of combined punishment for several crimes has been guided by clear and specific principles in the general rules of criminal law, there are still objective situations in which different judiciary agencies have different judgments when applying multiple punishments for multiple crimes and disputes in academic circles. The system of combined punishment of several crimes has certain shortcomings. This article will elaborate on the three dimensions of the concept and characteristics of the system of combined punishment of multiple crimes, the theoretical value of the system of combined punishment of multiple crimes, and the application of the system of combined punishment of multiple crimes.

## 1. Introduction

The system of combined punishment of several crimes, as an important system of penalties, plays an important role in the fair judicial trial of judges, the protection of criminals' legitimate rights and interests, and the maintenance of social harmony and stability. The second paragraph of Article 69 of the Amendment to the Criminal Law (9) stipulates that if there is a sentence of fixed-term imprisonment and detention in several crimes, the fixed-term imprisonment shall be executed. Among the several crimes, those sentenced to fixed-term imprisonment and control, or detention and control, shall be enforced after the execution of fixed-term imprisonment and detention. This is the first time that China's criminal law has clarified the system of combined punishment for different kinds of free punishment. This article will use this law as a basis to start a discussion on the judicial application of the system of multiple crimes.

## 2. Overview of the system of combined punishment for several crimes

### 2.1 The concept of the combined punishment system for several crimes

Different countries have different understandings of multiple crimes. Simultaneous punishment of multiple crimes in China's criminal punishment means that the people's court has committed several crimes committed by a person before the judgment was pronounced, or if a crime was found or a new crime was committed before the execution of the penalty after the judgment was pronounced. The principle of concurrent punishment and the method of calculating the sentence, determine the system of penalties to be imposed on it. [1] It is not difficult to see that the system of combined punishment of multiple crimes contains the following basic elements: First, the subject of the combined punishment of multiple crimes should be a judicial organ such as a people's court. Second, the number of crimes and the punishment are limited by the time factor. It should be before the sentence is pronounced or after the sentence is pronounced, and before the execution of the penalty is completed. Thirdly, the condition of punishment for punishment with multiple punishments is that one person commits multiple guilt or that he committed a new crime before committing the

punishment. Fourth, the combined punishment of multiple crimes should be measured in accordance with the principles determined by the Criminal Law. The author believes that the combined punishment of multiple crimes is a system of conviction and sentencing of the multiple crimes committed by the accused in the judicial trial of the people's court, and finally determines the system of punishment to be executed in accordance with the principle of combined punishment in the Criminal Law.

Table 1. Development History of New China's Criminal Law

| Development History of New China's Criminal Law |  |
|---|--|
| Development stage                               | The specific time                            |
| Establishment and development stage             | From October 1949 to the first half of 1957  |
| Depression and stagnation stage                 | From the second half of 1957 to October 1976 |
| Recovery and prosperity stage                   | October 1976 to present                      |

## 2.2 Characteristics of the system of combined punishment for several crimes

### 2.2.1 The Objectivity of the system of combined punishment of several crimes

The objective of concurrent punishment of multiple crimes is that the index crime is an objective fact of multiple crimes, that is, the objective fact that a person commits several crimes in a single crime or a joint crime and commits several crimes. If a perpetrator commits several acts but only commits a specific crime, he cannot be counted and punished. The combination of punishment is the essence of multiple crimes.

### 2.2.2 The time constraint of the system of combined punishment of several crimes

The time constraint of the combined punishment of several crimes applies to the unfinished punishment, which includes two aspects: in most cases, before the sentence is pronounced, the procuratorial organ will prosecute the defendant for two or more crimes. Based on the law and as the criterion, the defendant shall be convicted and sentenced separately for the crimes committed, and the punishment to be executed by the defendant shall be determined strictly in accordance with the principle of concurrent punishment. In practice, there are still a few cases in which the defendant has missed a crime or a new crime during the execution of the penalty after the sentence is announced. The judge convicted and sentenced the new crime and the missed crime separately, and the unexecuted penalty. Penalty rules, so as to determine the final punishment that the defendant should carry out, to better achieve the timeliness of the punishment. The combined punishment system for multiple crimes is applicable to the main sentence, the additional sentence, and the situations that occur during the parole test period and suspended sentence.

### 2.2.3 The statutory nature of the system of combined punishment of several crimes

The legality of the combined punishment of several crimes is mainly the legality of the sentencing and punishment of the specified crime. First, the premise of punishment of multiple crimes is multiple crimes, that is, in accordance with the general provisions of the Criminal Law and the provisions of the sub-rules, the convictions and sentencing should be independent of each other, and should not be affected by each other. Conviction and sentencing. China's criminal law does not clarify the concept of the number of crimes, academically there is a theory of behavior, a theory of legal interests, and so on. The general theory of China's criminal law theory on this issue is the crime constitution theory. [2] Secondly, when punishment is carried out, the defendant shall be punished according to the principle of punishment stipulated in the Criminal Law and the specific circumstances of the crime. Third, follow the statutory principle of crime, and in accordance with the clear provisions of the criminal law, ensure the expected possibility of the citizens, and maintain social stability and long-term security.

### **3. The Theoretical Value of the Simultaneous Punishment System for Several Crimes**

#### **3.1 The necessity of the system of combined punishment for several crimes**

The system of combined punishment of several crimes has a long history in China, which can be traced back to the pre-Qin period. It was gradually systematized in the Tang Dynasty. It has been valued by the rulers throughout the dynasties and continues to develop. After the founding of New China, the Criminal Law of 1979 stipulated the system of combined punishment for multiple crimes, and determined the principles and applicable methods of the combined punishment for multiple crimes. The provisions of the Criminal Law of 1979 concerning the punishment of multiple crimes are relatively concise and principles. It should be said that these provisions have not only been widely recognized by the academic community, but also have an outline role in judicial practice. It provides a basic paradigm for judicial practice. [3] From this, it can be seen that the combined punishment of multiple crimes, as a penalty system, has its own necessity in the history of 5,000 years in China. The law is functional. The system of one crime, one punishment and multiple punishments fully reflects the fairness and justice pursued by the law and the equivalence of the law, avoids repeated evaluation of a certain crime, and conforms to the objective principle of adaptation of crime, responsibility and punishment Guaranteed fair and just punishment.

#### **3.2 The rationality of the system of combined punishment for several crimes**

The system of combined punishment for multiple crimes allows the offender to receive due punishment for every crime he commits, which fully reflects the value of punishment for one crime, one punishment and punishment for all crimes. As one of the important systems of penalties, the principle and applicable method of punishment of multiple crimes can effectively punish criminals. In China's "Criminal Law Amendment (IX)", the principle of combination of fixed-term imprisonment and control, detention and control is adopted, and it is clear that there are sentenced to fixed-term imprisonment and control in several crimes, or detention and control, fixed-term imprisonment and detention execution After completion, the control must still be implemented. [4] The system of combined punishment of multiple crimes is essentially the independence of the charges and the combination of punishments, which reflects the simple value of reciprocity and fairness. Although the number crimes are punished concurrently, when the number crimes are punished, they are comprehensively studied and judged according to their objective social harm, and each crime is treated equally, reflecting the equivalence and fairness of the penalty.

### **4. Application of the combined punishment system for several crimes**

#### **4.1 The application of concurrent punishment for heterogeneous fixed-term punishment**

In China, the application of concurrent punishment for heterogeneous free punishment mainly includes the viewpoints of absorption, conversion, separate execution and compromise. Absorption theory advocates that all severe sentences should be accompanied by light sentences. That is to say, in the case of several crimes, there is a fixed-term imprisonment and punishment combined with punishment, only a fixed-term imprisonment; when there is a combined punishment with detention and control, only a detention is executed. [5] Some scholars advocate absorption, because this method of combined punishment not only reflects the seriousness of the law but also conforms to the principle of combined punishment, and is simple and easy to implement. [6] Conversion means that the different types of fixed-term imprisonment will be converted into the same type of heavier fixed-term imprisonment. Separate executions claim that within the scope of heterogeneous free punishment, the heavier punishment is executed first, and then the lighter punishment is executed. The author believes that the absorption theory may result in lighter punishment for heavier crimes. In the conversion theory, there are essentially differences in the three aspects of control, detention, and fixed-term imprisonment, which cannot be simply converted, otherwise it will cause different degrees of personal freedom restrictions for the offender. Separate execution says that it does not conform to the limitation and aggravating principle determined by China 's criminal law, there are

deficiencies that may increase the offender's sentence, and after the execution of the punishment separately, although it can be adjusted in time according to the commutation and parole system in our punishment execution system. The original penalties of the offender will inevitably increase the pressure on the judiciary and cause a waste of judicial resources. In summary, the author believes that although the absorption theory may result in lighter punishment for heavier crimes, after weighing the pros and cons, the absorption theory conforms to the statutory principle of crime and punishment, can maintain the fairness and justice of the law, and helps the judicial trial of the judge. Punish crimes better and save judicial resources effectively.

#### **4.2 The application of the combined penalty of the additional penalty system**

The main punishment and the additional punishment generally adopt the principle of combination of discipline, that is, the additional punishment in several crimes still needs to be executed. There are controversies on the application of concurrent penalties for supplementary penalties, mainly as follows: supplementary penalties are divided into the same supplementary penalties and different supplementary penalties. In our country, the application of the same kind of additional punishment mainly includes the alternative judgment theory, the combination and absorption theory, the absorption, restriction aggravation, merger theory, absorption, restriction aggravation, and alternative judgment theory. Regarding heterogeneous additional punishment, the academic community also has different opinions, mainly including the combination theory, the combination and absorption theory, and the combination and alternative judgment. The author believes that the principle of absorption, restriction of aggravation, and alternative discretion should be adopted for the same kind of additional punishment. Absorption refers to the deprivation of political rights for a lifetime of several crimes of deprivation of political rights, and the implementation of more political rights for life. There are several penalties for deprivation of political rights for a period of time, and the punishment cannot be aggravated for the perpetrator; the alternative measure means that when the two additional penalties for fines and confiscation of property exist at the same time, the alternative should be chosen. Regarding heterogeneous additional punishment, a combination of discipline and alternative discretion should be adopted, that is, for deprivation of political rights and confiscation of some Additional penalties such as fines should be applied to the principle of "consideration", but when fines and confiscation of all property are combined, "the judiciary should consider comprehensively" and choose a different additional penalty to better implement the function of penalties. [7]

#### **5. Conclusion**

As an important penalty discretion system, the system of combined punishment for several crimes reflects the development and constant adjustment of human civilization, and is the wisdom crystallization of human civilization. The system of combined punishment for several crimes not only has an important guiding significance to judge's conviction and sentencing, but also has a significant impact on the defendant. When sentencing several crimes, the judicial judges should weigh the results of the combined punishment, so that the combined punishment of several crimes can achieve the legitimacy of punishment, achieve the purpose of punishment, and protect the legitimate rights and interests of the defendant.

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