

A Review of Criminal Justice in 2020: Legal Disputes Concerning Concurrency Theory

Heng-da Hsu*

Abstract

In 2020, the Joint Senate for Criminal Cases of the Taiwan Supreme Court formally opened its door. It is undoubtedly a crucial moment for the settling of legal disputes and the resolving of conflicting interpretations. Of the eleven decisions in the Joint Senate's inaugural year, five decisions concern the application of the Concurrency Theory. This Article critically analyzes the five decisions from the perspective of the Concurrency Theory. It advances the following arguments: 1. The Blocking Effect (Sperrwirkung) from the lower penalty crime extends to rehabilitative measures statutes only if prescribed by law; 2. When a single offense constitutes two counts of crime concurrently and only one count of crime is surrenderable, a surrender must secure cost reduction benefit for the investigation bureaus, for the triggering of Article 62 Mitigation Statute to occur; 3. A single offense that constitutes Special Criminal Breach of Trust and the Crime of Non-Arm's Length Transactions concurrently shall result in the penalties prescribed in the Special Criminal Breach of Trust statute of the Securities and Exchange Act; 4. When a single offense constitutes the Illegal Transfer of Narcotics and the Transfer of Prohibited Substance concurrently, the court should convict the defendant on the count of Illegal Transfer of Narcotics; 5. In the event that the trial court partially acquits a defendant for a criminal offense, and the defendant appeals the convictions on other counts of crimes for that same offense to a superior court, the trial court's judgement of acquittal is finalized and the superior court may not vacate the acquitting judgement. The Article concludes that, while the Joint Senate indeed plays an important role in

* Professor of Law, College of Law, National Taiwan University.

E-mail: hdhsu@ntu.edu.tw

resolving legal questions and conflicting interpretations, the pivotal question remains whether the Joint Senate's decisions can build on robust theoretical foundations, which is the key to the reasonable interpretation of law.

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