

Concurrence between the Regulations of Deprivation of Illegal Benefits and Forfeiture in the Administrative Penalty Act and the Confiscation Regulations in the Criminal Code

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Abstract

Since the enforcement of Taiwan's Administrative Penalty Act in 2006, compared to the absent relevant regulations of confiscation in the Criminal Code at that time, the Administrative Penalty Act takes example from the German Act on Regulatory Offenses at the beginning of legislating which makes the regulations of illegal benefit deprivation and forfeiture below Article 18 in the Administrative Act more complete. As a result of the the absent regulations of confiscation in the Criminal Code at that time, especially on the lacuna in the regulation of illegal benefit confiscation, disputes regarding interpretation and applicability of regulations on the Administrative Penalty Act and the Criminal Code happen less frequently in relevant cases.

However, after the amendment of Criminal Code in 2015 regarding the regulation of confiscation, the concurrence in different relevant cases between the regulations of confiscation in the Criminal Code and the regulations of illegal benefit deprivation and forfeiture in the Administrative Penalty Act has frequently and inevitably led to disputes regarding interpretation and applicability.

Using the transaction and occurrence for the Judgment No. 732 of Supreme Administrative Court of 2018 and relevant judgments, this study starts from the aforementioned problem (the concurrence between the regulation of forfeiture in Administrative Penalty Act and the regulation of confiscation in Criminal Code) with typing various possible concurrence situations in cases between the

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regulations of illegal benefit deprivation and forfeiture in the current Administrative Penalty Act and the regulations of confiscation in the Criminal Code as well as the interpretation and applicability of derivative regulations.

Furthermore, by examining the content and nature of Administrative Penalty Act and Criminal Code as well as the perspective of whether or not the subject of confiscation and forfeiture is the same specific property or merely just the property benefit, this study sought to find possible solutions under the context of the current Administrative Penalty Act. The Judgment No. 732 of Supreme Administrative Court of 2018 and relevant judgments were also analyzed and evaluated.

Keywords: Administrative Penalty Act, confiscation of illegal benefits, narrowly defined confiscation, deprivation of illegal benefits, forfeiture