

THE POSITION OF THE JORDANIAN JUDICIARY ON THE ISSUE OF REAL CONCURRENCE OF OFFENCES/CONCURRENCE OF ACTUS REUS A COMPARATIVE STUDY BETWEEN THE SYRIAN AND LEBANESE JUDICIARIES

**Abdullah Mohammed Ehjelah, Yarmouk University
Mohammad Nawwaf AL-Fawareh, University of Jordan**

ABSTRACT

In fact, the Jordanian legislator hasn't stipulated an explicit criterion; under Article (72/1) of the Penal Code, for addressing real concurrence of offences, as it did not require the absence of a peremptory judgment in one of the crimes to apply the concept of real concurrence of offences. Accordingly, the Jordanian judiciary has adopted a more expansive approach in integrating or aggregated penalties for all the crimes committed; whether those pursued in one prosecution or several separate prosecutions - even if a peremptory judgment was rendered in one of these crimes.

With this rationale, this research comes to clarify the position of the Jordanian judiciary on real concurrence of offences; compared to the Syrian and Lebanese judiciaries. This research concluded a set of findings and recommendations; the most important of which is that the Jordanian judiciary has expanded the application of real concurrence of offences compared to the Syrian and Lebanese judiciaries. This is justified by the absence of a clear legislative standard under the provisions that govern real concurrence of offences under the Jordanian legislation. This situation requires a legislative amending intervention for such provisions to serve their purpose, and to rid them of any ambiguity that may arise upon application.

Keywords: Peremptory Judgment, Real Concurrence of Offences, Integrating Penalties, Aggregating Penalties.

INTRODUCTION

In jurisprudence; the concept of "*Real concurrence of offences*" is when an offender commits several crimes, each of which is consummate in its elements. In principle, several crimes postulate several respective penalties. Nevertheless, the punitive policy under various penal codes, including the Syrian, Lebanese, and the Jordanian, have instead established special rules in the case of real concurrence of offences, leaving it to the judge's discretion to aggregate all the penalties within a maximum ceiling, or integrate them within the most severe punishment; in order to serve the purpose of the penalty and mend the offender. This also aims at avoiding perpetuation of custodial penalties for the convict's entire life of.

Significance of the Research

This research is uniquely significant as it highlights judicial applications in the matter of the real concurrence of offences from 1927 until 2020; which the law did not clearly and precisely regulate in application; leading to variant judicial applications in Jordan. For this reason, The Court of Cassation (Supreme Court) had to intervene several times to establish consistent criteria for applying the status of real concurrence of offences.

The significance of this research also manifests in illustrating the Jordanian judiciary's position in applying the concept of real concurrence of offences, and comparing such position against the judicial systems that underpin the provisions of Article (72) of the Jordanian Penal Code, specifically the Lebanese and Syrian systems. The aim is to assess the Jordanian judiciary's approach in comparison to judiciary applications in the two countries, and to provide solutions to address the issue of real concurrence of offences.

RESEARCH PROBLEM AND QUESTIONS

Article (72/1) of the Jordanian Penal Code stipulates that: (If several felonies or misdemeanors are proven, a penalty for each offence shall be sentenced, while the most severe punishment is only executed).

It is noticeable that the wording of this provision does not specify the exact legal definition of real concurrence of offences; leaving the matter vague before the judiciary to whether aggregate or integrate the penalties. Thus, the research problem revolves around answering the following questions:

1. Did Article (72) of the Jordanian Penal Code provide a precise legal definition of the real concurrence of offences concept?
2. To apply the concept of real concurrence of offences, is it necessary that no peremptory judgment was rendered in any of the crimes committed?
3. What criteria does the Jordanian judiciary require to apply the concept of real concurrence of offences?
4. Did the Jordanian judiciary, in its application of the real concurrence of offences concept, follow-suite similar judicial systems, particularly the Lebanese and Syrian ones?
5. What is the jurisdictional court to consider a motion for aggregation or integration of penalties?

METHODOLOGY AND STRUCTURE

A descriptive, analytical, and practical approach was followed in comparing between the Jordanian, Syrian and Lebanese judiciaries. The research is branched into two sections.

In section I, we talk about the Lebanese and Syrian judiciaries' applications of the real concurrence of offences concept. In section II, we address the Jordanian judiciary's application of real concurrence of offences.

Section I: The Lebanese and Syrian Judiciaries' Applications of the Real Concurrence of Offences Concept

Article (204) of the Syrian Penal Code, and Article (205) of the Lebanese Penal Code, are similarly worded as Article (72) of the Jordanian Penal Code as follows:

If several felonies or misdemeanors are established, a penalty shall be rendered for each offence, while only the most severe punishment is executed. Nevertheless, aggregation of the sentenced penalties is allowed; provided that the sum of temporary penalties does not exceed the maximum sentence as legally prescribed for the most severe offence amongst them; except by half in the case of felonies, and by the same amount in the case of misdemeanors.

These aforementioned laws haven't clearly and precisely specified the scope of applying the real concurrence of offences concept.

As a result, holding of courts in both Lebanon and Syria had yielded several hypotheses for applying the concept of real concurrence of offences, according to the governing provisions under in the Penal Code.

There seems to be an unchallenged consensus in jurisprudence and in case law that real concurrence of offences is constituted in the case of multiple offences attributed to the defendant in one criminal prosecution. These crimes are remitted by remand, accusatory or indictment decision, to one court. However, the problem arises when an offender who committed several crimes is referred to different courts, or when a peremptory judgment is rendered against the latter in one of the crimes, to then be remitted for another offence committed prior to the peremptory judgment which wasn't previously discovered.

Another scenario would be after the offender commits a crime which is peremptorily adjudicated, the offender commits another crime whilst serving the sentence. under such hypotheses, is it possible to apply the concept of real concurrence of offences?

To answer this question, we will review the position of the Syrian and Lebanese judiciaries as follows:

Scenario 1: Multiple Criminal Prosecutions for the Crimes Committed

It is difficult sometimes to aggregate all the crimes attributed to the defendant and refer them to one court, for several reasons, some of which relate to courts' jurisdiction of type, spatiality, or individuality, while others reasons relate to practical aspects, and to the fact that some crimes are only discovered after referring the defendant in other crimes to the jurisdictional court and after peremptory adjudication.

In this scenario, the obvious question; if a peremptory judgment is rendered: can the offender benefit from a case of real concurrence of offences if the prosecution discovers other crimes committed by the same person before a peremptory judgment is rendered in any of them?

By examining the rulings of Syrian and Lebanese courts, we find that peremptory adjudication of one offence does not negate applying the real concurrence of offences concept on the crimes committed prior to the peremptory adjudication. In this case, the jurisdictional court to request integration or aggregation of penalties is the court that issued the last peremptory ruling.

In our estimation, giving the end court this jurisdiction is justified, as it is inconceivable that the first court was aware that the offender will commit other crimes which will be peremptorily adjudicated. However, we can safely assume that the end court had knowledge of the offender's criminal history.

In terms of practical application, the defendant submits a motion, explaining the peremptory rulings rendered against him/her and the date of the offences. The defendant is allowed the right to request an integration or aggregation of penalties only once.

Additionally, since a peremptory adjudication of one of the crimes does not prevent subsequent prosecution of other crimes discovered later to have been committed prior to the peremptory adjudication, regardless of whether the penalty for this crime was greater, less, or equal to the penalty for the crime for which a peremptory judgment was rendered (Bakkar, 2007), it would be inappropriate to say that if the judge had rendered the more severe penalty for the crimes committed, that there is no justification to motion proceedings for a less severe crime, as integration applies to penalties and not offences (Hosni, 1975).

In conclusion, we find that the positions of the Syrian and Lebanese judiciaries in the previous case is in agreement with the jurisprudential position in both countries. Some jurists and annotators of the Lebanese and the Syrian Penal Codes (Al-Audi, 2016, Moneim, 2003, Homad, 1990, Al-Sarraj, 2013) said: *“Should there be a concurrence of crimes committed before peremptory adjudication of one of them in successive prosecutions, the court that is considering the most recent prosecution shall take into account previous penalties then decide to integrate or aggregate the sentences. It is not required that such a court is the jurisdictional one over the more severe offence; as this matter is not related to disposition of the case, but rather determining the penalties to be imposed”*.

Scenario 2: A Person Commits a Crime after Being Peremptorily Sentenced

The majority of jurists (Hosni, 1975, Behnam, 1995, Abu-Amer, 1986, Nammour, 2004, Al-Saeed, 2009, Al-Fadil, 1978) argue that real concurrence of offences manifests if several offences are attributed to a particular person without a peremptory ruling separating them.

Under a resembling sentiment, the Syrian and Lebanese court holdings had settled - where the Lebanese and the Syrian Courts of Cassation; to accept a motion for integration of penalties, have required for all the relevant offences to have occurred prior to peremptory adjudication of any of them.

Section II: The Jordanian Judiciary's Application of Real Concurrence of Offences

As previously indicated, the provision of Article (72) of the Jordanian Penal Code (which corresponds exactly to Article 205 of the Lebanese Penal Code, and Article 204 of the Syrian Penal Code) did not explicitly require the absence of peremptory judgment in one of the offences for real concurrence of offences to be constituted. However, the Lebanese and Syrian jurisprudence and judiciary have deduced this condition based on the definition of real concurrence of offences under the relevant regulations, that clearly stipulate the nature of real

concurrence of offences. Such regulations are worded as follows: “*If a person commits multiple crimes before being sentenced for one of them, the sentence shall then not exceed. ...*”.

Without this condition, the cases of real concurrence and recurrence become one; dismissing the need for separate provisions thereof under different parts of the law. The researchers’ comments on the Jordanian judiciary’s application of real concurrence offences are as follow:

First: Peremptory Judgment has No Relevance to Real Concurrence of Offences; According to the Jordanian Judiciary

Despite the fact that having no peremptory adjudication in one of the crimes committed is an established condition in the Lebanese and Syrian jurisprudence and judicaries for real concurrence of offences to materialize, the Jordanian judiciary has adopted an entirely different approach. The Jordanian judiciary applies the rule of integrating or aggregating penalties for all crimes, even if any of these offences was previously peremptorily adjudicated.

This approach presents itself in Jordanian case law, for example the Court of Cassation; in its rulling No. 3643 of 2018, stated: by examining the provision of Article 72, we find that it addresses aggregation of penalties in generic terms; ruling integration of sentences, which is the principle, or aggregation thereof. Here, we do not find it appropriate to overburden the provision beyond its scope; as the first paragraph talked about the plurality of felonies or misdemeanors generically. There is nothing that could be interpreted as multiple charges in the same case; where the felony or misdemeanor may concur in one case. They could, however, be present in different cases, and this is where real concurrence of offences materializes).

The Court of Cassation has also confirmed that the jurisdictional court to consider motions for integrating the penalties is obligated to implement the provision of Article (72); by integrating or aggregating the penalties, and may not dismiss it, regardless of the number of cases or variety of types. The court had also confirmed that it is impermissible to request aggregation of penalties twice for the same case.

Second: The Problem Peremptory Adjudication Irrelevance to Real Concurrence of Offences; in Jordanian Judiciary

In our estimate, the Jordanian judiciary’s approach in integrating or aggregating the penalties; despite peremptory adjudication of one of the offences, as mentioned above, gives rise to another problem. In a nutshell, this problem is: The aggregation of penalties for all crimes; whether those committed before or after *res judicata* in one of them, would render punitive provision substanceless, and the penalties ineffective, as they will ultimately be integrated or aggregated with previous sentences. This may sometimes result in a more severe problem; namely: impunity, thus encouraging criminals to commit more offences repeatedly. Nevertheless, it is not legally possible to execute all the sentenced penalties.

This problem emerges more clearly when the penalties against this category of criminals are integrated or aggregated to the maximum limit; as stipulated under Article (72/2) of the Penal Code. As a result, when the sum of penalties reaches the maximum limit, this category will

commit more crimes without the possibility of prolonging the sentence. The following example illustrates this problem:

A person may commit a misdemeanor of fraud and be peremptorily sentenced to two years' imprisonment. While serving, in prison, the convict commits a misdemeanor of theft for which the latter is sentenced to three years' imprisonment. Also while in prison, the convict commits a misdemeanor of gross intentional harm and is peremptorily sentenced to two years' imprisonment. Subsequently, the convict files a motion to integrate the penalties or aggregate them.

Let us here assume the worst outcome scenario for the applicant, which is the aggregation of penalties; which shall under no circumstances in our example exceed (6 years) as the maximum limit for aggregating the penalties for misdemeanors; according to Article (72/2) of the Penal Code. Understanding this example postulates the following question: while serving the aggregated penalty, what if this person commits a fourth, fifth or even a sixth misdemeanor? Is it possible to prolong the imprisonment sentence beyond the (six years) limit?

The answer to this question is: negative; based on holding of Jordanian courts. This will undoubtedly cause the criminal to commit more crimes uninhibited; rendering the penalty ineffective in deterring perpetrators. Presumably, the perpetrator in the previous scenario has become immune to further punishments against potential offences. This is due to the fact that the judge is restrained within the maximum limit stipulated under Article (72/2) of the Jordanian Penal Code in case of aggregating penalties, and may not exceed this limit; regardless of the number of misdemeanors, or the penalties legally ascribed thereto.

In an attempt to avoid this problem, the Jordanian Court of Cassation has recently rendered several rulings in 2019 aiming to establish a rule which can solve this problem, namely (no integration or aggregation after integration or aggregation). This rule means that if the convicted person has filed a previous motion to integrate or aggregate several peremptory judgments and the motion was granted, then additional judgments are subsequently rendered against the same, the trial court will not be allowed to integrate the rendered sentences or aggregate them to previous sentences.

Third: Assessing the Jordanian Judiciary's Approach in Applying the Real Concurrence of Offences' Concept

The Jordanian judiciary went as far in its applying the concept of real concurrence of offences as to waive the condition of non-peremptory adjudication of one of the crimes, for the concept to materialize.

The Jordanian judiciary expansive application of the real concurrence of offences' concept, and giving the convict the right to motion for integration or aggregation of penalties will further encumber the Court of Cassation in considering appeals for cassation by written order, as it's impermissible for courts of appeal to consider appeals of first-degree court's decisions by dismissing or granting for a motion for integration or aggregation. This is due to the fact that

such a decision is regarded an order of commitment; that may not be appealed (Nammour, 2019; Sorour, 2016; Alia, 1987).

The Jordanian judiciary did not specify the court of jurisdiction to consider motions for integration or aggregation of penalties; when such penalties are peremptorily rendered by several courts. In our estimation, three observations respond to the Court of Cassation holding, regarding the rule (no aggregation or integration after aggregation or integration), which are:

1. Applying the rule (no aggregation or integration after aggregation or integration) will narrow the cases of real concurrence of offences that result in either integration or aggregation of penalties. In other words, integrating or aggregating of penalties will only apply to the penalties which haven't integrated or aggregated previously.
2. This sentiment is relatively recent, as it does not rise to the level of established judicial principles because it only came in three or four recent rulings; all of which were rendered between 2018-2019.
3. This holding was not issued by an upper magistrate. It is well established that holding of upper magistrates is more accepted than that of a first-tier magistrates.

CONCLUSION

1. It is noticeable in the wording of Article (72) of the Jordanian Penal Code, which corresponds to Article (204) of the Syrian Penal Code and Article (205) of the Lebanese Penal Code, that it did not specify the exact legal definition of real concurrence of offences; as it hasn't explicitly stipulate; for this case to materialize, absence of peremptory adjudication of one of the offences.
2. The Lebanese and Syrian jurisprudence and judiciaries are settled in this regard, as when a peremptory judgment is rendered for a particular crime, and then the perpetrator commits another crime, this case then does not constitute real concurrence of offences, but rather recurrence, if the criteria are met.
3. It is well established in the Lebanese and Syrian jurisprudence and judiciaries that presence of real concurrence of offences entails granting the court which has rendered the end penalty the jurisdiction to decide on a motion for integration or aggregation of penalties.
4. The Jordanian judiciary has expanded the applicability scope of real concurrence of offences, as it did not require absence peremptory adjudication of one of the crimes committed, for real concurrence to materialize; in contrast to the Syrian and Lebanese judiciaries. This is despite the fact that there is no difference in the legal provisions amongst the countries, in relation to real concurrence of offences.
5. The approach of the Jordanian judiciary in expanding the scope of real concurrence of offences could often lead to a problem related to encouraging crime, by encouraging a class of criminals to commit crimes repeatedly. This occurs because it's not legally possible to prolong the sentence.
6. The Jordanian Court of Cassation has recently become lenient toward less application of the real concurrence of offences' concept, by establishing the rule (no integration or aggregation after integration or aggregation).
7. The Jordanian judiciary did not specify the court of jurisdiction to consider motions for integration or aggregation of penalties.

RECOMMENDATIONS

1. In order to leave no room for discretion, and to address the problem of the real concurrence of offences, we recommend the Jordanian legislator revisits Article (72) of the Penal Code. The aim is to include a precise

- legal definition of the real concurrence of offences' concept; by requiring absence of peremptory adjudication of one of the crimes for integration or aggregation of penalties to be applicable.
2. In the current situation, and assuming that Article 72 of the Jordanian Penal Code remains as it is - we recommend the Jordanian judiciary to narrow the scope of applying real concurrence of offences; following the steps of their counterparts in Lebanon and Syria. This could be achieved by requiring absence peremptory adjudication of one of the crimes for real concurrence of offences to materialize.
 3. We recommend the Jordanian Court of Cassation; upon considering appeals by written order relating to decisions dismissing motions for integration or aggregation of penalties, to establish a principle that grants jurisdiction to integrate or aggregate penalties to the court that rendered the last ruling.

REFERENCES

- Abu-Amer, M.Z. (1986). *Penal code, general section*. University Press, Alexandria.
- Al-Audi, M. (2016). *Criminal law, part one, the general theory of crime*. Al-Halabi Human Rights Publications, Beirut.
- Al-Fadil, M. (1978). *General principles in criminal legislation*. Al-Daoudi Press, Damascus.
- Alia, S. (1987). *The force of res judicata*. University Foundation for Studies and Publishing, Beirut.
- Al-Saeed, K. (2009). *Explanation of the general provisions in the penal code*. House of Culture, Amman.
- Al-Sarraj, A. (2013). *Explanation of the general penal code*. Damascus University Publications.
- Bakkar, H. (2007). *The legal consequences of real concurrence of offences*. Mansha'at al-Maaref, Alexandria.
- Behnam, R. (1995). *The general theory of criminal law*. Manshet Al-Maarif, Alexandria.
- Homad, A. (1990). *Detailed explanation of the penal code*. General Section, New Press, Damascus.
- Hosni, M. (1975). *Explanation of the Lebanese penal code*. General Section, Dar Al-Naqari, Beirut.
- Moneim, A.S. (2003). *The general theory of the penal code*. Al-Halabi Human Rights Publications, Beirut.
- Nammour, M. (2004). *Studies in the jurisprudence of criminal law*. House of Culture for Printing, Publishing, and Distribution, Amman.
- Nammour, M. (2019). *The code of criminal procedures*. House of Culture for Publishing and Distribution, Amman.
- Sorour, A., (2016). *Mediator in the criminal procedure law*. Dar Al-Nahda Al-Arabiya Publishing, Cairo.